Public Service Company
of New Mexico
Alvarado Square MS-2824
Albuquerque, NM 87158
505 241-2754
Fax 505 241-2322

Benjamin F. Montoya
Chairman
President & CEO

March 3, 2000

BY HAND DELIVERY

U.S. Nuclear Regulatory Commission
Attn: Document Control Desk
Washington, D.C. 20555

Re: Palo Verde Nuclear Generating Station, Units 1, 2 and 3 (Docket Nos. STN 50-528/529/530, Facility Operating License Nos. NPF-41, NPF-51, NPF-74) --Application By Public Service Company of New Mexico for Consent to Indirect Transfers of Control and Approval of License Amendments to Reflect Licensee's Name Change

Ladies and Gentlemen:

Public Service Company of New Mexico ("PNM") submits this application under Section 184 of the Atomic Energy Act as amended, 22 U.S.C. § 2234, and 10 C.F.R. § 50.80 ("Application") for NRC consent to the indirect transfer of control of PNM's licenses to hold minority interests (both owned and leased) in the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 ("PVNGS" or "the PVNGS Units") to a holding company (Manzano Corporation, hereinafter "Manzano") created to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62-3A-1 through 23 (1999) (the "Restructuring Act").[1] As further described in Attachment B to this Application, the restructuring encompasses the formation of Manzano, the transfer by PNM of its electric and gas transmission and distribution businesses to an affiliated company (with PNM and such affiliated company being under common control by Manzano) and a change in PNM's name to a new name (Manzano Energy Corporation, hereinafter "Manzano Energy").[2] This letter also constitutes

---

1 A copy of the Restructuring Act is included as Exhibit 1 to Attachment B to this Application.

2 Upon restructuring, the name "Public Service Company of New Mexico" will be assigned to the new affiliated company (referred to hereinafter as the "UtilityCo").

A001

Change: NRC PDR 1Hr encl 1 w/o prop

an application under 10 C.F.R. § 50.90 for NRC approval of amendments to the operating licenses for the PVNGS Units to reflect the change in PNM's name.[3]

A description of the proposed transactions, including information provided pursuant to 10 C.F.R. §§ 50.80 and 50.90 and NRC Administrative Letter 96-02, is provided in the Information Submittal in Support of Application for NRC Consent to Proposed Indirect Transfers of Control and Approval of License Amendments to Reflect Name Change ("Information Submittal"), enclosed as Attachment B. That Attachment includes financial information for PNM that is confidential business information. Accordingly, Attachment B includes separate sets of certain proprietary (marked "PR") and non-proprietary (marked "NPR") Exhibits. PNM requests, pursuant to 10 C.F.R. § 2.790, that the proprietary information be withheld from public disclosure. The affidavit of Terry R. Horn, Vice-President and Treasurer of PNM, enclosed as Attachment A hereto, provides the basis for non-disclosure under the regulations.

As the Information Submittal demonstrates, the proposed indirect transfers of control and administrative license amendments will not be inimical to the common defense and security or result in any undue risk to public health and safety. The transfers will also be consistent with all applicable provisions of law, regulations, and orders issued by the Commission.

The proposed restructuring requires approval of other regulatory agencies in addition to consent from the NRC. The NRC Project Manager for PVNGS will be kept informed of the progress made by the other regulatory agencies in granting their approvals.

In order to fully comply with the requirements of the Restructuring Act, PNM respectfully requests that the NRC review this Application on a schedule that will permit the issuance of NRC's consent, and approval of the conforming administrative license amendments, as promptly as possible, and in any event before July 1, 2000. PNM also requests that NRC's consent to the indirect transfers of control of PNM's interests in the PVNGS Units be made effective upon issuance of the NRC order to that effect, and that the

---

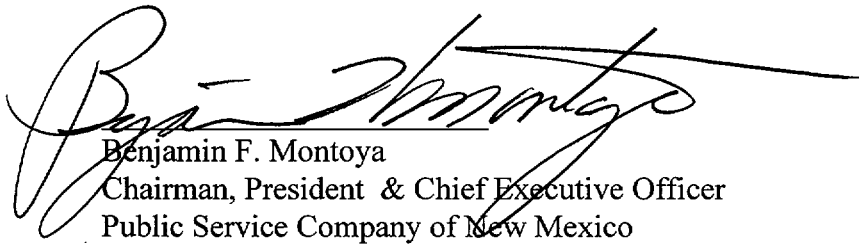
[3] A formal license amendment application will be submitted separately by Arizona Public Service Company, as Agent and operator of the PVNGS units.

NRC's consent for the transfer remain effective for a period of one year from the date of the issuance of the order.

If the NRC requires additional information concerning this Application, please contact Terry R. Horn, Vice President and Treasurer, (505) 241-2119. Service upon the applicant of comments, hearing requests, intervention petitions, or other docket entries should be made to PNM's outside counsel, as follows:

Matias F. Travieso-Diaz, Esq.
SHAW PITTMAN
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8142
matias.travieso-diaz@shawpittman.com

Very truly yours,



Benjamin F. Montoya
Chairman, President & Chief Executive Officer
Public Service Company of New Mexico
Alvarado Square
Albuquerque, New Mexico 87158

Enclosures

cc Ellis W. Merschoff, Regional Administrator, NRC Region IV
Mel B. Fields, NRC Project Manager, PVNGS
David E. Corporandy, NRC Resident Inspector, PVNGS
Robert S. Wood, NRC Division of Licensing and Program Mgm't
Steven R. Hom, Esq., NRC Office of General Counsel
James M. Levine, Arizona Public Service Company
(as PVNGS Operating Agent)

ATTACHMENT A

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

Terry R. Horn, upon being first duly sworn according to law, under oath, deposes and states:

1. I am the Vice President and Treasurer of Public Service Company of New Mexico ("PNM"). I have reviewed the Exhibits to the document entitled "Information Submittal In Support Of Application For NRC Consent To Proposed Indirect Transfers Of Control And Approval Of License Amendments To Reflect Name Change" and believe them to be true and correct.

2. Certain of the said Exhibits, specifically Exhibits 4, 5, 6, 7 and 8, contain commercial and financial information relating to the current and estimated future business operations of PNM and its affiliates that is considered confidential by PNM. Other than its disclosure in the cited Exhibits, the information in question is held in confidence and is generally not disclosed to parties outside PNM. Internal distribution of this information within PNM is limited to essential PNM personnel.

3. Public disclosure of the information contained in the cited Exhibits would be likely to cause substantial harm to PNM's competitive position in the electric power generation market because the information includes PNM's planning estimates of its economic performance, market penetration estimates and other sensitive business data.

4. For these reasons, I believe that the information contained in the cited Exhibits qualifies for withholding from public disclosure pursuant to 10 C.F.R. § 2.790(a)(4) and should be treated as confidential.

Terry R. Horn

SIGNED this 3RD day of MARCH, 2000.

NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

5/3/00

ATTACHMENT B

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
Public Service Company of New Mexico	)	**Docket Nos. STN 50-528, 50-529 and 50-530**
	)	
Palo Verde Nuclear Generating Station, Units 1, 2 and 3	)	
	)	

INFORMATION SUBMITTAL IN SUPPORT OF APPLICATION FOR NRC CONSENT TO PROPOSED INDIRECT TRANSFERS OF CONTROL AND APPROVAL OF LICENSE AMENDMENTS TO REFLECT NAME CHANGE

LIST OF EXHIBITS

Exhibit 1 – New Mexico Electric Utility Industry Restructuring Act of 1999

Exhibit 2 – New Mexico Public Regulation Commission Utility Case No. 3137 -- Application and Direct Testimony and Exhibits of Terry R. Horn: Part I – Shell Corporation Approval (November 1999)

Exhibit 3 – New Mexico Public Regulation Commission Utility Case No. 3137 -- Application and Direct Testimony and Exhibits of Terry R. Horn: Part II – Separation Plan (November 1999)

Exhibit 4 – Proforma Manzano Energy Revenues From Power Sales at Rates set by FERC and the PRC and Other Revenues From Regulatory Sources

Exhibit 5 – Proforma Manzano Energy Opening Balance Sheet

Exhibit 6 – Proforma Five-Year Projected Manzano Energy Income Statement

Exhibit 7 – Proforma Five-Year Projected Manzano Energy Cash Flow Statement

Exhibit 8 – Proforma Manzano Energy's Share of Palo Verde Costs and Available Funds to Defray Those Costs

INFORMATION SUBMITTAL IN SUPPORT OF APPLICATION FOR NRC CONSENT TO PROPOSED INDIRECT TRANSFERS OF CONTROL AND APPROVAL OF LICENSE AMENDMENTS TO REFLECT NAME CHANGE

I. INTRODUCTION AND DESCRIPTION OF THE PROPOSED TRANSACTION

A. INTRODUCTION

Public Service Company of New Mexico ("PNM") provides this information submittal ("Information Submittal") in support of its application under 10 C.F.R. §§ 50.80 and 50.90 ("Application") for: (1) NRC consent to the indirect transfer of control of PNM's licenses to hold minority interests (both owned and leased) in the Palo Verde Nuclear Generating Station, Units 1, 2 and 3 ("PVNGS" or "the PVNGS Units") to a holding company (Manzano Corporation, hereinafter "Manzano") that will be utilized[1] to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62-3A-1 through 23 (1999) (the "Restructuring Act"),[2] and (2) NRC approval of administrative amendments to the operating licenses for the PVNGS Units to reflect a proposed change in PNM's name.

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74 for PVNGS are held by the following co-licensees: Arizona Public Service Company ("APS") (owner or lessee of a 29.1% share of each of the PVNGS Units), Salt River Project Agricultural Improvement and Power District (owner of a 17.49% share), El Paso Electric Company (owner of a 15.8% share), Southern California Edison Company (owner of a 15.8% share), PNM (owner or lessee of a 10.2% share), Southern California Public Power Authority (owner of a 5.91% share) and Los Angeles Department of Water and Power (owner of a 5.70% share). APS is the licensed operator of the PVNGS Units; the remaining co-licensees, including PNM, are only licensed to possess their respective interests in PVNGS.

---

[1] Manzano has already been created. At this point, pending the completion of the PNM restructuring, it is a wholly owned subsidiary of PNM.

PNM is an integrated public utility engaged in the generation, transmission, distribution and sale of electricity and other energy services, as well as the transmission, distribution and sale of natural gas. PNM is subject to the jurisdiction of the New Mexico Public Regulation Commission ("PRC") with respect to PNM's retail electric and gas rates, service, accounting, issuance of securities, construction of major new generation and transmission facilities, and other matters. The Federal Energy Regulatory Commission ("FERC") has jurisdiction over rates and other matters related to PNM's wholesale electric sales and transmission of electricity in interstate commerce.

The Restructuring Act directs the opening of New Mexico's retail electric power market to customer choice in a process scheduled to begin on January 1, 2001. The PRC has set a June 1, 2000 deadline for utilities to file their transition plans to comply with the Restructuring Act's requirements.[3] The transition plan is to be approved no later than December 1, 2000 under the Restructuring Act. However, any date set in the Act can be extended by the PRC for up to one year.[4] A significant component of the transition required by the Restructuring Act is the separation of those aspects of a utility's business that will remain subject to PRC regulation, including electric power transmission and distribution, from its other business operations (such as electric power generation) which will not be regulated by the PRC. The restructuring proposed by PNM is the first step in the company's accomplishment of the mandated transition.[5]

Footnote continued from previous page

[2] A copy of the Restructuring Act is included as Exhibit 1 hereto.

[3] The original deadline for filing transition plans was March 1, 2000, but was subsequently extended by the PRC for three months. PNM filed a portion of its transition plan with the PRC in November 1999. See Exhibits 2 and 3, which include certain documents filed by PNM with the PRC at that time. These documents describe PNM's plan to implement the Restructuring Act's requirements through a corporate restructuring. PNM intends to file the remainder of its transition plan with the PRC on or before June 1, 2000, or in accordance with any other deadline ordered by the PRC.

[4] The transition plan is to include proposed tariffs (or a detailed description thereof) for transmission and distribution services, and is to include a non-bypassable wires charge to enable collection of "stranded costs."

[5] PNM's proposed "separation plan" to separate its regulated and deregulated assets is described in Exhibit 3.

The creation of a common holding company structure, as described below, is identified in Section 8.C of the Restructuring Act, § 62-3A-8.C, as an acceptable way to implement the requisite corporate separation in a non-divestiture context. PNM has chosen to utilize a common holding company structure for its regulated and deregulated assets, and is therefore seeking to implement what amounts to an indirect transfer of control of its licenses for the PVNGS Units. A description of the proposed PNM restructuring is presented next.

B. THE PROPOSED PNM RESTRUCTURING

To comply with its obligations under the Restructuring Act, PNM will split into two corporations so as to separately provide –

- power supply facilities, operations and services, and energy-related facilities, operations and services that are to be made available on a competitive, deregulated basis ("the deregulated businesses");

- transmission and distribution services consisting of: (i) transmission facilities, operations and service, (ii) distribution facilities, operations and service, and (iii) customer billing, metering, and other ancillary services, all of which are to be made available to the public on a regulated basis (the "regulated businesses").

A holding company will become the corporate parent of these two corporations and will engage in those activities that are necessary for it to meet its fiduciary and financial obligations to its shareholders as a publicly traded company. In addition, the holding company will establish a corporate support services division that will provide administrative and other business support to the subsidiaries.

To implement this plan, the Board of Directors of PNM agreed to form a holding company (Manzano) and transfer the regulated businesses of PNM to a newly created, wholly owned corporate subsidiary of Manzano (the "UtilityCo"). The corporate name "Public Service Company of New Mexico" will be transferred to the UtilityCo along with the regulated businesses assets and obligations, so as to provide continuity of company identification by its customers. In addition,

certain assets and obligations will be transferred to Manzano. A new name, Manzano Energy Corporation (hereinafter "Manzano Energy") has been selected for the remaining portion (i.e., the deregulated businesses) of PNM. Notwithstanding the name change, PNM will not undergo any corporate modifications other than having the regulated business severed off, becoming a wholly owned subsidiary of Manzano, and transferring some of its assets and obligations to Manzano.

C. IMPLEMENTATION OF THE RESTRUCTURING

Under the Restructuring Act, the New Mexico electric power market will become open to customer choice beginning on January 1, 2001 for certain educational institutions and schools and for residential and small business customers. For all other customers, the market will be open as of January 1, 2002. (Each of these dates, however, is subject to a possible delay by the PRC of up to one year, if needed, to assure orderly implementation of customer choice.)[6] Upon completion of the PNM restructuring, the UtilityCo will have the obligation to provide electric transmission, distribution, metering, billing, and certain other ancillary services to its customers even though it will no longer own or manage any generation assets. Manzano Energy will supply electric power generation services to the UtilityCo through at least the final implementation of customer choice, and possibly over a longer period, should Manzano Energy be successful in securing contracts for such services. The period of time from the completion of the PNM restructuring until customer choice is effective for all customer classes will be referred to herein as the "transition period;" the portion of the transition period through the date on which customer choice becomes effective for schools and residential and small business customers (currently scheduled for January 1, 2001) will be called here the "first phase" of the transition, and the balance of the transition period will be called the "second phase."

---

[6] Based on the above noted three-month extension in the deadline for filing transition plans, it may well be that at least a portion of the one-year extension in the transition schedule will be ordered by the PRC. In addition, the PRC staff has filed a motion -- which is still pending -- to postpone the hearing on the PNM restructuring process. Although PNM has opposed the motion, its granting may also cause a delay in the transition schedule.

During the transition period, Manzano Energy will supply electric power to the UtilityCo pursuant to a power purchase agreement (the "Interim Agreement") under which Manzano Energy will provide firm, all-requirements power to serve all retail customers receiving bundled electric service under PNM's current tariffs, which will continue to be applied by the UtilityCo.[7] Under this arrangement, the amounts currently recoverable in rates with respect to PNM's generation function (minus those amounts earmarked for the decommissioning of PVNGS, which may be subject to separate recovery) will still be recoverable by Manzano Energy during the first phase of the transition.[8] During the second phase, there will be a recovery based on the UtilityCo's current rates of the portion of Manzano Energy's generation function costs allocable to customers for whom choice does not become available until the end of the transition period. Thus, Manzano Energy will continue to provide power for some of the UtilityCo's customers at regulated rates through at least December 31, 2001, and possibly for an additional period of up to one year, depending on whether the transition schedule implementation is extended by the PRC, as provided for in the Restructuring Act. Exhibit 4 (included as a confidential document)[9] is a table that shows estimates of the amounts of electric power that will be sold by Manzano Energy at rates reviewed and accepted by FERC for the years 2000 and 2001, and which reflect the transition plan to be filed with the PRC. The table also shows Manzano Energy's other revenues from regulatory sources during that period. As the table shows, Manzano Energy's revenues from regulated power sales and other regulated recoveries will constitute a significant portion of the company's total anticipated revenues.

---

[7] The tariffs will be those agreed to by PNM in a settlement stipulation that was approved by the PRC on August 25, 1999.

[8] The details of PNM's proposed transition to complete customer choice (including proposed tariffs, or a detailed description thereof, for distribution and transmission services and proposed standard offer service tariffs, exclusive of price terms that will be incorporated prior to customer choice, for residential and small business customers who do not select a service provider) are part of the transition plan which PNM is required to file with the PRC. As noted above, PNM intends to file the remainder of its transition plan on or before June 1, 2000, or such other deadline that may be ordered by the PRC.

[9] See Attachment A to the accompanying Application, the Affidavit of Terry R. Horn pursuant to 10 C.F.R. § 2.790, filed in support of the request to keep several of the exhibits included herewith confidential.

D. PVNGS ASSETS TO BE RETAINED BY PNM (TO BECOME MANZANO ENERGY) AFTER THE RESTRUCTURING

Implementation of the restructuring will not entail a direct transfer of control of PNM's licenses for PVNGS and will not, therefore, require an amendment to those licenses except to reflect the change in licensee name from PNM to Manzano Energy. The assets being retained by the present licensee will include all PNM's owned and leased interests in the PVNGS Units.[10]

II. INFORMATION REQUIRED BY 10 C.F.R. § 50.80 FOR INDIRECT TRANSFERS OF CONTROL

A. COMPANY NAME

Public Service Company of New Mexico. This name will be changed to Manzano Energy Corporation as part of the restructuring, as explained above.

---

[10] PNM presently leases from certain institutional investors significant portions of PNM's 10.2% participation in PVNGS Units 1 and 2. PNM owns a 2.266667% undivided interest in Unit 1 and leases, under long-term leases, an aggregate 7.933333% interest in Unit 1 (together comprising its total 10.20% interest in Unit 1). PNM owns a 2.2666667% undivided interest in Unit 2 and leases, under long-term leases, an aggregate 7.9333333% interest in Unit 2 (together comprising its total 10.20% interest in Unit 2). PNM owns a 10.2% undivided interest in Unit 3. PNM's initial PVNGS Unit 1 sale and leaseback transactions were approved by the NRC on December 12, 1985, *Arizona Public Service Company* (Palo Verde Nuclear Generating Station, Unit 1), 22 NRC 875 (1985). All of PNM's sale and leaseback transactions are the subject of prior amendments to each of License No. NPF-41 (amendment no. 3 dated December 26, 1985, amendment no. 6 dated June 2, 1986 and amendment no. 11 dated December 11, 1986) and License No. NPF-51 (amendment no. 2 dated August 12, 1986 and amendment no. 6 dated December 11, 1986).

Although certain consents are required from the lessors under the PVNGS leases in order to consummate the restructuring, the PVNGS leases will remain in effect and PNM (to become Manzano Energy) will remain the lessee thereunder. The UtilityCo will not become a co-lessee or joint lessee under the PVNGS leases, nor will the lessors acquire any direct or indirect control or other involvement in PVNGS Units 1 and 2. Subsequent to the restructuring, Manzano Energy will continue to comply with all conditions in the PVNGS licenses applicable to the leases.

B. COMPANY ADDRESS

Alvarado Square

Albuquerque, New Mexico 87158

C. DESCRIPTION OF BUSINESS

Following implementation of the restructuring, Manzano Energy will be a wholly owned subsidiary of Manzano, and will engage in the following business activities:

- The generation of electricity (principally comprised of 390 MW of capacity at PVNGS, 765 MW of capacity at the coal-fired San Juan Generating Station and 192 MW of capacity at the coal-fired Four Corners Power Plant). PVNGS's generation will comprise less than 26% of Manzano Energy's total owned and leased electric generating capacity.

- The sale of electric energy, capacity and ancillary services for resale (including sales to the UtilityCo and directly to customers).

- Electric power wholesale trading activities.

- Other non-regulated energy and utility related services (for example, revenue metering, sub-metering and energy use optimization) to be provided by a wholly owned subsidiary of Manzano Energy.

D. NRC LICENSES INVOLVED

NRC Facility Operating Licenses NPF-41, NPF-51 and NPF-74.

E. ORGANIZATION AND MANAGEMENT

PNM is, and will remain after consummation of the restructuring, the corporation which was first organized under the laws of the State of New Mexico in 1917. All of PNM's current directors and principal officers are citizens of the United States; all of the directors and principal officers of

both Manzano and Manzano Energy are expected to be U.S. citizens. The principal location of PNM's business is, and will remain following the restructuring, the State of New Mexico.

PNM's current directors and officers are:

Directors of PNM

John T. Ackerman

Robert G. Armstrong

Joyce A. Godwin

Laurence H. Lattman

Manuel Lujan, Jr.

Benjamin F. Montoya, President,[11] Chief Executive Officer and Chairman of the Board

Reynaldo U. Ortiz

Robert M. Price

Paul F. Roth.

Officers

Benjamin F. Montoya, President, Chief Executive Officer and Chairman of the Board

Roger J. Flynn, Executive Vice President, Electric and Gas Services

William J. Real, Executive Vice President, Energy Services and Power Production

Barbara L. Barsky, Senior Vice President, Planning and Investor Services

Marc D. Christensen, Senior Vice President, Shared Services

Max H. Maerki, Senior Vice President and Chief Financial Officer

Patrick T. Ortiz, Senior Vice President, General Counsel and Secretary

[11] On January 26, 2000, PNM announced that Jeffry E. Sterba will become Company President on or before March 15, 2000, and that Benjamin F. Montoya intends to retire within the next 18 months.

Edward Padilla, Jr., Senior Vice President, Bulk Power Marketing and Development

R. Blake Ridgeway, Senior Vice President, Energy Services

Ernest T. C'de Baca, Vice President, Governmental Affairs

Melvin J. Christopher, Vice President, Engineering and Operations

Patrick J. Goodman, Vice President, Power Production

Terry R. Horn, Vice President and Treasurer

Sarita P. Loehr, Vice President, Human Resources

John R. Loyack, Vice President, Corporate Controller and Chief Accounting Officer

Cindy E. McGill, Vice President, Regulatory and Public Policy

John H. Myers, Vice President, Construction and Reliability

Terry D. Rister, Vice President, Consumer Services.

The current directors of Manzano (all U.S. citizens) are:

John T. Ackerman

Robert G. Armstrong

Joyce A. Godwin

Benjamin F. Montoya

Theodore F. Patlovich

Robert M. Price

Jeffry E. Sterba.

Upon completion of the restructuring, Manzano, Manzano Energy and the UtilityCo will each have its own Board of Directors. It is anticipated that the PRC will require that there will be no overlap between the Boards of Manzano Energy and the UtilityCo; however, both companies will be managed and owned by a common holding company (Manzano). PNM will provide written information, including citizenship, about all Manzano Energy directors and principal officers upon

determination of their identities, as well as information on any changes in composition in Manzano's Board.

Following implementation of the restructuring, neither Manzano nor Manzano Energy will be owned, controlled or dominated by an alien, foreign corporation, or foreign government. PNM is not acting as an agent or representative of any other person in respect of the Application.

PNM is a publicly traded and widely owned company, thus the extent of current foreign ownership of PNM is unknown, because many shareholders do not own stock directly, but do so through brokers, banks and nominees.[12] Currently, only approximately 0.008% of PNM's common stock is owned by shareholders whose registered address is outside the United States. PNM does not anticipate that there will be an increase in foreign ownership of Manzano Energy following the proposed restructuring.

F. TECHNICAL QUALIFICATIONS

Pursuant to the Arizona Nuclear Power Project Participation Agreement, APS serves as operating agent for all PVNGS participants in the management, operation, maintenance and improvement of the PVNGS units. Furthermore, APS is solely licensed to operate the PVNGS units. Therefore, PNM's restructuring will not involve any change to either the management or the technical organization or staff responsible for operating the PVNGS Units. PNM's restructuring will require no change in the numbers and qualifications of APS personnel who operate the PVNGS units.

G. FINANCIAL QUALIFICATIONS

As described above, from consummation of the restructuring through the end of the transition period, Manzano Energy will continue to recover the cost of all, or a substantial portion of, the electricity it generates and provides to the UtilityCo through cost-of-service type rates filed

[12] Based on reports filed with the SEC, PNM knows of only one person, the Prudential Insurance Company of America of Newark, New Jersey, who is the beneficial owner of more than 5% of PNM's common stock.

with and subject to the approval of FERC. [13] For these reasons, Manzano Energy will remain after the restructuring and throughout the transition period an "electric utility" (as defined in 10 C.F.R. § 50.2); thus, the transfer subject of the Application is exempt from financial qualifications review under 10 C.F.R. § 50.33(f).

Notwithstanding that Manzano Energy will remain –under NRC regulations– an "electric utility" subsequent to the restructuring, PNM provides the information that follows in order to assist the NRC in its review of the Application.

Subsequent to the restructuring, the deregulated businesses to be retained by Manzano Energy will comprise approximately 52% of PNM's pre-restructuring total assets, accounting for approximately 60% ($699 million in 1999) of PNM's pre-restructuring operating revenues and 47% ($39 million in 1999) of its pre-restructuring net income. The approximate net book value of the assets comprising the deregulated businesses to be owned by Manzano Energy will be over $1.5 billion. See Manzano Energy's opening proforma balance sheet (included as a confidential document in Exhibit 5). It is expected that upon the restructuring, Manzano Energy will have 53% debt and 47% equity. At the end of this year, Manzano Energy is anticipated to have 49% debt and 51% equity, and these proportions are expected to change to 43% debt and 57% equity by 2004. Exhibits 6 and 7 (also included as confidential documents) are the estimated proforma income and cash flow statements of Manzano Energy for the five-year period following the restructuring.

Exhibit 8 (also included as a confidential document) contains proforma estimates, for each of the five years commencing January 1, 2000, of Manzano Energy's share of the total annual operating costs of the three PVNGS units. The exhibit shows that Manzano Energy has more than adequate cash available at all times during this period to cover the company's share of the PVNGS

[13] The Interim Agreement between Manzano Energy and the UtilityCo will be cost-of-service based. Payments thereunder will be collected through rates set in a PRC-approved retail rate settlement. The agreement is, therefore, unlike the market-based rate schedules that the NRC has determined are not sufficient to classify a generating company as an "electric utility" under 10 C.F.R. §50.2. See North

Footnote continued on next page

operation costs. The exhibit demonstrates that Manzano Energy will have adequate funds to cover all its nuclear-related financial obligations during a postulated six-month outage of all three PVNGS units. Exhibits 5 through 8 show that Manzano Energy will have significant financial strength, as evidenced by the fact that PNM has received indications, based upon preliminary discussions, that Manzano Energy should receive an investment-grade bond rating by credit rating agencies such as Moody's, Standard & Poor's and Duff & Phelps. Indeed, Manzano Energy will retain the financial capability for raising and managing capital in the amounts historically associated with PNM. It will continue to own considerable generating assets in addition to its interest in PVNGS: PVNGS capacity will comprise less than 26% of Manzano Energy's total owned and leased electric generating capacity and 27% of the total value of its assets. Lastly, Manzano Energy's interests in its non-nuclear electric generation assets (having a net book value of approximately $422 million) will not be subject to the prior claim of a mortgage in favor of debt security holders or other creditors.[14] Manzano Energy's obligations as PVNGS licensee will, therefore, have a financial claim on the company's non-nuclear electric generating assets of no less priority than the claims of external creditors.

H. DECOMMISSIONING FUNDING

NRC regulations require information showing "reasonable assurance . . . that funds will be available to decommission the facility." 10 C.F.R. § 50.33(k). PNM provides financial assurance for the decommissioning of its ownership interests in the PVNGS Units through external sinking funds in which deposits are made at least annually.[15] After the restructuring, Manzano Energy will continue to own the existing nuclear decommissioning trusts presently maintained by PNM.

Footnote continued from previous page

Atlantic Energy Service Corp. and Great Bay Power Corp. (Seabrook Station Unit No. 1), Exemption, 62 F.R. 5,492, 5,493 (February 5, 1997).

[14] There are $111 million of first mortgage bonds which serve as collateral for tax exempt pollution control revenue bonds and are secured by a lien on PNM's owned interest in PVNGS.

[15] See the Decommissioning Funding Status Report for the PVNGS Units ("Decommissioning Funding Report") for the year ended December 31, 1998, letter 102-04266-JML/SAB/RKB, dated March 30, 1999 from James M. Levine (APS) to the NRC, and attachments thereto.

Therefore, Manzano Energy will remain responsible for the decommissioning obligations associated with its ownership interests in the PVNGS Units and will continue to fund the decommissioning trusts for the three units in accordance with NRC regulations and contractual commitments. PNM anticipates that Manzano Energy will continue to utilize an external sinking fund method for providing financial assurance for decommissioning.

As contemplated by the Restructuring Act, § 62-3A-6.A(9), PNM will submit a proposal for the use of a non-bypassable wires charge that will be collected by the UtilityCo on behalf of Manzano Energy for recovery of stranded costs allocated among PNM's customer classes. The nuclear decommissioning costs for PVNGS Units 1 and 2 will be included as a specifically identified element of stranded costs.[16] PNM's stranded cost proposal will seek to have nuclear decommissioning costs covered by a separately-stated charge to be collected over a period in excess of five years. By the time the next biennial report to the NRC is made in March 2001 in accordance with 10 C.F.R. § 50.75(f)(1), the precise method for collecting decommissioning costs via the New Mexico wires charge is expected to be known and, if so, will be reported to the Commission. Payments into the decommissioning trusts will continue to be made by PNM until the restructuring is approved, and by the UtilityCo during the transition period. Indeed, an agreement to be entered between Manzano Energy and the UtilityCo will require the UtilityCo to make payments as Manzano Energy's agent in specified amounts into the decommissioning trusts.

It should be noted that Section 7F(2) of the Restructuring Act (Exhibit 1 hereto) provides as follows:

> Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be interpreted to require the commission to make any order involving rates or wires charges that would result in a public utility losing its eligibility:

---

[16] PVNGS Unit 3 was excluded from the rate base; therefore, no provision is expected to be made by the PRC to provide recovery of its decommissioning expenses through non-bypassable wires charges. See Decommissioning Funding Report at 4-5. PNM intends to meet its Unit 3 decommissioning funding obligations from cash generated by stranded cost recoveries. The UtilityCo, under an agreement with Manzano Energy, will deposit the required amounts directly into the Unit 3 decommissioning trust.

* * * *

(2) to exclusively use external sinking fund methods for decommissioning obligations pursuant to federal guidelines.

This provision in the Restructuring Act clearly indicates that the New Mexico legislature intends that no action be taken that would undermine PNM's ability to use non-bypassable wires charges to fund the PVNGS decommissioning trusts, and thereby provides added confidence that regulatory sources of decommissioning funding will remain available after the restructuring is completed.

I. ANTITRUST INFORMATION

The Atomic Energy Act only provides for an antitrust review in connection with a construction permit application and, where there have been "significant changes" from the time of the construction permit, in connection with the initial operating license application. 42 U.S.C. § 2135(c). As the Commission recently decided, antitrust reviews of post-operating license transfer applications are neither required nor authorized by the Atomic Energy Act.[17] Accordingly, no antitrust review is required with respect to the indirect transfers of control that would result from the PNM restructuring.

J. RESTRICTED DATA

The Application does not contain any Restricted Data and it is not expected that any will become involved in the transfer of control. However, pursuant to 10 C.F.R. § 50.37, in the event that such information does become involved, PNM agrees that it and Manzano Energy will appropriately safeguard such information and will not permit any individual to have access to Restricted Data until the Office of Personnel Management (the successor to the Civil Service Commission) shall have made an investigation and reported to the NRC on the character, associations, and loyalty of the individual, and the NRC has determined that permitting such person

[17] Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 NRC 441, 468 (1999). See also the proposed amendments to 10 C.F.R. § 50.80, 64 F.R. 59671 (November 3, 1999).

to have access to Restricted Data will not endanger the common defense and security of the United States.

K. STATEMENT OF PURPOSE

The purpose of the proposed indirect transfer of control of PNM's interest in the PVNGS NRC licenses is to fulfill the mandate of the Restructuring Act, which requires corporate separation of PNM's deregulated businesses on the one hand and its regulated businesses on the other. The use of a common holding company structure, as contemplated by Section 8.C of the Restructuring Act, § 62-3A-8.C, is the method elected by PNM to accomplish the requisite corporate separation in a non-divestiture context and is, therefore, the reason PNM desires to cause an indirect transfer of control of its NRC licenses.

L. ENVIRONMENTAL IMPACT

The request for approval for the indirect transfers of control of PNM's PVNGS licenses and the name change request are requests for approvals by the NRC which meet the eligibility criterion for categorical exclusion set forth in 10 C.F.R. § 51.22(c)(21). Pursuant to 10 C.F.R. § 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with approval of the indirect transfer of control or the license amendments to reflect the name change.

M. NO SIGNIFICANT HAZARDS CONSIDERATIONS

The only action sought in the Application with respect to the PVNGS licenses held by PNM is an amendment under 10 C.F.R. § 50.90 to change the licensee's name to conform the licenses to the results of the restructuring of PNM. Accordingly, pursuant to 10 C.F.R. § 2.1315(a), the requested amendment involves "no significant hazards consideration."

N. UNDERTAKINGS BY PNM

1. Regulatory and Other Approvals

Other major regulatory approvals required in connection with the proposed restructuring include PRC approval of PNM's restructuring plan under the Restructuring Act and various other

provisions of New Mexico utility law, and approvals by the SEC and the FERC. The restructuring is also subject to approval by PNM's shareholders and certain of PNM's lessors. PNM intends to seek the approval of its shareholders at its 2000 Annual Meeting of Shareholders presently scheduled for June 2000. PNM plans to consummate the restructuring as soon as possible after all regulatory, lessor and shareholder and other approvals have been obtained, with a target completion date of no later than August 1, 2000.

PNM will keep the NRC informed if there are any significant changes in the status of other required regulatory approvals or other developments that have an impact on the above schedule.

2. Post-Restructuring Transfers

Manzano Energy will provide to the Office of Nuclear Reactor Regulation a copy of any application to any regulatory authority, at the time it is filed, to transfer (excluding grants of a security interest or creation of liens) from Manzano Energy to Manzano or any affiliated company, facilities for the production, transmission or distribution of electric energy having a depreciated book value exceeding ten percent (10%) of Manzano Energy's consolidated net utility plant (as recorded on its books of account), other than transfers forming part of the proposed restructuring described in this submission.

III. EFFECTIVE DATE

The proposed restructuring involves the approval of the shareholders of PNM and, as noted above, other regulatory authorities in addition to the NRC. Until all regulatory approvals have been obtained and the restructuring is complete, the indirect transfers cannot be implemented. PNM intends to implement the restructuring as soon as reasonably possible after all the necessary approvals have been obtained, with a targeted completion date of August 1, 2000. NRC approval is requested by no later than July 1, 2000, to be made effective at that time with an effectiveness period of twelve (12) months, in order to provide sufficient time for the restructuring to be finalized.

IV. CONCLUSIONS

For the foregoing reasons, the proposed PNM restructuring will not: (1) have any adverse impact on the ownership or operation of the licensed units; (2) affect the managerial, technical or financial qualifications of the licensed operator of these units; (3) impair PNM's financial qualifications; (4) result in foreign ownership, control or domination over PNM or any NRC licensee; or (5) require any additional NRC reviews. In conclusion, the proposed restructuring will not be inimical to the common defense and security or result in any undue risk to public health and safety, and the indirect transfers of NRC licenses associated with the restructuring will be consistent with the requirements of the Atomic Energy Act and the NRC regulations. Accordingly, the NRC is requested to consent to the indirect transfers of control that would result from the PNM corporate restructuring described herein.

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

Terry R. Horn, upon being first duly sworn according to law, under oath, deposes and states:

I am the Vice President and Treasurer of Public Service Company of New Mexico ("PNM"). I have reviewed the foregoing "Information Submittal In Support Of Application For NRC Consent To Proposed Indirect Transfers Of Control And Approval Of License Amendments To Reflect Name Change" and believe it to be true and correct to the best of my knowledge.

Terry R. Horn

SIGNED this 3RD day of MARCH, 2000.

NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

5/3/00

The Legislature

of the

State of New Mexico

44th Legislature, 1st Session

LAWS 1999

CHAPTER _____

SENATE BILL 428, as amended,

with emergency clause and with certificate of correction

Introduced by

SENATOR MICHAEL S. SANCHEZ
SENATOR CARLOS R. CISNEROS
SENATOR DEDE FELDMAN
SENATOR STUART INGLE
SENATOR ROMAN M. MAES III
SENATOR WILLIAM H. PAYNE

State of New Mexico
Senate

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 20, 1999

CERTIFICATE OF CORRECTION

I certify that the following error was found in

SENATE BILL 428, as amended

and has been corrected in enrolling and engrossing:

1. On page 8, line 21 of the introduced bill "62-3-4.1" changed to correct a typographical error.

Respectfully submitted,

Margaret Larragoite

Margaret Larragoite, Chief Clerk

AN ACT

RELATING TO PUBLIC UTILITIES; ESTABLISHING THE RESTRUCTURE OF THE ELECTRIC UTILITY INDUSTRY; PROVIDING FOR CUSTOMER CHOICE IN THE SUPPLY OF ELECTRICITY; PROVIDING OPTIONS TO RURAL ELECTRIC COOPERATIVES AND MUNICIPAL UTILITIES; CREATING A FUND; PROVIDING PENALTIES; ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Electric Utility Industry Restructuring Act of 1999".

Section 2. FINDINGS AND PURPOSES.--

A. With respect to the Electric Utility Industry Restructuring Act of 1999, the legislature finds that:

(1) the generation and retail sale of electricity is becoming a competitive industry across the nation;

(2) retail electric customers in New Mexico should have the opportunity to benefit from competition in the electric generation markets and should have the choice to select their supplier of electricity;

(3) competition in the retail market for electricity is expected to provide long-term benefits for the economy of New Mexico, including the lowering of electricity prices, the creation of business opportunities, the

improvement of energy efficiency and innovations in services and supply;

(4) to avoid burdening New Mexico streets, highways and landscapes with duplicate electric facilities, the transmission and distribution of electricity should remain subject to the regulation of the public regulation commission, with public utilities obligated to deliver electricity from electric suppliers to customers in areas served;

(5) it is necessary and appropriate to allow distribution cooperative utilities and municipal utilities to participate in the restructured market in ways that differ from rules applicable to other participants that are not customer owned;

(6) public utilities currently provide and will provide in the future products and services in addition to electric supply, transmission and distribution service. To the greatest extent possible, products and services are and should be available from nonregulated providers in the competitive marketplace, including from nonregulated public utility affiliates;

(7) the public interest requires the continued protection of retail customers through the licensing of electric suppliers, the provision of information to customers regarding electric service, service reliability

and quality and the availability of service for all retail customers;

(8) residential and small business customers are least likely to benefit from the restructuring of the electric industry and need special protection to help ensure their participation in any benefits of competition;

(9) electric public utilities have undertaken long-term investments in facilities in order to provide sufficient and reliable service to the public. These actions may have created costs that will not be recoverable in a competitive market, and utilities should be permitted a reasonable opportunity to recover an appropriate amount of the costs incurred previously in providing electric service as well as costs that will be incurred in converting to the restructured scheme;

(10) protection of the state's environment and the promotion of renewable energy technologies are sensible endeavors that may be encouraged in the restructured electric industry; yet, after a reasonable period, assessment should be made to determine the usefulness, acceptability, benefits, including environmental and economic benefits, and the appropriateness of continuing financial promotion of renewable energy; and

(11) it is necessary to provide comprehensive implementing legislation to establish direction

for all aspects of the restructuring of the electric utility industry in New Mexico.

B. The purposes of the Electric Utility Industry Restructuring Act of 1999 are to:

(1) provide a framework and time schedule for the restructuring of the electric industry to prepare for full competition in the energy supply and services segments of the electric industry;

(2) permit customer choice in the state on a phased basis to permit education of retail customers about choice and to permit utilities, suppliers and regulators to learn from their developing experiences in the competitive marketplace;

(3) state the policies of the legislature regarding the recovery of stranded costs and transition costs;

(4) ensure that when customer choice of electric supply is offered that adequate safeguards and procedures are in place to maintain safe and reliable electric service;

(5) ensure that residential and small business customers are not unduly harmed by restructuring;

(6) require that customer information about customer choice be appropriate and adequate to ensure informed decisions by the state's citizens;

(7) ensure that all retail customers continue to be offered electric service; and

(8) protect the financial integrity of public electric utilities during the transition to a competitive marketplace.

Section 3. DEFINITIONS.--As used in the Electric Utility Industry Restructuring Act of 1999:

A. "ancillary services" means those services that are auxiliary to basic generation, transmission or distribution services, but are determined by the commission to be necessary for the provision of the basic generation, transmission or distribution service being provided;

B. "affiliate" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another person. Control includes the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities;

C. "bundled service" means the combination of supply, distribution and transmission services provided to customers prior to customer choice;

D. "commission" means the public regulation commission or, before January 1, 1999, the New Mexico public

utility commission;

E. "competitive power supplier" means any person offering competitive service to customers in the state, whether directly or as an intermediary or agent of the seller or purchaser;

F. "competitive service" means any supply service or energy-related service available to customers from multiple suppliers on an unregulated basis;

G. "customer" means a retail electric customer or consumer;

H. "customer choice" means the opportunity for an individual customer to purchase supply service or energy-related service from a competitive power supplier;

I. "distribution cooperative utility" means a utility with distribution facilities organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act;

J. "distribution company" means a person who owns, operates, leases or controls distribution facilities for distribution of electricity to or for the public and is regulated by the commission;

K. "distribution facilities" means those facilities by and through which electricity is distributed to the customer and that are owned, operated, leased or controlled by a distribution company;

L. "distribution service" means the regulated component of service provided by distribution facilities and includes ancillary services;

M. "energy-related service" means any competitive service that relates to or supports the provision of electric energy, but does not include supply service;

N. "generation and transmission cooperative" means a person with generation or transmission facilities either organized as a rural electric cooperative pursuant to Laws 1937, Chapter 100 or the Rural Electric Cooperative Act or organized in another state and providing sales of electric power to member cooperatives in this state;

O. "monopoly coercion" means any action by a public utility or affiliate of a public utility, including any action of employees, officers or directors of those companies that the company permits or condones, that causes a customer to reasonably believe that regulated or gas service will be impaired or diminished if that customer acquires competitive goods or services from a person other than an affiliate of the public utility, or causes a customer to reasonably believe that regulated service will be augmented or improved if that customer acquires competitive goods or services from an affiliate rather than from another person;

P. "municipal utility" means an electric utility owned or controlled by a municipal corporation organized

pursuant to the laws of the state or a class A or an H class county;

Q. "non-discriminatory" means that no preference or competitive advantage will be given to any person;

R. "open access" means non-discriminatory transmission and distribution services for the delivery of supply service by all competitive power suppliers to facilitate customer choice;

S. "person" means an individual, association, joint venture, organization, partnership, firm, syndicate, corporation, cooperative and any other legal entity;

T. "public utility" means any person or that person's lessee, trustee or receiver, not engaged solely in interstate business and except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that now does or hereafter may own, operate, lease or control any plant, property or facility for regulated services to or for the public of electricity for light, heat or power or other uses, and includes a distribution company, a transmission company or both;

U. "regulated services" means bundled services prior to the date the involved class of service is granted customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999; and, only standard offer, distribution and transmission services after customer choice begins, pursuant to that act, and in any event, after

January 1, 2002;

V. "renewable energy" means electrical energy generated by means of a low- or zero-emissions generation technology that has substantial long-term production potential and may include, without limitation, solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

W. "service customer" means a customer receiving supply service over a public utility's distribution cooperative utility's or municipal utility's distribution or transmission facilities in areas served by the utility;

X. "small business customer" means a customer that purchases less than two hundred thousand kilowatt-hours per year or at a demand level that does not exceed fifty kilowatts;

Y. "standard offer service" means supply service acquired and delivered by a public utility after December 31, 2000 to residential and small business customers that are eligible for customer choice after that date but do not elect to acquire their power supplies from the retail competitive marketplace; and as to a distribution cooperative utility, means supply service acquired and delivered by the distribution cooperative utility to residential and small

business customers that either do not elect to acquire their supply service from a competitive power supplier or are not eligible to make such election pursuant to the terms of the Electric Utility Industry Restructuring Act of 1999;

Z. "stranded costs" means the net present value of the difference between:

(1) the regulated revenue requirements for all utility-generation-related functions, including purchased power, fuel contracts and lease and lease-related obligations, which as of the date of open access, were being recovered in rates, or if not previously recovered in rates, which the commission determines would be recoverable in rates; and

(2) the revenues that could be earned from selling the same generation-related services as specified in Paragraph (1) of this subsection at competitive retail market rates pursuant to retail competition.

Regulated revenue requirements include all regulatory assets, net liabilities, deferred taxes, costs associated with construction, operation and decommissioning or removal from service of generation facilities, costs associated with purchased power, water and fuel contracts, lease and lease-related costs, gains or benefits to which ratepayers are entitled and all other accounting categories of costs and credits, including credit for taxes already recovered by the

utility, recognized under cost-of-service regulation and attributable to the generation function of each utility. "Stranded costs" shall not include costs that are unreasonable, imprudent or mitigable or that have been determined to not be recoverable in rates. "Stranded costs" shall be calculated for the period ending when the useful lives for all generation assets or obligations of the particular utility existing on the effective date of the Electric Utility Industry Restructuring Act of 1999 are anticipated to expire. Retiring assets are presumed to be replaced at market prices;

AA. "supply service" means the unregulated electric energy or capacity component of electric service;

BB. "system benefits charges" means costs to benefit customers and the public that are collected and disbursed by a public utility or a distribution cooperative utility a municipal utility pursuant to law;

CC. "transition costs" means those prudent, reasonable and unmitigable costs other than stranded costs, not recoverable elsewhere under either federally approved rates or rates approved by the commission, that a public utility would not have incurred but for its compliance with the requirements of the Electric Utility Industry Restructuring Act of 1999 and regulations promulgated thereunder relating to the transition to open access, and the

prudent cost of severance, early and enhanced retirement benefits, retraining, placement services, unemployment benefits and health care coverage to public utility nonmanagerial employees who are laid off on or before January 1, 2003, that are not otherwise recovered as a stranded salary and benefits cost. "Transition costs" shall not include costs that the public utility would have incurred notwithstanding the Electric Utility Industry Restructuring Act of 1999;

DD. "transition period" means that period of time during which a public utility is permitted to charge customers for stranded costs or transition costs;

EE. "transmission company" means a person who owns, operates, leases or controls transmission facilities for transmission of electricity to or for the public and is regulated by the commission;

FF. "transmission facilities" means those facilities that are used to provide transmission service as determined by the commission or the federal energy regulatory commission;

GG. "transmission service" means the regulated component of service provided by transmission facilities and includes ancillary services; and

HH. "unbundled services" means the separation of electric power supply service into separate components,

including supply, distribution and transmission services.

Section 4. IMPLEMENTATION OF CUSTOMER CHOICE--PRIOR PLANS AND APPROVALS--REVIEW BY COMMISSION.--

A. Except as provided in Sections 16 and 17 of the Electric Utility Industry Restructuring Act of 1999, customer choice service shall be available as follows:

(1) for public post-secondary educational institutions and public schools, as defined in Section 22-1-2 NMSA 1978, and for residential and small business customers on January 1, 2001; and

(2) for all other customers of electricity, on January 1, 2002.

B. A plan or approval for customer choice, disposition of stranded costs, preparation for open access or competitive supply service for a public utility granted by the commission between January 1, 1997 and December 31, 1998 may be reviewed by the commission, in conjunction with the Electric Utility Industry Restructuring Act of 1999. After notice and public hearing, the plan or approval shall be confirmed, rejected or modified by the commission on or before November 30, 1999. Modifications to a plan or an approval may be recommended by the commission, the public utility subject to the plan or approval or a party with standing.

C. A public utility having had a plan or approval

granted by the commission after January 1, 1997 shall be subject to the requirements of the Electric Utility Industry Restructuring Act of 1999 to the extent the requirements of that act are not inconsistent with the plan or approval, as confirmed, rejected or modified in accordance with Subsection B of this section.

D. The commission may delay customer choice and other dates established in the Electric Utility Industry Restructuring Act of 1999 by up to one year upon finding that an orderly implementation of customer choice cannot be accomplished without the delay.

Section 5. DELIVERY OF ELECTRIC SUPPLY.--A public utility or its successor in interest that provides electric service to a customer or a customer location before customer choice becomes available for that customer as provided in Section 4 of the Electric Utility Industry Restructuring Act of 1999 shall continue to provide distribution service or transmission service on a non-discriminatory basis to or for that customer or customer location.

Section 6. TRANSITION PLANS.--

A. A public utility shall file a transition plan that complies with the Electric Utility Industry Restructuring Act of 1999 with the commission no later than March 1, 2000 for commission approval on or before December 1, 2000. The transition plan shall include a detailed

description of the public utility's:

(1) proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 8 of the Electric Utility Industry Restructuring Act of 1999;

(2) associated unbundled cost-of-service studies and an explanation of all cost allocations made to the unbundled services;

(3) proposed methodologies to allow residential and small business customers to have customer choice without requiring additional end-use metering equipment;

(4) proposals to implement customer choice and open access;

(5) proposed standard offer service tariffs, exclusive of price terms that shall be incorporated prior to customer choice, for residential and small business customers that do not select a power supplier pursuant to customer choice eligibility;

(6) proposed competitive procurement process or other process for the selection of power supply for standard offer service tariffs, together with a proposed rate setting procedure. The initial procurement of power for standard offer service shall occur at least three months

prior to customer choice, or earlier as determined by the commission, so that price terms can be the basis for determination of stranded costs;

(7) proposed tariffs for distribution service for customers and competitive power suppliers, and transmission service, either on file with a federal regulatory agency having jurisdiction or as proposed by the public utility;

(8) the projected amounts of stranded costs and transition costs sought to be recovered by the public utility;

(9) proposed non-bypassable wires charges for recovery of transition costs and stranded costs allocated among customer classes;

(10) proposed system for the collection, recovery and accounting of the system benefits charge and stranded and transition costs through wires charges;

(11) proposed customer education programs, necessary computer hardware and software modifications and meter upgrades necessary to provide open access;

(12) proposed procedures for balancing, settlements and communications with competitive power suppliers; and

(13) any other information, documentation or justification requested by the commission.

B. The commission in making its determination of the amount of stranded costs to be recovered by a public utility in its transition plan filing shall order no less than fifty percent recovery of stranded costs. The commission may allow up to one hundred percent recovery of stranded costs only if it finds that recovery of more than fifty percent of stranded costs:

(1) is in the public interest;

(2) is necessary to maintain the financial integrity of the public utility;

(3) is necessary to continue adequate and reliable service by the public utility; and

(4) will not cause an increase in rates to residential or small business customers during the transition period.

C. The commission in quantifying stranded costs shall consider:

(1) mitigation efforts and results;

(2) reasonable methods for determining market valuations, including:

(a) the use of standard offer bid prices;

(b) appraisal by independent third-party professionals;

(c) a competitive bid sale for

generation; and

(d) any other method designed to provide a reasonable valuation;

(3) for residential and small business customers, that the standard offer bid price may relfect the current market value of supply service; and

(4) that recoverable stranded costs must be fair and equitable to customers, utility investors and the public.

D. Before July 1, 2000, the commission shall approve the procurement procedure proposed by the public utility in its transition plan for the acquisition of supply service for standard offer service. On or before September 1, 2000, a public utility shall update its pending transition plan filing by providing the price of supply service procured for standard offer service pursuant to the procurement procedure approved by the commission. The approval of stranded costs to be recovered from the residential and small business classes shall be made after the public utility has contracted to procure power for the standard offer, but prior to December 1, 2000.

E. After notice and public hearing, the commission shall issue a final order approving or modifying a public utility's transition plan, including tariffs for just and reasonable rates for distribution service, transmission

service, subject to federal jurisdiction, and standard offer services. All interested parties shall be afforded an opportunity to participate and be heard on any matter contained in a transition plan filing. The commission may initiate an inquiry into an approved transition plan's implementation and operation, if the public interest requires.

Section 7. RECOVERY OF TRANSITION AND STRANDED COSTS--OPPORTUNITIES AND LIMITS.--

A. The commission shall determine the non-bypassable wires charges for the recovery of transition costs and stranded costs as described in Section 6 of the Electric Utility Industry Restructuring Act of 1999.

B. As to stranded cost recovery, the non-bypassable wires charge established shall:

(1) be calculated to begin on the eligibility date of customer choice for each customer class;

(2) not extend longer than five years thereafter, provided that the commission may separate nuclear decommissioning for recovery over a longer period of time through a separate wires charge if it determines that such recovery is in the public interest; and

(3) shall be equitably designed in a competitively neutral manner that ensures that the class pays no more than the stranded costs associated with that class.

C. In its approval of a transition plan provided for in Section 6 of the Electric Utility Industry Restructuring Act of 1999, the commission shall determine a non-bypassable wires charge for recovery of transition costs through December 31, 2007, after which date further transition charges shall not be recoverable through a separate wires charge.

D. The commission or the public utility may seek to consider and modify or continue the wires charge established to achieve collection of the transition costs. If an over-collection of transition costs is determined by the commission to have occurred, a wires credit shall be applied to customers' bills to return the over-collection of transition costs in an amount and for such time as the commission may determine.

E. Nothing in the Electric Utility Industry Restructuring Act of 1999 is intended to affect the ability of a public utility to recover wholesale stranded costs, including stranded costs recovered from wholesale customers under contract.

F. Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be interpreted to require the commission to make any order involving rates or wires charges that would result in a public utility losing its eligibility:

(1) for accelerated depreciation or other

tax benefits for federal income tax purposes; or

(2) to exclusively use external sinking fund methods for decommissioning obligations pursuant to federal guidelines.

Section 8. DIVESTITURE NOT REQUIRED--AFFILIATES--SEPARATION OF REGULATED FROM COMPETITIVE FUNCTIONS--PROHIBITIONS AGAINST CROSS-SUBSIDIES, DISCRIMINATION AND ANTI-COMPETITIVE ACTIONS--DECLARATION REGARDING ANTITRUST ACTIONS.--

A. The Electric Utility Industry Restructuring Act of 1999 does not require nor shall it be construed to require nor shall the commission require a public utility to divest itself of any of its assets owned, leased or in which an interest is held, owned or leased on the effective date of that act.

B. Before January 1, 2001, a public utility shall separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations and service and

customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis.

C. Corporate separation of regulated from unregulated services shall be accomplished by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties. A public utility may provide all competitive and ancillary services within a single unregulated company and provide all non-competitive and ancillary services within a separate regulated company. Unregulated service shall not be provided by a regulated company.

D. Prior to customer choice pursuant to the Electric Utility Industry Restructuring Act of 1999, the commission shall adopt codes of conduct applicable to public utilities that shall contain provisions that:

(1) prevent undue discrimination in favor of affiliates;

(2) prevent any anti-competitive practices that could harm competition in any market for competitive services, including practices that unfairly impede a customer from self-generating a portion of his supply service requirements;

(3) grant customers and their competitive

power suppliers access to a public utility's retail distribution and transmission facilities on a non-discriminatory basis at the same rates, terms and conditions of service of use by the public utility and its affiliates;

(4) prevent the disclosure of any individual customer information to any person, including an affiliate unless the customer provides written consent except as otherwise directed in a rulemaking by the commission;

(5) prevent the disclosure of any aggregated customer information to any person, including an affiliate, unless the same information is timely made available on the same basis to all competitors;

(6) require that any person, including an affiliate, possessing customer information obtained in a manner contrary to Paragraphs (4) and (5) of this subsection shall make no commercial use of the information and either destroy the information or return it to the public utility;

(7) provide that transactions between a public utility and an affiliate do not involve any subsidies between them and do not jeopardize reliability of the electric system, including its interconnections; and

(8) prevent an affiliate from identifying its affiliation with the public utility unless the affiliate also discloses in a reasonable manner that it is neither the same company as the public utility nor is it regulated by the

commission.

E. A public utility shall not subsidize competitive services provided by an affiliate. A public utility shall file with the commission a statement of policy and procedure, consistent with the commission's codes of conduct and subject to commission approval, to avoid any subsidy to an affiliate. The statement of policy and procedure shall:

(1) describe the separation of services made pursuant to Subsection B of this section; and

(2) describe the safeguards instituted to prevent the sharing with an affiliate of employees, goods, services or facilities, except that common costs for essential corporate-wide services shall be allocated between the public utility and affiliates to reflect the proportional benefit that the public utility receives from those services compared to the affiliates receiving the services, and provided that a public utility may purchase goods, services or facilities from an affiliate if the items cannot be provided internally or obtained from an independent person at an equal or lower price or other factors such as quality or service that justify a higher purchase price. The commission may promulgate rules regarding the transfer of employees, provided that the commission shall not require or approve a policy or procedure that interferes with an employee's

ability to apply for and be considered for a position of his choice.

F. A public utility shall not coerce or entice, either by act or omission, a customer to purchase the goods or services of an affiliated unregulated company over the goods or services of its competitors.

G. A public utility shall not engage in monopoly coercion. Complaints alleging monopoly coercion may be filed with the commission or district court and, if filed, shall be placed at the head of the docket; and after notice and hearing, shall be resolved expeditiously. Filing a complaint for monopoly coercion with the commission pursuant to this section neither precludes nor excludes other remedies available pursuant to law and is not a prerequisite for seeking relief otherwise available. The attorney general shall have standing on behalf of consumers to file a complaint initiating or to intervene in a case before the commission alleging monopoly coercion.

H. If the commission finds and orders that monopoly coercion has occurred, after notice and hearing, the commission may fine the public utility or its affiliate or issue such cease and desist orders as are deemed necessary in accordance with the Electric Utility Industry Restructuring Act of 1999. Attorney fees and costs shall be awarded to a prevailing complainant. If the defendant prevails, attorney

fees and costs shall be awarded upon a commission finding that the complaint was either frivolous or made in bad faith.

I. The state and all regulatory bodies and agencies acting pursuant to state policy do not supervise or condone any actions of a competitive power supplier or monopoly coercion activities of a public utility that are or would be unlawful pursuant to the Antitrust Act or any federal antitrust act. The provisions of Section 57-1-16 NMSA 1978 are not a defense to an antitrust violation or monopoly coercion charge against a competitive power supplier or monopoly coercion charge against a public utility.

J. Public utilities that provide both electricity and natural gas distribution services shall not be required to functionally separate their electric and gas transmission, transportation and distribution operations from each other, and any rule or order to the contrary is void and to no force and effect; and provided that any regulated natural gas distribution operations operated within the same legal entity as regulated electric operations shall be subject to Subsections E and G of this section; and provided further that nothing in this section shall prevent a combined gas and electric distribution company from selling the natural gas commodity to customers pursuant to tariffs approved by the commission.

K. Nothing in this section shall be construed to

require any commission act or order prior to filing an action pursuant to the Antitrust Act or any federal antitrust act or to limit the authority of the attorney general granted in the Antitrust Act.

Section 9. COMPETITIVE POWER SUPPLIERS--LICENSE APPLICATION AND REVOCATION.--

A. A competitive power supplier shall file an application with, and obtain a license from, the commission before offering competitive services for sale to customers in the state.

B. Prior to receiving a license in the state, a competitive power supplier shall file a report with the commission, with information and in a form prescribed by the commission, disclosing activities and operations and those of any affiliate related to its supply service in this state.

C. Any person applying for a competitive power supplier license shall:

(1) disclose its name, owners, business addresses and telephone numbers in the state, and if a corporation, its directors and officers;

(2) execute, by a person authorized to do so, an affidavit authorizing or reflecting the authorization of the competitive power supplier to a statutory agent of the competitive power supplier to accept service of process in the state, accompanied by an acceptance of such designation

by the statutory agent;

(3) execute, by a person authorized to do so, an agreement to compensate the state for any applicable taxes for sales to customers in the state;

(4) execute, by a person authorized to do so, an agreement that all electricity sold to a customer in the state shall be delivered to that customer;

(5) provide proof of financial integrity and a demonstration of adequate supply with reserve margins or the ability to obtain adequate reserve margins;

(6) post a bond, the financial security equivalent of a bond or other adequate financial assurances acceptable to the commission to cover system costs in the event the licensee fails to provide supply service in accordance with its obligations;

(7) execute, by a person authorized to do so, an agreement to comply with and be bound by the rules promulgated by the commission applicable to competitive power suppliers and supply service in the state;

(8) demonstrate capability to meet all obligations undertaken or assumed, for and on behalf of its customers, so that supply service is available, reliable and deliverable on a real-time basis;

(9) execute, by a person authorized to do so, an agreement to produce documents or other records to

support any filings, reports or agreements required by the commission and to support any representations made to the commission or customers if required to do so by the commission;

(10) execute, by a person authorized to do so, an agreement to compensate a distribution or transmission company that provides open access for delivery of supply service to a customer of the competitive power supplier for shortfalls in supply service pursuant to rules promulgated by the commission; and

(11) submit a proposal for renewable energy supply service options to customers.

D. An application for a license is deemed approved within forty-five days of its filing with the commission, unless the commission, in its discretion, extends the approval period for thirty days or rejects the application before it is deemed approved. If rejected, the commission shall state its reasons for the rejection and may identify corrective measures to overcome the deficiencies causing the rejection.

E. Thirty days before offering any sales of competitive services in the state, a competitive power supplier shall:

(1) provide all public utilities with copies of its application and license; and

(2) publish a copy of its license in a newspaper of general circulation in each county of the state in which it intends to offer competitive service.

F. The commission shall promulgate rules governing competitive electric suppliers for the protection of customers, including:

(1) required disclosures to a potential customer of unbundled prices, generation sources and fuel mix, associated emissions, gross receipts taxes, franchise fees and any other charges;

(2) fair and reasonable marketing and sales practices, including truthful advertising and disclosure practices; and

(3) an expeditious procedure before the commission to resolve a dispute between a customer and a competitive power supplier regarding compliance with commission rules applicable to competitive power suppliers.

G. After a hearing initiated on the commission's own investigation or upon the complaint of an affected party, the commission may revoke or suspend the license of or impose a penalty on a competitive power supplier, or both, if it is established that just cause for the revocation, suspension or penalty imposition exists because the competitive power supplier:

(1) knowingly provided false information to

the commission;

(2) switched or caused to be switched the supply service of a customer without first obtaining the customer's informed written permission;

(3) failed to provide reasonably adequate supply service for its customers in the state;

(4) committed fraud or knowingly engaged in an unfair or deceptive trade practice;

(5) is a delinquent taxpayer as to any New Mexico tax;

(6) engaged in anti-competitive conduct; or

(7) violated any other law or commission rule or order.

H. Any person selling or offering to sell competitive services in this state in violation of any provision of the Electric Utility Industry Restructuring Act of 1999 is subject to license revocation or suspension in addition to any administrative, civil or criminal fines or penalties imposed pursuant to that act or pursuant to other law. Nothing in that act shall be construed to limit a person's rights pursuant to the Unfair Practices Act or to require exhaustion of remedies before bringing an action pursuant to that act.

Section 10. DISTRIBUTION SERVICE--STANDARD OFFER SERVICES.--

A. Distribution service is subject to the jurisdiction and authority of the commission.

B. Each public utility providing distribution service shall:

(1) file and maintain tariffs providing rates and service conditions for distribution service available to competitive power suppliers, transmission companies and customers on a non-discriminatory basis;

(2) plan, build and maintain distribution facilities or ensure that facilities are planned, built and maintained;

(3) prudently acquire and deliver standard offer service in accordance with the transition plan filed and approved in accordance with Section 6 of the Electric Utility Industry Restructuring Act of 1999;

(4) at the discretion and direction of the commission, prudently arrange for back-up and emergency supply service; and

(5) provide billing and metering services and other ancillary services as approved by the commission to customers and competitive power suppliers pursuant to commission-regulated prices, terms and conditions of service.

C. Standard offer service is subject to the jurisdiction and authority of the commission.

Section 11. TRANSMISSION SERVICE.--

A. Transmission service is subject to the jurisdiction and authority of the commission and shall be provided in a non-discriminatory manner pursuant to transmission service tariffs approved by the commission to the extent permitted by federal law or the federal energy regulatory commission.

B. If transmission service is not operated in a manner that the commission determines to be in the public interest, the commission shall take all necessary actions within its jurisdiction to ensure that reliable and non-discriminatory transmission service is provided to and for customers.

Section 12. CUSTOMER EDUCATION AND PROTECTIONS.--

A. The commission shall conduct customer education efforts necessary to enable customers to make informed decisions about customer choice. The commission may require the inclusion of educational materials in bills or other mailings regularly made to service customers by a public utility.

B. It is unlawful pursuant to the Electric Utility Industry Restructuring Act of 1999 for any person to:

(1) change, direct another person to change or participate in processing a change in a customer's supply service provider without the customer's authorization; or

(2) charge, direct another person to charge

or participate in processing a charge for any product or service through a customer's public utility bill for any unregulated service without the customer's authorization.

C. A person may file a complaint regarding a violation of Subsection B of this section with the commission. Complaints shall be placed at the head of the docket and shall be resolved expeditiously. Any person found to have violated any provision of Subsection B of this section shall be subject to imposition of fines in accordance with the Electric Utility Industry Restructuring Act of 1999 and to appropriate cease and desist orders. The commission may award attorney fees and costs to prevailing parties.

D. The commission shall not permit an action or transaction that results or could result in a violation of Subsection B of this section.

E. As used in this section, "authorization" means a letter of agency separate from any sales or solicitation material that contains, in clear and conspicuous language, a full and complete description of the change in supply service provider, and any product or service to be charged to the customer's bill. The letter of agency shall contain, in clear and conspicuous language, a full and complete description of the rates, fees and charges associated with the new supply service provider and the product or service to be charged to the bill. The letter of agency shall be signed

by the customer before any change may be made in a customer's supply service provider, or any charge for any unregulated product or service may be placed on a customer's bill.

F. Any customer authorization that does not comply with the requirements of this section shall be void and without effect.

G. No person shall use any sweepstakes, contest or drawing of any kind to obtain a customer's authorization to change a customer's supply service provider or to charge for any product or service on a customer's bill.

H. The commission may adopt rules as necessary to provide further customer protections.

Section 13. SYSTEM BENEFITS CHARGE--RECOVERY.--A "system benefits charge" in the amount of three hundredths of one cent ($.0003) per kilowatt-hour is created and imposed on all retail kilowatt-hour sales in the state billed by public utilities, municipal utilities and distribution cooperative utilities beginning January 1, 2002. On January 1, 2007, the system benefits charge shall increase to six-hundredths of one cent ($.0006) per kilowatt-hour. The commission shall eliminate any portion of the system benefits charge that is not being used for the purposes specified in Section 15 of the Electric Utility Industry Restructuring Act of 1999. The system benefits charge shall be separately identified on bills rendered to customers beginning on January 1, 2002.

Section 14. WIRES CHARGES--COLLECTION--ACCOUNTING--PREPAYMENT.--

A. Wires charges assessed on a per kilowatt-hour basis for stranded costs, transition costs and the system benefits charge shall be paid by each customer to the public utility, and as to the system benefits charge only to the distribution cooperative utility or a municipal utility. Revenues collected as the system benefits charge shall be paid to the electric industry system benefits fund and distributed in accordance with the provisions of Section 15 of the Electric Utility Industry Restructuring Act of 1999.

B. Notwithstanding any other provision of the Electric Utility Industry Restructuring Act of 1999 and subject to the requirements of this subsection, a customer of a public utility shall be allowed to pay a fee equal to the net present value of stranded cost charges to be assessed to that customer. Any prepayment of stranded costs must be completed prior to the date of customer choice for that customer and shall take into account expected growth for that customer based upon historical usage. Disputes as to the amount of the payment required pursuant to this subsection shall be presented to the commission no later than ninety days prior to the applicable customer choice date and shall be resolved by the commission thirty days prior to that date. Prepayment of stranded costs shall be for the benefit of the

service location for which the payment is determined and shall not transfer with a customer to a different or additional service location.

Section 15. ELECTRIC INDUSTRY SYSTEM BENEFITS FUND CREATED--SUPPORT FOR ADMINISTRATION AND CUSTOMER INFORMATION, LOW-INCOME CUSTOMERS AND RENEWABLE TECHNOLOGY.--

A. The "electric industry system benefits fund" is created and consists of money collected as a wires charge assessed on a three-hundredths-of-one-cent ($.0003) per kilowatt-hour basis as the system benefits charge collected monthly and paid quarterly to the department of environment. No other money shall be deposited or paid in the electric industry system benefits fund. Interest or other earnings from investment or deposit of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall be transferred to the general fund.

B. Money in the electric industry system benefits fund is appropriated to the department of environment solely for the purpose of disbursing money to authorized recipients for authorized purposes as described in Subsection D of this section. Disbursements from the fund shall be made upon certification by the secretary of environment that the disbursement is for a payment authorized by Section 15 of the Electric Utility Industry Restructuring Act of 1999.

C. The department shall promulgate rules establishing the application procedure and required qualifications of projects, including a person or business that may attempt to participate, contract or join with an authorized recipient in applying for a disbursement from the fund. The department may periodically accept applications for disbursement from the fund and shall prioritize the acceptable applications considering:

(1) the contribution the project offers to the knowledge of and potential commercialization of the renewable energy;

(2) the geographic area of the state in which the project is to be conducted in relation to other projects;

(3) the cost of the project and the relative contribution of the disbursement sought from the fund to the total cost of the project; and

(4) in the case of a project of a school district, the number and involvement of students in the project.

D. The department shall manage, administer and maintain the fund in the following manner and for the following purposes:

(1) no more than one hundred thousand dollars ($100,000) annually to the department for

administration of the fund;

(2) five hundred thousand dollars ($500,000) annually to the commission for consumer education and information, and for administration of the Electric Utility Industry Restructuring Act of 1999;

(3) no less than five hundred thousand dollars ($500,000) annually for low-income energy assistance through the federal low-income housing energy assistance project to be expended for that project's weatherization program administered by the New Mexico mortgage finance authority or for other low-income energy assistance authorized and administered by the state;

(4) no more than four million dollars ($4,000,000) annually to encourage the use of renewable energy through the initiation, development and evaluation of renewable technology projects authorized and directed by public post-secondary educational institutions or a school district in conjunction with the education of its students or by the governing body of an incorporated city, town or village or a county, each in conjunction with the respective governing body's interest in protecting the environment and reducing the city's or county's utility costs; and

(5) no more than four million dollars ($4,000,000) to the governing body of a community or Indian nation, tribe or pueblo, where limited or no electric service

is available, to develop electric service through the initiation and implementation of new projects, including those using renewable energy, to provide or extend electric service in low-income communities.

E. The department shall submit to the legislative finance committee prior to each regular legislative session a report on disbursements made from the fund to include, at a minimum:

(1) a list of recipients receiving disbursements;

(2) the amount of each disbursement;

(3) the date of each disbursement;

(4) a description of each project or expansion funded with a disbursement;

(5) a description of each project's contribution to the state's knowledge and use of renewable energy and developing technologies; and

(6) a description of the expansion of electric service in the state.

Section 16. DISTRIBUTION COOPERATIVE UTILITIES.--

A. Notwithstanding any other provisions of the Electric Utility Industry Restructuring Act of 1999, this section governs distribution cooperative utilities and generation and transmission cooperatives with respect to the Electric Utility Industry Restructuring Act of 1999.

B. A generation and transmission cooperative may provide power and energy to its members and shall be subject to regulation by the commission pursuant to the Public Utility Act. A generation and transmission cooperative shall not provide supply service at retail unless it is a licensed competitive power supplier and provides open access in accordance with the Electric Utility Industry Restructuring Act of 1999.

C. A distribution cooperative utility is not a public utility for the purposes of the Electric Utility Industry Restructuring Act of 1999. A distribution cooperative utility, however, remains subject to the jurisdiction and authority of the commission to the same extent it was regulated by the commission prior to the effective date of that act.

D. To the extent that it elects a business method option pursuant to Subsection I of this section other than load aggregator, a distribution cooperative utility shall file a business method plan with the commission within sixty days of the election that shall include the following:

(1) the business method option elected, the method of election and other relevant authorizations and approvals of the option;

(2) the costs, liabilities and investments that the distribution cooperative utility seeks to recover

from customers who choose supply service other than from the distribution cooperative utility;

(3) the amount of the costs, liabilities and investments and the methodologies used by the distribution cooperative utility to determine the amount of costs, liabilities and investments that the distribution cooperative utility reasonably expected to recover through rates if bundled service had continued, reduced by the results of appropriate mitigation efforts taken by the distribution cooperative utility to offset the costs, liabilities and investments;

(4) the methodologies by which the distribution cooperative utility shall compute an exit fee or a non-bypassable non-discriminatory charge for customers choosing a competitive power supplier to provide supply services;

(5) a description of the implementation and operation of the business method option, the period during which it is estimated to be implemented, the customer information and notification that the distribution cooperative utility intends to provide to its service customers; and

(6) tariffs for service to its service customers, including either exit fees or non-bypassable non-discriminatory charges to seek to recover costs, liabilities

and investments sought to be recovered due to the change from bundled to unbundled service.

E. The business method plan is deemed approved by the commission within six months after the date of its filing, unless after notice and hearing, the commission either rejects or modifies the business method plan filing.

F. Notwithstanding the business method option elected by the distribution cooperative utility, the distribution cooperative utility shall:

(1) make standard offer service, as approved by the commission, available to its residential and small business customers;

(2) provide distribution service to its service customers; and

(3) not provide or permit a competitive advantage to a competitive power supplier.

G. A distribution cooperative utility organized pursuant to the laws of another state and providing bundled services in this state on the effective date of the Electric Utility Industry Restructuring Act of 1999 to not more than twenty percent of its total customers may file an application with the commission seeking approval of its election to be governed by the laws related to electric restructuring of the state where organized. The commission shall approve the application if the distribution cooperative utility:

(1) does not provide supply service to other than its service customers in this state; and

(2) remains subject to the jurisdiction and authority of the commission for bundled service provided in this state.

H. On or before January 1, 2002, a distribution cooperative utility shall elect through its board of trustees a business method of providing supply service to its service customers from the options described in Subsection I of this section. The chosen business method may be implemented over a three-year period or less, after commission approval. The distribution cooperative utility shall not:

(1) transmit supply service over its facilities for competitive power suppliers to any service customer, except in accordance with provisions of a business method plan approved by the commission; or

(2) convert or permit the conversion of a retail service delivery point on its system to a wholesale service delivery point without the approval of the commission.

I. A distribution cooperative utility may elect to provide service to its service customers using one of the following business methods of supply service:

(1) load aggregator method, pursuant to which the distribution cooperative utility:

(a) shall acquire and provide supply service;

(b) may aggregate its customers by class or otherwise;

(c) shall provide supply, transmission and distribution services; and

(d) shall remain subject to regulation by the commission to the same extent as it was regulated prior to the effective date of the Electric Utility Industry Restructuring Act of 1999 and its election;

(2) customer-directed supplier, pursuant to which a retail customer may select a competitive service provider from a list of competitive supply service proposals obtained by the distribution cooperative utility. The distribution cooperative utility shall determine the competitive supply service proposals that will be offered to customers by competitive power suppliers pursuant to non-discriminatory rules adopted by the distribution cooperative utility and approved by the commission;

(3) customer class direct access, pursuant to which one or more classes of retail customers satisfying criteria determined by the distribution cooperative utility and approved by the commission may contract directly with a competitive power supplier. A criteria established for class eligibility may be expanded to permit greater eligibility for

customer class direct access, subject to commission approval. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for customer class direct access customers; and

(4) direct access, pursuant to which all retail customers may contract with a competitive power supplier for supply service and the distribution cooperative utility distributes power from the competitive power supplier's delivery point on its system to the retail customer's premises. Direct access shall be provided in a non-discriminatory manner. The distribution cooperative utility shall not be obligated to supply service or identify potential supply services for direct access customers.

J. A distribution cooperative utility may set a reasonable exit fee or a non-bypassable non-discriminatory charge to recover costs, liabilities and investments that would have reasonably been recovered, if not mitigated, pursuant to cost-of-service ratemaking for bundled service. An exit fee or a non-bypassable non-discriminatory charge may be assessed to a customer eligible to select and selecting supply service other than from the distribution cooperative utility's standard offer service or otherwise.

K. Distribution cooperative utilities shall notify their customers within twelve months after the effective date of the Electric Utility Industry Restructuring Act of 1999

concerning the terms of this section and other applicable terms of that act. A distribution cooperative utility electing an option of conducting its business other than as a load aggregator shall inform its service customers of the major impacts of the customer choices available pursuant to the elected option.

L. Nothing in the Electric Utility Industry Restructuring Act of 1999 shall be deemed:

(1) to require a distribution cooperative utility to do any act that might result in the loss of its exemption from income taxes; or

(2) to apply to, interfere with, abrogate or change the rights of a party under a wholesale power supply, mortgage or other financing agreement to which a distribution cooperative utility is a party.

Section 17. MUNICIPAL UTILITIES.--

A. This section governs municipal utilities in relation to the Electric Utility Industry Restructuring Act of 1999. Except as provided in Subsection E of this section, a municipal utility is neither a public utility, a distribution company nor a transmission company pursuant to the Electric Utility Industry Restructuring Act of 1999.

B. Except for a municipality authorized to condemn facilities pursuant to Subsections E and F of Section 3-24-1 NMSA 1978, which is deemed to have chosen to participate in

customer choice for its service customers effective January 1, 2002, a municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access for competitive services to its service customers. A municipal governing body is authorized to elect whether and when its municipal utility participates in customer choice and open access to offer supply service and competitive services to customers in addition to its service customers. A decision by a municipal governing body to participate in customer choice and open access for its service customers only or its service customers and other customers at any time after January 1, 2002 shall be made by the adoption of an appropriate ordinance or resolution, which decision once made is thereafter irrevocable. A municipal utility may not participate in customer choice or open access for customers other than its service customers unless and until its service customers are eligible for customer choice with open access available to fulfill a customer's choice of supply service.

C. If a municipal governing body elects not to participate in customer choice and open access, its municipal utility shall be regulated by the commission to the same extent as it was regulated prior to the effective date of the Electric Utility Industry Restructuring Act of 1999 and shall not offer any service to retail customers other than to its

service customers.

D. A municipality deemed by the provisions of Subsections E and F of Section 3-24-1 NMSA 1978 to have elected to participate in customer choice for its service customers or any other municipality that elects by its governing body to participate in customer choice and open access for its service consumers, shall, by its municipal governing body:

(1) establish rates, terms and conditions pursuant to which the municipal utility shall provide open access over its distribution facilities and unbundled services to its service customers, including standard offer service;

(2) provide open access on a non-discriminatory, competitively neutral basis pursuant to terms and conditions comparable to that applied to itself;

(3) establish procedures for complaint to and hearing by the municipal governing body by any person aggrieved by the terms and conditions and operation of open access to the distribution facilities of the municipal utility. Decisions of the municipal governing body may be appealed by an aggrieved person to the district court in the district where the municipal utility is located;

(4) not provide or permit a competitive advantage to a competitive power supplier; and

(5) regulate its operation and service to its service customers.

E. When a municipal governing body elects for its municipal utility to provide competitive service to a customer other than its service customers, the municipal utility becomes and shall be subject to the applicable provisions of the Electric Utility Industry Restructuring Act of 1999 to the extent competitive service is to be made available by the municipal utility to customers other than its service customers.

F. A municipal governing body shall notify the service customers of its municipal utility of the Electric Utility Industry Restructuring Act of 1999 and its specific terms applicable to municipal utilities.

G. Nothing in the Electric Utility Industry Restructuring Act of 1999 impairs the tax-exempt status of municipalities and municipal utilities.

H. For purposes of this section, "municipal governing body" means a commission, council or other entity vested with the power to control the management and operation of the municipal utility, in accordance with law.

Section 18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX REVENUES ANALYSIS.--

A. A franchise fee charge shall be stated as a separate line entry on a public utility's or distribution

cooperative utility's bills and shall only be recovered from customers located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts taxes collected on electric service received by retail customers in the state shall be stated as a separate line entry on a bill for electric service sent to the customer by a public utility or distribution cooperative utility.

C. The New Mexico legislative council shall annually through January 1, 2002, refer to the revenue stabilization and tax policy committee questions and issues related to the amount of state and local tax revenues derived from previously regulated electric utility service and property and report to the legislature annually on the changed impact to state and local government tax revenues resulting from restructuring and competition in the electric industry.

D. On or before January 1, 2003, the revenue stabilization and tax policy committee shall recommend legislative changes, if any, to establish comparable state and local taxation burdens on all market participants in the supply of electricity considering the impacts and changes that have resulted from the restructure and competition in the electric industry in the state.

Section 19. COMMISSION EXAMINATIONS.--

A. To ensure an orderly and equitable restructuring of the electric utility industry in this state and to achieve the purposes outlined in Section 2 of the Electric Utility Industry Restructuring Act of 1999, the legislature hereby directs the commission to further examine:

(1) standard offer;

(2) consumer education and protection;

(3) safety, reliability, quality and performance standards for competitive power suppliers and distribution and transmission facilities;

(4) the presence of market power, its impacts on the restructure of the electric industry and methods available to limit or eliminate its adverse impacts;

(5) alternative operations and regulations, including an independent system operator;

(6) regional transmission and governance efforts, both public and private, and the advisability of regional cooperation by the state;

(7) emergency and back-up service;

(8) the advisability and desirability of requiring renewable energy portfolio standards in supply service offered to customers in the state; and

(9) how power may be procured from on-site generation facilities, including facilitating net metering.

B. The commission shall report on its examinations

to the legislature by December 1 of each of the three years following the effective date of the Electric Utility Industry Restructuring Act of 1999 and thereafter as necessary and provide its recommendations for further legislative changes or direction.

Section 20. RULEMAKING.--The commission is authorized to promulgate rules necessary to implement its authority and the directives granted in the Electric Utility Industry Restructuring Act of 1999.

Section 21. ADMINISTRATIVE FINES.--

A. The commission may impose an administrative fine on any person subject to regulation or licensure pursuant to the Electric Utility Industry Restructuring Act of 1999 for any act or omission that the person knew or should have known was a violation of any provision of that act or rule or order of the commission.

B. An administrative fine of not less than one hundred dollars ($100) nor more than two million dollars ($2,000,000) may be imposed for each violation. Each day of a continuing violation shall be considered a separate violation.

C. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the person that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of

benefits charge and the system benefits fund, their operation and effectiveness, and then to make recommendations to the legislature by January 10, 2004 for any repeal of or changes to these provisions.

Section 23. CONFLICTING PROVISIONS.--The provisions of the Electric Utility Industry Restructuring Act of 1999 shall supersede any conflicting provision of the Public Utility Act.

Section 24. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

s/Walter D. Bradley
Walter D. Bradley, President
Senate

s/Margaret Larragoite
Margaret Larragoite, Chief Clerk
Senate

s/Raymond G. Sanchez
Raymond G. Sanchez, Speaker
House of Representatives

s/Stephen R. Arias
Stephen R. Arias, Chief Clerk
House of Representatives

Approved by me this _____ day of _____, 1999

s/Governor Gary E. Johnson
Governor Gary E. Johnson
State of New Mexico

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART I – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN - SHELL CORPORATION APPROVAL	)	Utility Case No. 3137 PART I - Shell Corporation Approval
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

APPLICATION

AND

DIRECT TESTIMONY AND EXHIBITS

OF

TERRY R. HORN

November 1999

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

In the Matter of Public Service Company of New Mexico's Transition Plan Filed Pursuant to the Electric Utility Industry Restructuring Act of 1999	)	
PART I - Authorizations Requested in Connection with PNM's Separation Plan - Shell Corporation Approval	)	**Utility Case No. 3137 PART I - Shell Corporation Approval**
Public Service Company of New Mexico,	)	
Petitioner.	)	

APPLICATION

Public Service Company of New Mexico ("PNM" or "Company"), a utility regulated in New Mexico by the New Mexico Public Regulation Commission ("NMPRC" or "Commission"), hereby applies to the Commission for a final order by February 1, 2000, authorizing PNM to form two subsidiary shell corporations, specifically (1) a subsidiary of PNM that will ultimately become the holding company for PNM's regulated and competitive business subsidiaries, and (2) a subsidiary of PNM that will ultimately become the regulated utility company for PNM's regulated transmission and distribution electric and gas company to comply with the Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62-3A-1 through 23 (1999) ("Restructuring Act" or "Act").

This Application is being filed concurrently with PNM's Part II Application for approval of its Separation Plan. The Part II Separation Plan Application seeks all approvals necessary for the Company's restructuring pursuant to NMSA 1978, § 62-3A-6(A)(1) (1999).

1. Background and Introduction

a. The Restructuring Act requires a public utility to file its Transition Plan no later than March 1, 2000, for Commission approval on or before December 1, 2000, to show how it intends to comply with the Act. NMSA 1978, § 62-3A-6(A) (1999).

b. The transition plan must include a detailed description of the public utility's:

(1) proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 8 [62-3A-8 NMSA 1978] of the Restructuring Act;

(2) associated unbundled cost-of-service studies and an explanation of all cost allocations made to the unbundled services;

(3) proposed methodologies to allow residential and small business customers to have customer choice without requiring additional end-use metering equipment;

(4) proposals to implement customer choice and open access;

(5) proposed standard offer service tariffs, exclusive of price terms that shall be incorporated prior to customer choice, for residential and small business customers that do not select a power supplier pursuant to customer choice eligibility;

(6) proposed competitive procurement process or other process for the selection of power supply for standard offer service tariffs, together with a proposed rate setting procedure. The initial procurement of power for standard offer service shall occur at least three months prior to customer choice, or earlier as determined by the commission, so that price terms can be the basis for determination of stranded costs;

(7) proposed tariffs for distribution service for customers and competitive power suppliers, and transmission service, either on file with a federal regulatory agency having jurisdiction or as proposed by the public utility;

(8) the projected amounts of stranded costs and transition costs sought to be recovered by the public utility;

(9) proposed non-bypassable wires charges for recovery of transition costs and stranded costs allocated among customer classes;

(10) proposed system for the collection, recovery and accounting of the system benefits charge and stranded and transition costs through wires charges;

(11) proposed customer education programs, necessary computer hardware and software modifications and meter upgrades necessary to provide open access;

(12) proposed procedures for balancing, settlements and communications with competitive power suppliers; and

(13) any other information, documentation or justification requested by the commission.

NMSA 1978, § 62-3A-6 (1999).

c. PNM is filing its Transition Plan in three Parts.

- Part I, this filing, requests approval by February 1, 2000, of a Class II transaction creating two subsidiary shell corporations required in order to set in motion certain federal filings and shareholder approvals necessary to effectuate PNM's Separation Plan ("Shell Corporation Approval" or "Part I").

- Part II, filed concurrently with the instant filing, requests, no later than June 1, 2000, all NMPRC approvals necessary for PNM to implement its Separation Plan in accordance with NMSA 1978, § 62-3A-6(A)(1) (1999) and other provisions of the Public Utility Act ("Separation Plan" or "Part II").

- Part III will include all Transition Plan requirements other than its Separation Plan and will be filed no later than March 1, 2000, and will comply with NMSA 1978, §§ 62-3A-6(A)(2) through (13) (1999) of the Act ("March 1 Filing" or "Part III").

d. PNM is filing its Transition Plan in three parts for the following reasons:

(1) The Restructuring Act requires all public utilities to, before January 1, 2001,

> separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering that are to be made

> available to the public pursuant to that act on a regulated basis.

NMSA 1978, § 62-3A-8(B) (1999).

(2) The Act further requires public utilities to accomplish this separation "by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties." NMSA 1978, § 62-3A-8(C) (1999).

(3) PNM has opted to create separate affiliated companies owned by a common holding company to comply with the Act. Part I of its Transition Plan is the critical first step.

(4) The transition to competition will require massive organizational, institutional and operational changes by PNM. Early approvals of Part I and Part II of its Transition Plan, filed concurrently today, authorizing by February 1, 2000, formation of the shell corporations, and implementation of the Separation Plan by July 1, 2000, respectively, will give PNM six months to carry out the internal organizational changes necessary to be ready for customer choice by January 1, 2001. By phasing these changes, PNM believes that the transition to competition can be more orderly and manageable for customers, the Commission and PNM.

(5) In addition, filing Parts I and II of its Transition Plan at this time allows PNM to coordinate these filings with those required by the United States Securities and Exchange Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Nuclear Regulatory Commission. With these filings completed, PNM can turn its attention to the balance of its Transition Plan.

(6) The Act does not prohibit, and in fact is consistent with, Commission approval of formation of the shell corporations prior to Commission approval of the remainder of the Transition Plan. NMSA 1978, § 62-3A-6(A) (1999).

2. Summary of PNM's Separation Plan

PNM has chosen to separate its generation from its transmission and distribution assets by creation of separate affiliated companies owned by a common holding company ("HoldingCo"). All non-competitive and ancillary services for the provision of electric transmission and distribution service as well as gas distribution service will be provided by a regulated utility corporation, referred to herein as "UtilityCo." Competitive generation energy supply and ancillary supply service will be provided by a separate, unregulated corporation referred to as "PowerCo." As required by the Act, unregulated service will not be provided by a regulated company.

3. Approvals Requested

a. The approval of the formation of the two shell corporations requested herein is for the limited purpose of setting in motion certain federal filings and shareholder approvals. The final order requested by this Application (Part I) does not seek substantive approval of PNM's Separation Plan (Part II).

b. The formation of the shell subsidiaries requested in this Application will not materially or adversely affect PNM's ability to provide reasonable and proper utility service at fair, just and reasonable rates. Because the formation of the subsidiaries as requested herein is specifically contemplated by the Restructuring Act and because of the limited purpose of this request, PNM respectfully requests in this filing a variance pursuant to Rule 450.25 from any provisions of Rule 450, including the filing of a general diversification plan ("GDP") for purposes of this Part I Application. See, NMSA 1978, § 62-3A-23 (1999). PNM has filed a GDP with its Separation Plan (Part II).

c. PNM respectfully submits that approval of this Application does not require a hearing because the shell corporations will be able to operate as functional corporations only if the Separation Plan in the Part II Application is approved.

d. This Application is supported by the testimony of Terry R. Horn, Vice President and Treasurer of PNM.

4. Pleadings and notice should be sent to:

PUBLIC SERVICE COMPANY OF NEW MEXICO
Terry R. Horn, Vice President & Treasurer
Alvarado Square, MS-2704
Albuquerque, NM 87158
(505) 241-2117

PUBLIC SERVICE COMPANY OF NEW MEXICO
Charles W. Gunter, Regulatory Project Manager
Alvarado Square, MS-0920
Albuquerque, NM 87158
(505) 241-2212

EASTHAM JOHNSON MONNHEIMER & JONTZ, P.C.
Marilyn C. O'Leary
Charlotte Lamont
Attorneys for Public Service Company of New Mexico
500 Marquette NW, Suite 1200
Albuquerque, New Mexico 87102
P.O. Box 1276
Albuquerque, New Mexico 87103
(505) 247-2315 (Telephone)
(505) 764-5480 (Facsimile)

WHEREFORE, PNM respectfully requests a final order by February 1, 2000, from the Commission authorizing PNM: (1) to form a subsidiary of PNM that will ultimately become the holding company for PNM's regulated and competitive business subsidiaries; (2) to form a subsidiary of PNM that will ultimately become the regulated utility company for PNM's regulated electric and

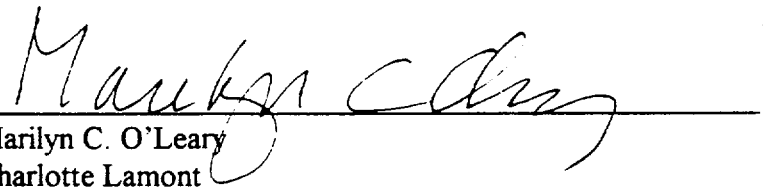
gas, transmission and distribution services; and (3) to minimally capitalize the corporations as discussed in the testimony, all in order to comply with the Restructuring Act.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW MEXICO
Joanne Reuter, Deputy General Counsel
414 Silver, SW, M-S 0806
Albuquerque, NM 87102
(505) 241-4932

WHITE, KOCH, KELLY & McCARTHY, P.A.
Benjamin Phillips
Rebecca Dempsey
Post Office Box 787
Santa Fe, NM 87504-0787
(505) 982-4374

EASTHAM JOHNSON MONNHEIMER & JONTZ, P.C.

By 
Marilyn C. O'Leary
Charlotte Lamont
Attorneys for Public Service Company of New Mexico
500 Marquette NW, Suite 1200
Albuquerque, New Mexico 87102
P.O. Box 1276
Albuquerque, New Mexico 87103
(505) 247-2315

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART I – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN - SHELL CORPORATION APPROVAL	)	Utility Case No. 3137 PART I - Shell Corporation Approval
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

DIRECT TESTIMONY AND EXHIBITS

OF

TERRY R. HORN

November 1999

DIRECT TESTIMONY OF
TERRY R. HORN
NMPRC UTILITY CASE NO. 3137 (PART I)

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, POSITION WITH PUBLIC SERVICE COMPANY OF NEW MEXICO AND YOUR QUALIFICATIONS.

A. My name is Terry R. Horn. My address is Alvarado Square, Albuquerque, New Mexico 87158. I have been employed by Public Service Company of New Mexico ("PNM" or the "Company") since November 1985, and currently hold the position of Vice President and Treasurer. My education and professional background are set out in more detail in PNM Exhibit ___ (TRH-1).

Q. WHAT ARE YOUR SPECIFIC RESPONSIBILITIES AS VICE PRESIDENT AND TREASURER AT PNM?

A. As Vice President and Treasurer I have responsibility for managing PNM's Treasury Department and its primary functions, including finance, cash management, investment management, risk management and treasury administration and compliance. Specifically in regard to this case, I have responsibility for planning and implementing certain steps necessary to separate gas and electric distribution and transmission assets from electric generation and supply assets, i.e., forming and financing a holding company and a separate affiliated distribution and transmission company consistent with the Electric Utility Industry Restructuring Act of 1999 ("the Restructuring Act"). As I shall explain, the first step in the process will be the formation of two "shell" companies as subsidiaries of PNM which will ultimately

become the holding company and the new utility company when all necessary approvals are obtained.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to support PNM's Application which seeks New Mexico Public Regulation Commission ("NMPRC" or the "Commission") approval by February 1, 2000 (1) to form a shell subsidiary of PNM which will ultimately become the holding company for PNM's regulated and competitive business subsidiaries in compliance with the Act, and (2) to form a second shell subsidiary of PNM, which will ultimately become the new utility company ("UtilityCo"). The approval of the formation of these two shell corporations is for the limited purpose of setting certain federal filings and shareholder approvals in motion. The final order requested by this Application (Part I of PNM's Transition Plan filing) does not seek substantive approval of PNM's Separation Plan, and none of the approvals granted here will foreclose exercise of the Commission's discretion or decisions in its approval of Part II of PNM's Transition Plan filing – the Separation Plan. I will also address my understanding of the NMPRC approvals involved with these specific steps.

Q. PLEASE PROVIDE AN OVERVIEW OF THE ACTIONS PNM PROPOSES TO TAKE IN ORDER TO ACHIEVE THE SEPARATION OF ASSETS AND

FORMATION OF A COMMON HOLDING COMPANY CONSISTENT WITH THE RESTRUCTURING ACT.

A. Certainly. Subject to receipt of all approvals and our ability to conclude other necessary transactions, on or about July 1, 2000, PNM plans to separate its electric and gas distribution and transmission assets from its electric generation assets into two separate corporations under a common holding company (the "Separation Plan"), consistent with the Restructuring Act. To achieve this structure, PNM will undertake the following:

1. PNM will form a holding company. This company, for ease of reference, will be referred to throughout this testimony as "HoldingCo."

2. PNM will form a distribution and transmission company ("UtilityCo"), which will be assigned the name "Public Service Company of New Mexico," to hold the electric and gas distribution and transmission assets that will be a wholly-owned subsidiary of HoldingCo.

3. PNM's electric and gas distribution and transmission assets will be transferred to UtilityCo.

4. The existing corporation, formed in 1917 and currently known as "PNM," will retain the electric generation assets and will be a wholly-owned subsidiary of HoldingCo. A new name is in the process of being selected.

5. Regulated electric and gas distribution and transmission service will be provided to jurisdictional customers by UtilityCo.

The Separation Plan is being filed concurrently with this application. This Application requests approval of the preliminary step required prior to implementing its Separation Plan, i.e., the formation of the shell subsidiary corporations.

Q. WHY DO YOU NEED APPROVAL BY FEBRUARY 1, 2000 TO FORM THE SHELL HOLDING COMPANY?

A. The next PNM Annual Shareholders' Meeting is scheduled for June 6, 2000. At that meeting, approval will be sought for the Company's mandatory share exchange which allows transfer of PNM shareholder ownership to HoldingCo. A Registration Statement, which requires a registrant, needs to be filed with the Securities and Exchange Commission ("SEC") on Form S-4 thirty to sixty days before mailing to then current PNM shareholders. (In this case, only HoldingCo can be the registrant; PNM cannot.) The Form S-4 will include the prospectus for HoldingCo stock as well as a PNM proxy statement requesting shareholder approval of the mandatory share exchange in conjunction with the Company's restructuring plan to comply with the Act. The shares of the holding company which will be exchanged with PNM common shareholders must be registered with the SEC before this occurs. In order to register the holding company common stock shares with the SEC, the holding company must be in existence. Therefore, we will need approval no later than February 1, 2000, to form the shell corporation, which can then become the holding company. This allows time to prepare and coordinate the S-4 filing with legal counsel and accountants before filing with the SEC in March, 2000, time to respond to any SEC comments and time before the June 6, 2000, Annual Shareholders Meeting for the solicitation of the shareholders' votes.

Q. WHY DO YOU NEED APPROVAL BY FEBRUARY 1, 2000, TO FORM THE SHELL UTILITY COMPANY?

A. The utility company needs to be formed for the same basic reasons as the holding company, although technically its formation could come later since it is not the filer of the Form S-4 relating to PNM's shareholder meeting. However, the utility company will need to file various registration statements with the SEC in order to exchange debt and issue new debt to the public in connection with the separation of electric and gas transmission and distribution assets from the generation and supply assets of PNM. By setting up the shell corporation now, PNM will be in a position to have the necessary SEC filings in place to be ready for the proposed July 1, 2000, separation.

Q. PLEASE EXPLAIN IN GREATER DETAIL THE STEPS REQUIRED IN FORMING HOLDINGCO.

A. First, a minimally capitalized subsidiary of PNM is created and incorporated in New Mexico, which can be done with very simple "boilerplate" Articles of Incorporation and Bylaws. The formation of this shell holding company corporation must take place before the Registration Statement on Form S-4 is filed with the SEC in March, 2000. This subsidiary will ultimately become the holding company that owns all the common stock of the regulated electric and gas transmission and distribution company and the competitive electric generation

and supply company. However, this subsidiary cannot and will not become the actual holding company until all required regulatory approvals, including those requested in Part II of this proceeding and shareholder approvals have been obtained. Without these approvals, it will participate in the execution of the mandatory share exchange agreement and the S-4 but will otherwise remain a minimally capitalized subsidiary of PNM and serve no other function.

Q. PLEASE EXPLAIN IN GREATER DETAIL THE STEPS REQUIRED IN FORMING UTILITYCO.

A. As above, another minimally capitalized subsidiary of PNM, which will become the utility company, is created and incorporated in New Mexico. The formation of this shell corporation must take place before registration statements with the SEC for the offers or exchange of debt are filed. This subsidiary will ultimately become the company that owns all the assets of the regulated electric and gas transmission and distribution company. However, this subsidiary cannot and will not become the actual utility company without all required regulatory and shareholder approvals, including the approvals requested in Part II of this proceeding.

Q. WHAT ARE THE REQUIRED REGULATORY APPROVALS NEEDED BEFORE THE SHELL CORPORATIONS CAN BECOME HOLDINGCO AND UTILITYCO?

A. Approvals are needed from the Nuclear Regulatory Commission, the SEC, the Federal Energy Regulatory Commission and the NMPRC. These are discussed in PNM's Separation Plan Application filed concurrently with this Application.

Q. WHAT IS MEANT BY "MINIMALLY CAPITALIZED"?

A. Generally, approximately $1,000 is invested to set up the initial capital in each of these shell corporations. PNM will pay expenses relating to the restructuring.

Q. WHAT ARE THE SPECIFIC AUTHORIZATIONS THAT PNM IS REQUESTING WITH RESPECT TO THE CREATION OF THE SUBSIDARIES YOU HAVE DISCUSSED?

A. PNM is requesting a final order by February 1, 2000, for all approvals necessary to form the shell subsidiaries. Under Section 62-3-3(K)(1) of the New Mexico Public Utility Act, the formation of a "corporate subsidiary" by a public utility is a Class II transaction, and Rule 450 requires prior NMPRC approval of Class II transactions. The creation of the shell subsidiaries is intended merely to facilitate soliciting PNM shareholder approval of the Company restructuring plan to comply with the Restructuring Act and to allow the timely filing of appropriate SEC debt registrations. Therefore, PNM is requesting, pursuant to Rule 450.25, that the Commission grant the necessary variances from the provisions of Rule 450 and grant approval to form the two shell subsidiaries with an equity investment of $1,000

in each subsidiary. Further, a GDP is being submitted with the Separation Plan filed concurrently with this application.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

PNM EXHIBIT _____ (TRH-1)

is included on the following pages

EDUCATIONAL AND PROFESSIONAL SUMMARY

Name: Terry R. Horn

Address:
Public Service Company of New Mexico
Alvarado Square
Albuquerque, NM 87158

Educational Experience:
MBA--Finance, University of Houston - 1977
BBA--Finance/Economics, NMSU - 1974

Business Experience:

Public Service Company of New Mexico

Vice President and Treasurer:
December 1998 - Present

Director of Financial Management
Assistant Treasurer:
February 1991 – December 1998

Manager, Financing Projects:
April 1990 - February 1991

Financing Project Manager:
November 1985 - March 1990

Texaco, Inc.

Supervisor Information Systems/Staff Analyst:
1984 through 1985

Senior Analyst - 1983 through 1984
Analyst - 1981 through 1983
Senior Accountant - 1980 through 1981
General Accountant - 1977 through 1980
Accountant - 1975 through 1977
Jr. Accountant - 1975

NMPRC Proceedings:
Case No. 2354 - Revolver/TOP Securitization
Case No. 2385 - Revolver/TOP Securitization
Case No. 2482 - EIP SLOB Refunding
Case No. 2509 - PC Bond Refunding
Case No. 2515 - TOP Securitization
Case No. 2545 - A/R Securitization
Case No. 2587 - SGGC/SGPC Assets Sale
Case No. 2596 - Retirement of Drexel LOBs

Case No. 2692 - Amended A/R Securitization
Case No. 2700 - Purchase of PVNGS LOBs
Case No. 2721 - PC Bond Refunding
Case No. 2796 - Revolver/SUNS Indenture
Case No. 2837 - SUNs/PVNGS Lease Financing
Case No. 2989 - Plains/Tri-State Merger
Case No. 3012 - $11.5 million PCB Issuance

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
	)	**Utility Case No. 3137**
PART I – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN - SHELL CORPORATION APPROVAL	)	**(PART I)**
PUBLIC SERVICE COMPANY OF NEW MEXICO	)	
PETITIONER.	)	

AFFIDAVIT

STATE OF NEW MEXICO)
) **ss**
COUNTY OF BERNALILLO)

Terry R. Horn, upon being first duly sworn according to law, under oath, deposes and states: That I have read the foregoing Application and Testimony including Exhibits and it is true and accurate based on my own personal knowledge and belief.

SIGNED this 17th day of November, 1999.

TERRY R. HORN

SUBSCRIBED AND SWORN to before me this 17th day of November, 1999.

OFFICIAL SEAL
CINDY C. PENNINGTON
Notary Public
State of New Mexico
My Commission Expires June 1, 2002

NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

June 1, 2002

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART I – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN - SHELL CORPORATION APPROVAL	)	**Utility Case No. 3137 PART I - Shell Corporation Approval**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
PETITIONER.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **"Application and Direct Testimony and Exhibits of Terry R. Horn"** was mailed first-class, postage prepaid this 17th day of November, 1999 to each of the following individuals:

Steven S. Michel, Esq.
368 Hillside Avenue
Santa Fe, NM 87501

Richard N. Carpenter, Esq.
Sunny J. Nixon, Esq.
Carpenter & Nixon, LLP
P.O. Box 1837
Santa Fe, NM 87504-1837

Nann Houliston, Esq.
Utility Counsel
1 Civic Plaza, Room 3013
Albuquerque, NM 87102

F. Choi Lee, Director Energy Management
Phelps Dodge Mining Company
2600 N. Central Avenue
Phoenix, AZ 85004-3014

Ray Stanley
Ray Stanley & Associates
1750 N. Collins, Suite 209
Richardson, TX 75080

Randy E. Lovato, Esq.
Plains Electric Gen. & Trans. Coop. Inc.
2401 Aztec Road N.E.
Albuquerque, NM 87107

Andres Valdez
140 Washington, S.E.
Albuquerque, NM 87108

Jeffrey D. Rudolph
Manager of Rates and Regulatory Affairs
Plains Electric Gen. & Trans. Coop. Inc.
P.O. Box 6551
Albuquerque, NM 87197-6551

Dr. John C. Tysseling
Energy, Economic &
Environmental Consultants
One Sycamore Plaza
5600 Wyoming Blvd. N.E., Suite 225
Albuquerque, NM 87109

Michael D. Dirmeier
Georgetown Consulting Group
456 Main Street
Ridgefield, CT 06877

Jeff Taylor, Esq.
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Lewis O. Campbell, Esq.
Campbell & Snyder LLP
P.O. Box 30605
Albuquerque, NM 87190-0605

I. David Rosenstein
Lundberg, Marshall & Associates
Post Office Box 429349
Cincinnati, OH 45242-9349

Bruce C. Throne, Esq.
P. O. Box 9270
Santa Fe, NM 87504-9270

Leslie J. Lawner, Esq.
Enron Capital & Trade Resources Corp.
712 North Lea
Roswell, NM 88201

John Nielsen
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

Robert Bienstock, Esq.
University Counsel
150 Scholes Hall
University of New Mexico
Albuquerque, NM 87131

Michael B. Campbell, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87501

John Stutz
Tellus Institute
11 Arlington Street
Boston, Massachusetts 02116-3411

Jim Dittmer
Utilitech, Inc.
740 North Blue Parkway, Suite 204
Lee's Summit, MO 64086

Steven Ellinwood, Esq.
Law Department
Pittsburg & Midway Coal Mining Company
6400 South Fiddler's Green Circle
Englewood, CO 80111-4991

Jim Smith
Tri-Gas, Inc.
8200 Washington NE
Albuquerque, NM 87113

Garth Ashpaugh
Public Resources Management Group
225 South Swoope, Suite 211
Maitland, FL 32751

Fred Saffer
Fred Saffer & Associates
2111 East Michigan Street, Suite 219
Orlando, FL 32806

Lt. Col. Steven A. Gabrial
Capt. David Dusseau
Utility Litigation Team
General Litigation Team
139 Barnes Dr., Suite 1
Tyndall AFB, FL 32403-5319

Daniel A. Najjar
300 Paseo De Peralta, Suite 200
P.O. Box 4265
Santa Fe, NM 87501

James K. Tarpey
Director, Regulatory Affairs
Enron Capital & Trade Resources Corp.
1 Tabor Center
1200 17th Street, Suite 2750
Denver, CO 80202

Richard Mietz, Esq.
NM Public Regulation Commission
224 East Palace Avenue
Santa Fe, NM 87501-2013

Sally Ann Stinner
Lundberg, Marshall & Associates
P.O. Box 4360
Rockville, MD 20849-4360

Nelson Gabay
810-A Aztec NW
Albuquerque, NM 87107

Cydney Beadles-Salazar, Esq.
Chief Staff Counsel
NM Public Regulation Commission
224 East Palace Avenue
Santa Fe, NM 87501

Timothy M. Sheehan, Esq.
Sheehan, Sheehan & Stelzner, P.A.
Post Office Box 271
Albuquerque, NM 87103

Tito D. Chavez, Esq.
Bernalillo County Legal Dept.
1 Civic Plaza, 10th Floor
Albuquerque, NM 87102

Stephen L. Joseph
3101 Old Pecos Trail
Santa Fe, NM 87501

DATED this 17th day of November, 1999.

By: Charles W. Gunter

Charles W. Gunter
Regulatory Project Manager
Public Service Company of New Mexico
Alvarado Square, MS 0920
Albuquerque, New Mexico 87158
(505) 241-2212

#30258

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	Utility Case No. 3137 PART II - Separation Plan
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

APPLICATION

AND

DIRECT TESTIMONY AND EXHIBITS

OF

ROGER J. FLYNN
THOMAS G. SATEGNA
TERRY R. HORN

November 1999

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	Utility Case No. 3137 PART II - Separation Plan
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

APPLICATION

AND

DIRECT TESTIMONY AND EXHIBITS

OF

ROGER J. FLYNN
THOMAS G. SATEGNA
TERRY R. HORN

November 1999

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

In the Matter of Public Service Company of New Mexico's Transition Plan Filed Pursuant to the Electric Utility Industry Restructuring Act of 1999	)	
	)	**Utility Case No. 3137**
Part II - Authorizations Requested in Connection With PNM's Separation Plan	)	**PART II - Separation Plan**
Public Service Company of New Mexico,	)	
Petitioner.	)	

APPLICATION

Public Service Company of New Mexico ("PNM" or "Company"), a utility regulated in New Mexico by the New Mexico Public Regulation Commission ("NMPRC" or "Commission"), hereby files its application ("Application") for a final order granting all approvals required in order for the Company to separate its regulated and competitive businesses into at least two separate corporations held by a common holding company pursuant to the Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62-3A-1 through 23 (1999) ("Restructuring Act" or "Act").

1. Background and Introduction

a. The Restructuring Act requires a public utility to file its Transition Plan no later than March 1, 2000, for Commission approval on or before December 1, 2000, to show how it intends to comply with the Act. NMSA 1978, § 62-3A-6(A) (1999).

b. The transition plan must include a detailed description of the public utility's:

> (1) proposal and alternatives to separate its supply service and energy-related service assets from its distribution and transmission services assets pursuant to Section 8 [62-3A-8 NMSA 1978] of the Electric Utility Industry Restructuring Act of 1999;
>
> (2) associated unbundled cost-of-service studies and an explanation of all cost allocations made to the unbundled services;

(3) proposed methodologies to allow residential and small business customers to have customer choice without requiring additional end-use metering equipment;

(4) proposals to implement customer choice and open access;

(5) proposed standard offer service tariffs, exclusive of price terms that shall be incorporated prior to customer choice, for residential and small business customers that do not select a power supplier pursuant to customer choice eligibility;

(6) proposed competitive procurement process or other process for the selection of power supply for standard offer service tariffs, together with a proposed rate setting procedure. The initial procurement of power for standard offer service shall occur at least three months prior to customer choice, or earlier as determined by the commission, so that price terms can be the basis for determination of stranded costs;

(7) proposed tariffs for distribution service for customers and competitive power suppliers, and transmission service, either on file with a federal regulatory agency having jurisdiction or as proposed by the public utility;

(8) the projected amounts of stranded costs and transition costs sought to be recovered by the public utility;

(9) proposed non-bypassable wires charges for recovery of transition costs and stranded costs allocated among customer classes;

(10) proposed system for the collection, recovery and accounting of the system benefits charge and stranded and transition costs through wires charges;

(11) proposed customer education programs, necessary computer hardware and software modifications and meter upgrades necessary to provide open access;

(12) proposed procedures for balancing, settlements and communications with competitive power suppliers; and

(13) any other information, documentation or justification requested by the commission.

NMSA 1978, § 62-3A-6 (1999).

c. PNM is filing its Transition Plan in three Parts.

- Part I, filed concurrently with this filing, requests approval by February 1, 2000, of a Class II transaction creating two subsidiary "shell" corporations required in order to set in motion certain federal filings and shareholder approvals necessary to effectuate PNM's Separation Plan ("Shell Corporation Approval" or "Part I").

- Part II is the instant filing, and requests by June 1, 2000, all NMPRC approvals necessary for PNM to implement its Separation Plan in accordance with NMSA 1978, § 62-3A-6(A)(1) (1999) and other provisions of the Public Utility Act ("Separation Plan" or "Part II").

- Part III will include all Transition Plan requirements other than its Separation Plan, will be filed no later than March 1, 2000 in accordance with the Restructuring Act and will comply with NMSA 1978, §§ 62-3A-6(A)(2) through (13) (1999) ("March 1 Filing" or "Part III").

d. PNM is filing its Transition Plan in three parts for the following reasons:

(1) The Restructuring Act requires all public utilities to, before January 1, 2001,

> separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution services consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis.

NMSA 1978, § 62-3A-8(B) (1999).

(2) The Act further requires public utilities to accomplish this separation "by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties." NMSA 1978, § 62-3A-8(C) (1999).

(3) PNM has opted to create separate affiliated companies owned by a common holding company to comply with the Act and is submitting its proposal in this application. The transition to competition will require massive organizational, institutional and operational changes by PNM. Implementation of the Separation Plan by July 1, 2000, will allow PNM six months to carry out the internal organizational changes necessary to be ready for customer choice by January 1, 2001. By phasing this change, PNM believes that the transition can be more orderly and manageable for customers, the Commission and PNM. The financings required to effectuate these changes, for which approval is requested in this Application, will be facilitated if the Commission grants approvals by June 1, 2000, and will allow PNM to implement its Separation Plan in July, 2000.

(4) In addition, filing its Separation Plan at this time allows PNM to coordinate this filing with those required by the United States Securities and Exchange Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Nuclear Regulatory Commission. With these filings completed, PNM can turn its attention to the balance of its Transition Plan.

(5) Approval and implementation of the Separation Plan will have no effect on customers' rates and service. It will be invisible to customers. All rate issues will be dealt with in Part III.

(6) The Act does not prohibit, and in fact is consistent with, Commission approval of a Separation Plan prior to Commission approval of the remainder of the Transition Plan. See NMSA 1978, § 62-3A-6(A) (1999).

(i) NMSA 1978, § 62-3A-6 (1999) of the Act requires public utilities to file a Transition Plan that complies with the Act no later than March 1, 2000, for Commission approval on or before December 1, 2000.

(ii) NMSA 1978, § 62-3A-6(A)(1) (1999) of the Act requires a public utility to file its proposal and alternatives to separate its supply service and energy related service assets from its distribution and transmission services assets pursuant to Section 8 of the Act. This Application sets forth the Company's Separation Plan and complies with that requirement.

e. PNM hopes that by filing its Separation Plan at this time it will be able to receive approval of Part II no later than June 1, 2000. Approval by that date, along with other necessary approvals, will allow PNM to separate assets and personnel, set up its holding company and subsidiaries, and subject to other Commission requirements, allow its regulated and competitive businesses to begin to function in ways that will benefit customers of both its regulated and competitive businesses and its stockholders.

2. Summary of PNM's Separation Plan

PNM has chosen to separate its generation from its transmission and distribution assets by creation of separate affiliated companies owned by a common holding company ("HoldingCo"). All non-competitive and ancillary services for the provision of electric transmission and distribution service as well as gas transmission and distribution service will be provided by a regulated utility corporation, referred to herein as "UtilityCo." Competitive generation energy supply and ancillary supply service will be provided by a separate, unregulated corporation referred to as "PowerCo." As required by the Act, unregulated service will not be provided by a regulated company. Shared services will be provided by a division of HoldingCo. This Separation Plan fulfills the mandates of NMSA 1978, § 63-3A-8(C) (1999).

3. Approvals Required

a. PNM is requesting all approvals necessary to implement its Separation Plan. Because this Separation Plan is required by the Restructuring Act, and because the design of PNM's proposed

Separation Plan is expressly authorized by the Restructuring Act, the granting of the approvals that may technically still be required under the Public Utility Act ("PUA") should be far more streamlined and straightforward than had there been no Restructuring Act. Nevertheless, to provide full information to the NMPRC and because many of the requirements of the PUA and Rule 450 provide a framework for testimony filed in support of this application, PNM is specifically requesting all approvals that would otherwise be required and is providing supporting documentation. Specific approvals requested to the full extent required by law are:

- NMSA 1978, § 62-3A-6(A)(1) (1999) - approval of PNM's Separation Plan;
- NMSA 1978, §§ 62-6-6 and 62-6-7 - approval to issue securities;
- NMSA 1978, § 62-6-12(A)(4) - sale and purchase of public utility plant (both gas and electric);
- NMSA 1978, §§ 62-9-1 and 62-9-6 - certificate of public convenience and necessity for gas and electric operations of UtilityCo;
- NMSA 1978, § 62-9-5 - abandonment of service by both PNM Gas Services and PNM Electric Services.

b. PNM believes that its filing complies with requirements under the above statutes and any corresponding rules; however, to the extent that traditional application of the standards involved with these PUA approvals would operate to hinder or foreclose compliance with the Restructuring Act, those provisions of the PUA have been superseded by the requirements of the Restructuring Act. NMSA 1978, § 62-3A-23 (1999).

4. Compliance with the Restructuring Act and the Public Interest

a. The Separation Plan proposed in this filing is required by the Restructuring Act. This Separation Plan complies with the Act and will achieve the goals of the Act.

b. The issuance of securities will allow PNM to capitalize the new utility in a manner intended to achieve an investment grade rating. Such issuance is not inconsistent with the public interest; its purpose is permitted by the PUA; and the aggregate amount of securities outstanding and proposed to be outstanding will not exceed the fair value of the properties and business of UtilityCo.

c. Transmission and distribution assets will be transferred at net book value. This will allow the formation of a regulated transmission and distribution ("T & D") utility with essentially the same asset value as the T & D portion of PNM's current assets.

d. Authorization to abandon service and issuance of a certificate of public convenience and necessity ("CCN") to operate a public utility, if required, will allow the Commission to authorize PNM to abandon its T & D assets and will authorize the new T & D utility to operate in the state of New Mexico subject to the jurisdiction of the Commission. The new utility company is a successor in interest to PNM and entitled to the CCN pursuant to NMSA 1978, § 62-3A-5 (1999), whether the Commission determines that a new CCN is necessary coupled with abandonment by the 1917 corporation, or simply a transfer of the existing CCN to UtilityCo pursuant to NMSA 1978, § 62-3A-5 (1999).

e. Plans for capitalization of UtilityCo and PowerCo will provide both companies with the financial viability appropriate to their prospective functions.

f. The creation of a division within HoldingCo to provide shared services will allow both UtilityCo and PowerCo to benefit from economies of scope and scale.

5. Testimony

Attached to this Application as Exhibit A is a General Diversification Plan as required by Rule 450. Testimony of PNM witnesses Roger J. Flynn, Thomas G. Sategna and Terry R. Horn are provided in support of the Application.

6. Waiver

PNM respectfully requests a waiver from the requirements of 17 NMAC 1.2 §§ 51.2.2, 51.2.3 and 51.4. As grounds for this request, PNM states that its annual informational financing filing ("AIFF") for 1999 did not include the securities for which approvals are now sought because the Restructuring Act was enacted less than one month prior to the filing of the AIFF and PNM had not yet formulated financing plans related to the Act. Further, PNM will file its annual informational financing filing for 2000 in April of that year. Providing a form of notice according to § 51.4 is inapplicable because PNM is not requesting approval of the application in 30 days and because notice will be published as required by the Commission.

7. Pleadings and notice should be sent to:

PUBLIC SERVICE COMPANY OF NEW MEXICO
Terry R. Horn, Vice President & Treasurer
Alvarado Square, MS-2704
Albuquerque, NM 87158
(505) 241-2117

PUBLIC SERVICE COMPANY OF NEW MEXICO
Charles W. Gunter, Regulatory Project Manager
Alvarado Square, MS-0920
Albuquerque, NM 87158
(505) 241-2212

EASTHAM JOHNSON MONNHEIMER & JONTZ, P.C.
Marilyn C. O'Leary
Charlotte Lamont
Attorneys for Public Service Company of New Mexico
500 Marquette NW, Suite 1200
Albuquerque, New Mexico 87102
P.O. Box 1276
Albuquerque, New Mexico 87103
(505) 247-2315 (Telephone)
(505) 764-5480 (Facsimile)

WHEREFORE, PNM hereby requests that the Commission issue a final order granting all approvals required for it to implement its Separation Plan as described in this Application.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW MEXICO
Joanne Reuter, Deputy General Counsel
414 Silver, SW, M-S 0806
Albuquerque, NM 87102
(505) 241-4932

WHITE, KOCH, KELLY & McCARTHY, P.A.
Benjamin Phillips
Rebecca Dempsey
Post Office Box 787
Santa Fe, NM 87504-0787
(505) 982-4374

EASTHAM JOHNSON MONNHEIMER & JONTZ, P.C.

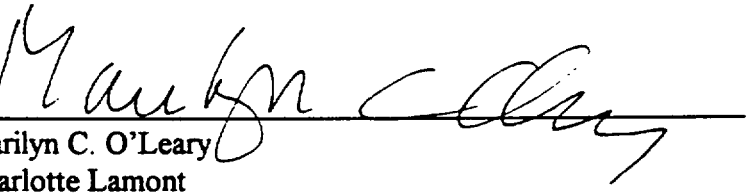
By 
Marilyn C. O'Leary
Charlotte Lamont
Attorneys for Public Service Company of New Mexico
500 Marquette NW, Suite 1200
Albuquerque, New Mexico 87102
P.O. Box 1276
Albuquerque, New Mexico 87103
(505) 247-2315

Exhibit A

PUBLIC SERVICE COMPANY OF NEW MEXICO'S GENERAL DIVERSIFICATION PLAN RELATING TO THE PROPOSED FORMATION OF A HOLDING COMPANY

New Mexico Public Regulation Commission ("NMPRC") Rule 450.7(a) requires a public utility to obtain written approval of a general diversification plan ("GDP") from the Commission prior to engaging in a Class II transaction. Rule 450.7(b) requires that a GDP submitted to the Commission contain the information specified in the subparts of Rule 450.7(b). Because PNM's Separation Plan contemplates the formation by PNM of a public utility holding company, which constitutes a Class II transaction as defined under Section 62-3-3(K)(1) of the Public Utility Act, PNM is hereby submitting its GDP consistent with Rule 450.7.

Given the far-reaching and unprecedented changes to the electric utility industry and to public utilities in New Mexico mandated by the New Mexico Electric Utility Industry Restructuring Act of 1999 ("Restructuring Act" or "Act"), much of the information that would normally be included in a GDP appears not to be germane to the instant filing. The formation of a holding company having common control over a separate transmission and distribution services company and a separate generation, power supply and energy-related services company is expressly authorized by the Restructuring Act as a means of achieving the corporate and asset separations required by the Act. Therefore, many if not all of the Rule 450 requirements appear to be pre-empted by the Act. Nonetheless, PNM is submitting its GDP to provide information that may be helpful to the Commission in reviewing PNM's proposed Separation Plan.

Although PNM has filed a number of GDPs in the past, this GDP is being filed as a stand-alone plan and not as an amendment to prior GDPs, given the nature of this filing.

(1) To the extent known the name, home office address, and chief executive officer of each affiliate, corporate subsidiary, holding company, or person which is the subject of the Class II transaction:

HoldingCo

PNM has not yet selected a name for the holding company. For the purposes of this filing, the holding company is referred to as "HoldingCo" for convenience.

The home office address for HoldingCo is expected to be the following:

[HoldingCo]
c/o Corporate Secretary
Alvarado Square
Albuquerque, New Mexico 87158

The chief executive officer of HoldingCo is expected to be Benjamin J. Montoya, in the position of Chairman, President and Chief Executive Officer. Mr. Montoya currently is Chairman, President and Chief Executive Officer of PNM.

UtilityCo

The transmission and distribution utility company to be formed will assume the name "Public Service Company of New Mexico." For clarity and convenience, this company is referred to as "UtilityCo" in this filing.

The home office address for UtilityCo is expected to be the following:

[UtilityCo]
c/o Corporate Secretary
Alvarado Square
Albuquerque, New Mexico 87158

The chief executive officer of UtilityCo is expected to be Roger J. Flynn, in the position of President and Chief Executive Officer. Mr. Flynn currently is Executive Vice President, Electric and Gas Services, of PNM.

PowerCo

PNM has not yet selected a name for the generation, power supply and energy-related services company. For the purposes of this filing, this company is referred to as "PowerCo" for convenience.

The home office address for PowerCo has not been determined at this time.

The chief executive officer of PowerCo is expected to be William J. Real, in the position of President and Chief Executive Officer. Mr. Real currently is Executive Vice president, Energy Services and Power Production, of PNM.

(2) **A statement of the goals and effects upon the utility operation of the Class II transaction including an analysis of the benefits, risks, and any costs to the public utility which could arise, and including all tax effects on the utility both on a consolidated entity basis and on a stand-alone basis:**

Goals of the Class II transaction

The principal goal in forming HoldingCo and UtilityCo is to comply with the Restructuring Act. Specifically, Section 8(B) of the Restructuring Act requires the following:

> Before January 1, 2001, a public utility shall separate into at least two corporations, separating supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services that are to be made available to the public pursuant to the Electric Utility Industry Restructuring Act of 1999 on a competitive unregulated basis from transmission and distribution service consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering that are to be made available to the public pursuant to that act on a regulated basis.

Further, Section 8(C) of the Restructuring Act provides that

> Corporate separation of regulated from unregulated services shall be accomplished by either the creation of separate affiliated companies that may be owned by a common holding company, through the creation of separate non-affiliated corporations or through the sale of assets to one or more third parties.

PNM proposes to comply with the Restructuring Act by forming separate affiliated companies owned by a common holding company to separate its regulated electric and gas distribution and transmission services assets from its competitive supply service and energy-related service assets, as expressly authorized by Section 8(C) of the Restructuring Act.

The Separation Plan ensures that UtilityCo can continue to provide safe and reliable electric utility service during the interim period between the separation of transmission, distribution, metering and billing from generation, power supply and energy-related services, and the commencement of open access.

The holding company and shared services design enable UtilityCo to obtain needed services at reasonable cost, thus benefiting jurisdictional customers.

Effects on the utility operation of the Class II transaction

During the interim period between the separation of transmission, distribution, metering and billing from generation, power supply and energy-related services, and the commencement of open access, there will be no effects on rates or service to NMPRC jurisdictional customers. The separation of assets into UtilityCo, PowerCo and HoldingCo will be "invisible" to customers. Rates will continue to be those rates in effect pursuant to the stipulation recently approved by the Commission in NMPRC Case No. 2761, and there will be no change in service to customers, as intercompany agreements will enable UtilityCo to provide generation, transmission and distribution

service, as PNM does presently. After full open access, the effects are as envisioned by the Restructuring Act.

Benefits, risks, costs

The benefits include compliance with the Restructuring Act, with no adverse effects on utility rates or service during the period prior to open access. The Commission is being asked to approve only the corporate structures proposed in this filing and the financings required to effect the separation. All issues that affect rates and services to retail customers will be the subject of the March 1, 2000, filing. Prior to customer choice customers will be unaffected by the approvals requested in this filing. PNM will continue to provide customers fully bundled electric utility service until the customer choice provisions of the Restructuring Act take effect. Approval of the Separation Plan prior to approval of other Transition Plan matters will help smooth the transition to customer choice by providing additional time during which a more orderly and manageable transition can occur. This should help ease the administrative burdens of PNM, the Commission, the Commission Staff and intervenors, and ultimately benefit customers.

The risks of PNM's proposed Separation Plan are those inherent in the required separation of assets and the deregulation of the supply portion of electric services as required by the Act. Transition costs, stranded costs and UtilityCo's cost of service will be addressed in PNM's Transition Plan to be filed March 1, 2000.

Tax effects on the utility both on a consolidated entity basis and on a stand-alone basis

Consolidated basis. There will be no change in the method of calculating income taxes. Currently, PNM (the parent) and its subsidiaries compute and pay income taxes on a consolidated basis. When formed, HoldingCo, as parent, will file the federal and state consolidated tax returns. UtilityCo will be included as one of the subsidiaries. The computation of taxes payable by UtilityCo, however, will be computed on a stand-alone basis and not be affected by the formation of HoldingCo.

Stand-alone basis. The statutory rates and the method of calculating income taxes for ratemaking purposes will not change as a result of the formation of HoldingCo.

Additionally, the Company will seek a ruling from the Internal Revenue Service to ensure that the tax status of the two qualified nuclear decommissioning trusts relating to Palo Verde Nuclear Generating Station ("PVNGS") Units 1 and 2 remain the same after transition as they are today. At present, current deposits into these trusts are deductible for tax purposes.

(3) **The type of corporate structure to be used:**

Both the proposed HoldingCo and UtilityCo will be corporations incorporated under the laws of the State of New Mexico. PowerCo will be the corporation that is presently PNM and which was incorporated in the State of New Mexico in 1917.

(4) **The means of implementing the corporate structure to be used, including, but not limited to, amendments to corporate articles, any issuances, acquisitions, cancellations, exchanges, transfers, or conversions of securities, and the impact of such on the rights of creditors and security holders:**

HoldingCo

HoldingCo will be formed through a "mandatory share exchange" pursuant to New Mexico corporate law. Essentially, PNM's common shareholders will vote to exchange their shares of PNM common stock for shares of common stock issued by a wholly-owned PNM subsidiary initially formed as a "shell" corporation (HoldingCo). In the mandatory share exchange, all non-dissenting PNM common shareholders will have their PNM common shares exchanged, on a one-for-one basis, for shares in HoldingCo. After this exchange, the former PNM common shareholders will own all the outstanding common shares of HoldingCo. PNM will be a wholly-owned subsidiary of HoldingCo through HoldingCo's ownership of all the outstanding shares of PNM. Any dissenting common shareholders will receive cash in an amount equal to fair value for their PNM common shares, rather than receiving shares of HoldingCo. HoldingCo will have entirely new Articles of Incorporation which will be included in the Form S-4 registration statement to be filed with the SEC in March, 2000.

UtilityCo

UtilityCo will be formed as a new subsidiary corporation incorporated in New Mexico, to own PNM's electric and gas regulated assets and operations. HoldingCo will own all common stock of UtilityCo. Electric and gas transmission and distribution assets will be transferred from the current PNM, the 1917 corporation, to UtilityCo. UtilityCo will ultimately finance its acquisition of transmission and distribution assets from the 1917 corporation in one or more of the following ways: (1) UtilityCo could issue up to $600 million of its own senior unsecured notes (SUNs) and apply the proceeds toward acquisition of assets; or, alternatively, (2) UtilityCo could issue a lesser amount of its own SUNs and enter into an exchange offer for up to $400 million of SUNs already existing for which the 1917 corporation is the obligor. After the debt transactions and transfer of short-term assets and liabilities, all transmission and distribution assets still remaining in PowerCo, approximately $360 million, will be contributed to UtilityCo, thus creating the equity of UtilityCo. At this point, UtilityCo will have a debt to capital ratio of approximately 60%, which should allow UtilityCo to obtain a BBB+ investment grade rating. All assets will be transferred to UtilityCo at net book value. UtilityCo will

have entirely new Articles of Incorporation which will be approved later in the process by the appropriate Board.

To facilitate the transaction, UtilityCo may opt to utilize an interim strategy of entering into a temporary bridge loan in the amount of $500 million.

PowerCo

No new corporate structure will be required for PowerCo, as PowerCo will be the 1917 corporation that presently exists as PNM. PowerCo will retain all $586 million of outstanding PCBs, which are secured by SUNs and First Mortgage Bonds ("FMBs"). Some or all of the $400 million of taxable SUNs could remain with PowerCo if it were more appropriate that UtilityCo be capitalized with newly issued SUNs. Alternatively, it might be appropriate to offer the holders of PNM's $400 million of taxable SUNs the opportunity to exchange their securities for similar securities issued by UtilityCo. PowerCo will also retain the PVNGS leases and the approximate remaining 16 years of rental payment obligations. As the 1917 corporation, PowerCo must address a number of impacts on the rights of PNM's lessors, creditors and security holders following the mandatory share exchange which creates HoldingCo. To accomplish the functional separation required by the Restructuring Act, consents will be required from (i) the owner participants and the holder of leveraged lease debt in connection with the PVNGS Units 1 and 2 lease agreements, and (ii) the owner participants under the Eastern Interconnection Project (EIP) leases. The existing wholly-owned subsidiaries of PNM will continue as wholly-owned subsidiaries of PowerCo, subject to future alternative structures to be determined by PowerCo.

(5) **The anticipated capital structure for the utility, its affiliates, and the consolidated entity (utility plus affiliates) for the next five (5) years:**

HoldingCo

Following the mandatory share exchange, HoldingCo initially will have approximately $874 million of common stock equity and no long-term debt of its own. However, because the assets and debt of UtilityCo, PowerCo and other HoldingCo subsidiary companies will be consolidated into HoldingCo for financial accounting purposes, the initial capital structure of HoldingCo will be approximately 57% debt and 43% equity on a consolidated basis. This ratio of total debt to total capital on a consolidated basis may be constant for the next five (5) years, but may change subject to financing growth in PowerCo. Over time, HoldingCo may raise future capital through the issuance of new common equity, or through other appropriate financing arrangements of its own.

UtilityCo

UtilityCo initially will have approximately $540 million of debt and approximately $360 million of equity, for a capital structure consisting of 60% debt and 40% equity. This capital structure is expected to remain in the approximate same proportion during the next five (5) years. A solid investment grade credit rating, at or near BBB+, has been targeted for UtilityCo. This should allow UtilityCo to have access to most capital markets and to obtain cost-effective long-term and short-term debt financing. To determine what capital structure is required to obtain BBB+ credit ratings, PNM consulted S&P published quantitative criteria for determining the credit rating of a regulated utility company such as UtilityCo. S&P's published ratings criteria allow total debt to total capital of approximately 60% for a BBB+ credit rating, assuming a business position of "1". A business position "1" utility has the strongest business profile based upon S&P's reviews of regulation, markets, operations, competitiveness and management. Therefore, assuming UtilityCo is viewed to have a business position of "1" by S&P, UtilityCo, with its $1.2 billion of assets and $.3 billion of other book or accounting liabilities, can have approximately 60% of the $.9 billion net amount, or approximately $540 million of debt. Of course, flexibility as to UtilityCo's capital structure should be maintained, as the appropriate capital structure necessary to maintain investment grade rating may fluctuate as rating agencies evaluate their criteria over time. As discussed previously, UtilityCo will issue new debt in the form of SUNs and may obtain additional SUNs debt through an exchange offer with current holders of PNM SUNs. Between the two transactions, UtilityCo will have debt financing of approximately $540 million in the form of SUNs.

PowerCo

PowerCo initially will have approximately 50% debt and approximately 50% equity. This capital structure may change as growth is financed. PowerCo will retain all $586 million of outstanding pollution control revenue bonds ("PCBs"), which are secured by SUNs and FMBs. Some or all of the $400 million of taxable SUNs could remain with PowerCo if it were more appropriate that UtilityCo be capitalized with newly issued SUNs. PowerCo will also retain the PVNGS leases and the approximate remaining 16 years of rental payment obligations.

(6) **The contemplated annual and cumulative investment in each affiliated interest for the next five (5) years in dollars and as a percentage of projected net utility plant and an explanation of why this level of investment is reasonable and will not increase the risks of investment in the public utility:**

HoldingCo and PowerCo

PowerCo is expected to grow by $400 million to $600 million over five (5) years. The investments in HoldingCo and PowerCo will be made by HoldingCo shareholders and HoldingCo, respectively, and not by UtilityCo. Because these investments will not

originate from UtilityCo, the investments will not increase the risks of investment in the public utility, that is, UtilityCo.

UtilityCo

UtilityCo will need to maintain its debt to capital ratio at a level that keeps its BBB+ credit rating. Over long periods of time, financing for capital expenditures will need to be approximately 60% debt and 40% equity. Therefore, over time, UtilityCo earnings over the 40% needed to maintain the target debt to capital ratio should be paid as a dividend to HoldingCo. This will provide a long-term benchmark for preventing payment of "excessive dividends" to HoldingCo pursuant to Rule 450. At any specific point in time, a given capital expenditure may be 100% debt or equity financed; over the long-term, however, the target debt to capital balance will need to be maintained. If too much debt is used, credit ratings will suffer. If too much equity is used, credit ratings will improve but more costly equity will be replacing debt in the capital structure. Traditionally, to lower the cost of equity, utilities have tended to finance periods of above average growth with issuances of equity and debt, keeping their dividend pay-out ratio constant. Over time and barring any equity infusions, at least 60% of UtilityCo earnings will need to be sent to HoldingCo in the form of dividends to maintain the appropriate capital structure for UtilityCo.

(7) **An explanation of how the affiliate(s) will be financed, by whom, and the type and amounts of capital or instruments of indebtedness:**

HoldingCo

HoldingCo will be capitalized with common stock equity as a result of the mandatory share exchange. Afterwards, over time, HoldingCo will receive dividend payments from its subsidiary companies and could raise future capital through the issuance of common equity, or through other appropriate financing arrangements.

HoldingCo will also maintain an unsecured revolving credit facility similar to PNM's current $300 million unsecured credit facility. The amount of the HoldingCo revolving credit facility has not been determined at this time.

UtilityCo

UtilityCo will be capitalized initially with the SUNs previously discussed, along with the transfer of transmission and distribution assets from the existing 1917 corporation. After formation, and over long periods of time, financing for capital expenditures is currently targeted to be approximately 60% debt and 40% equity.

PNM intends that UtilityCo, at least initially, will have a $150 million unsecured revolving credit facility very similar to PNM's current $300 million unsecured revolving

credit facility. In addition, a smaller version of PNM's current $80 million securitization of accounts receivable may be useful for UtilityCo.

See the response to item (6) above for further information regarding expected UtilityCo financing.

PowerCo

PowerCo will be capitalized initially with $586 million of PCBs retained in the 1917 corporation. PowerCo also could retain some or all of the $400 million of taxable SUNs, depending on whether UtilityCo is capitalized with newly issued SUNs. PowerCo also will retain the PVNGS leases and the approximate remaining 16 years of rental payment obligations. Over time, PowerCo can issue debt or equity in appropriate amounts to optimize shareholder returns over the long term.

(8) **An explanation of how the utility's capital structure, cost of capital, and ability to attract capital at reasonable rates will be impacted:**

PNM has planned for UtilityCo to have an investment grade, BBB+ credit rating. With such a rating, UtilityCo should be able to attract capital at reasonable rates, and at rates more favorable than the rates otherwise available to PNM given PNM's current credit ratings.

See the previous responses above for further information regarding expected UtilityCo financing.

(9) **An explanation of how the utility can assure that adequate capital will still be available for the construction of necessary new utility plant and at no greater cost than if the utility did not engage in this Class II transaction:**

Adequate capital should be available because, as indicated above, PNM has planned for UtilityCo to have an investment grade, BBB+ credit rating. With such a rating, UtilityCo should be able to attract capital at reasonable rates, and at rates more favorable than the rates otherwise available to PNM given PNM's current credit ratings.

(10) **To the extent not answered in (9) above an explanation of how ratepayers will be protected and insulated from any risks, costs, or their adverse and material effects attributable to Class II transactions or their resulting effects:**

The Commission retains the authority to regulate the rates and services of UtilityCo. The approvals requested herein are not intended to limit the Commission's ratemaking authority in any way. Further, the affiliated companies will comply with all provisions of

the Restructuring Act and the Code of Conduct adopted by the Commission with respect to the sharing of customer information, cross-subsidization and discrimination.

(11) If the utility intends to divest a corporate subsidiary, an explanation of the reasons for such divestiture, how it will be accomplished, how it will affect utility operations, financial viability, cost of capital, and adequacy of service during the next ten (10) years following divestiture, the anticipated proceeds to the utility, the extent, if any, that the utility intends for ratepayers to share in the proceeds or otherwise benefit from the divestiture, the amount of and reasons why any ratepayer funds have flowed directly or indirectly to the benefit of the corporate subsidiary:

Since UtilityCo will start out as a shell corporation subsidiary of PNM, it will need to be dividended to Holding Co. The dividend by PNM to HoldingCo of the shell corporation which will become UtilityCo could be construed as a "divestiture." This particular "divestiture," however, does not appear to be the type of "divestiture" contemplated by this information requirement, which seems to address the divestiture by a utility of a "going concern." Nonetheless, information regarding the reasons for the dividend of the shell corporation (UtilityCo), how it will be accomplished, how it will affect utility operations, financial viability, cost of capital and adequacy of service, is provided in the Part I Application and supporting testimony filed concurrently with this Part II filing.

(12) To the extent not provided above, such information or representations that will allow the Commission to make the findings contained in NMPRC Rule 450.7(c).

PNM hereby represents that:

1. The books and records of UtilityCo will be kept separate from those of non-regulated businesses and in accordance with the Uniform System of Accounts;

2. The Commission and its Staff will have access to books, records, accounts or documents of an affiliate participating in a Class I or Class II transaction pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19;

3. The supervision and regulation of UtilityCo pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired or unduly complicated;

4. UtilityCo will not pay excessive dividends to HoldingCo, and HoldingCo will not take any action which will have an adverse and material effect on the utility's ability to provide reasonable and proper service at fair, just and reasonable rates;

5. UtilityCo will not without prior approval of the Commission:

   A. Loan its funds or securities or transfer any similar assets to any affiliated interest, or

   B. Purchase debt instruments of any affiliated interests or guarantee or assume liabilities of such affiliated interests.

6. All applicable statutes, rules or regulations, federal or state, have been or will be complied with;

7 & 8. UtilityCo agrees to have an allocation study/management audit performed in accordance with the directions contained in a lawful Commission order directing its performance (the cost of which will not be charged to ratepayers). See ENMR Tel. Coop. v. N. M. State Corp. Comm., 118 N. M. 654 (1994).

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	Utility Case No. 3137 PART II - Separation Plan
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

DIRECT TESTIMONY AND EXHIBITS

OF

ROGER J. FLYNN

November 1999

DIRECT TESTIMONY OF
ROGER J. FLYNN
NMPRC UTILITY CASE NO. 3137 (PART II)

Q. PLEASE STATE YOUR NAME, BUSINESS POSITION, BUSINESS ADDRESS AND BUSINESS QUALIFICATIONS.

A. My name is Roger J. Flynn. I am Executive Vice President, Electric and Gas Services, for Public Service Company of New Mexico ("PNM" or the "Company"). My business address is Alvarado Square, Albuquerque, New Mexico.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE.

A. I graduated from the University of California at Berkeley in 1964 with a B.S. degree in Electrical Engineering. I obtained an M.S. degree from Stanford University Graduate School of Business in 1989. I am a registered professional engineer in New Mexico and California. Beginning in 1964 I held various positions with Pacific Gas and Electric Company (PG&E), starting as a substation engineer. My final position with PG&E was Regional Vice President in which capacity I was responsible for electric and gas operations in the San Joaquin Valley. I joined PNM in 1994 as Senior Vice President, Electric Services. Currently I am Executive Vice President and have responsibility for executive management of PNM's retail electric and natural gas utility operations.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

A. Yes. I have testified in the following New Mexico Public Regulation Commission ("NMPRC" or the "Commission") proceedings: Case No. 2740, pertaining to PNM's application for regulatory authorizations required in connection with the Person Peaking Project; Case No. 2787, concerning PNM's application for regulatory authorizations required in connection with a potential 5 MW solar facility; and Case No. 2867, regarding an application and complaint filed by Residential Electric, Incorporated.

I. INTRODUCTION

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. PNM is filing for approval of its Separation Plan in compliance with Section 6(A)(1) of the New Mexico Electric Utility Industry Restructuring Act of 1999 ("Restructuring Act" or "Act") at this time in order to receive approval from the NMPRC by June 1, 2000. The purpose of my testimony is as follows:

- To provide an overview of PNM's Separation Plan and holding company design
- To describe how the new entities formed will operate during the period between Commission approval of the Separation Plan and the commencement of open access
- To discuss PNM's rationale for filing at this time
- To introduce the other witnesses providing testimony in this filing and to outline the approvals requested

Q. DO YOU HAVE ANY PRELIMINARY STATEMENTS BEFORE PROCEEDING FURTHER?

A. Yes. In this filing PNM is proposing the formation of a new, regulated electric transmission and distribution company as part of PNM's Separation Plan. PNM believes that this new company can best respond to a transition to competition and its attendant opportunities for customer choice by continuing to provide, with a high commitment to excellence, reasonable and reliable public utility service. This regulated electric and natural gas delivery company, which will be referred to throughout this testimony as "UtilityCo," will have two sets of customers – energy consumers and energy suppliers. PNM has been cognizant in its Separation Plan of its responsibilities to both constituencies. The early separation of assets and services proposed in this case will facilitate the transition to competition and will be invisible to PNM's customers prior to customer choice. The rate freeze recently approved by the Commission ensures that current rates will not change until customer choice is implemented.

Q. PLEASE EXPLAIN THE OVERALL ORGANIZATION OF PNM'S TRANSITION PLAN FILINGS.

A. The Restructuring Act requires a public utility to file a transition plan that complies with the Act no later than March 1, 2000. PNM has decided to file its Transition Plan in three parts.

Part I, filed concurrently with this filing, requests approval by February 1, 2000, of a Class II transaction creating two subsidiary "shell" corporations required in order to set in motion the federal filings and shareholder approvals necessary to effectuate PNM's Separation Plan.

Part II is the instant filing, and requests by June 1, 2000, all approvals necessary for PNM to implement its Separation Plan in compliance with Section 6(A)(1) of the Restructuring Act. This application also requests specific approval to issue the securities necessary to carry out the Separation Plan.

Part III is referred to as PNM's Transition Plan and will be filed no later than March 1, 2000, in compliance with Sections 6(A)(2) through (13) of the Act.

Q. WHY IS PNM FILING A SEPARATION PLAN?

A. The Restructuring Act requires a public utility to separate its transmission and distribution businesses from its generation, power supply and energy services businesses into at least two separate corporations. The Act specifically authorizes the use of subsidiaries owned in common by a holding company in order to comply with this requirement.

Q. HOW DOES PNM PROPOSE TO COMPLY WITH THE ACT?

A. PNM has opted to form separate affiliated companies owned by a common holding company to separate its regulated electric and gas distribution and transmission services assets from its competitive supply service and energy-related service assets, as expressly authorized by Section 8(C) of the Restructuring Act.

Accordingly, PNM has filed in this case the Separation Plan portion of its Transition Plan which describes PNM's proposal and alternatives to form a holding company and to form separate affiliated companies for purposes of separating its competitive assets from its regulated assets. In addition, PNM is requesting any and all authorizations required to effectuate the Separation Plan.

II. OVERVIEW OF PNM'S SEPARATION PLAN AND HOLDING COMPANY DESIGN

Q. PLEASE PROVIDE AN OVERVIEW OF PNM'S SEPARATION PLAN AND HOLDING COMPANY DESIGN.

A. Certainly. PNM Exhibit ____ (RJF-1) shows the proposed holding company design including UtilityCo and PowerCo as two separate companies under a common holding company (HoldingCo).

PNM's Separation Plan calls for PNM to incorporate two new companies. One of the new corporations will become the holding company, while the second will become the regulated utility subsidiary. The existing PNM corporation will become the holding company's generation, power supply and energy services subsidiary.

UtilityCo will be a corporation which owns transmission and distribution assets, and provides transmission and distribution service, consisting of transmission facilities, operations and service, distribution facilities, operations and service and customer billing and metering, made available to the public on a regulated basis.

PowerCo will be a corporation which owns supply service and energy-related service assets, and provides supply service and energy-related service consisting of generation and power supply facilities, operations and services and energy-related facilities, operations and services, made available to the public pursuant to the Restructuring Act on a competitive unregulated basis.

HoldingCo will have a Shared Services division. HoldingCo and its Shared Services organization will provide certain services to all subsidiary companies. Service agreements that define service levels and costs will be negotiated between Shared Services and each of the subsidiaries. As PNM witness Thomas G. Sategna discusses in his testimony, HoldingCo services will be paid for by

UtilityCo using the direct charge and cost allocation pricing methodologies reviewed by the Commission in numerous proceedings in the past.

Q. SINCE THE EXISTING CORPORATION WILL BE POWERCO, WHAT WILL BE THE NAME OF UTILITYCO?

A. The "Public Service Company of New Mexico" name will be assigned to UtilityCo so as to minimize customer confusion. Thus, customers' utility company will be PNM before and after the corporate reorganization. The names for HoldingCo and PowerCo have not been selected yet.

Q. PLEASE DESCRIBE THE CORPORATE GOVERNANCE STRUCTURE PNM ANTICIPATES IMPLEMENTING.

A. The approach PNM has developed regarding corporate governance structure is specifically designed to promote separation of UtilityCo from competitive affiliates. HoldingCo board will elect the members of the Board of Directors for UtilityCo inasmuch as HoldingCo will be the sole shareholder of UtilityCo. There will be minimal overlap between the HoldingCo board and UtilityCo board, and no overlap between the boards of UtilityCo and PowerCo or any other affiliate involved in a competitive business. However, there may be overlap between the HoldingCo board and the boards of the competitive businesses.

Q. HOW WILL UTILITYCO OBTAIN NECESSARY SERVICES UNDER THIS DESIGN?

A. Some services will be embedded, that is, provided by employees of the individual companies, and certain services will be provided by HoldingCo or outsourced.

Q. WHICH SERVICES WILL BE EMBEDDED IN THE UTILITY AND WHY?

A. Several finance functions will be embedded including budgeting, financial reporting and revenue accounting. Certain human resource functions will also be embedded including employee relations, recruiting and safety. Others services that will be embedded include certain legal services, purchasing, insurance claims services, as well as public affairs, regulatory affairs and fleet services. The functions and services described above will be embedded in UtilityCo because of the need for UtilityCo to own and control those functions and services within its range of direct responsibilities. Reasons for selecting what services should be embedded included the mandates of the Restructuring Act, the anticipated requirements of the Commission's Code of Conduct and economic efficiencies.

Q. PLEASE DESCRIBE THE SERVICES THAT WILL BE IN THE HOLDINGCO CORE.

A. The services in the HoldingCo core are those that are necessary for HoldingCo to meet its legal, fiduciary and financial obligations as a publicly-traded corporation.

These services include financial risk management, cash management, compliance, credit management, trust and corporate investments, planning and capital management, financial accounting and reporting, budgeting, tax planning and strategy, audit, general counsel services, strategic planning and analysis, shareholder records and alliance, investor relations, and government relations.

Q. PLEASE DESCRIBE THE SERVICES THAT WILL BE PROVIDED TO UTILITYCO FROM THE SHARED SERVICES DIVISION OF HOLDINGCO.

A. Services provided from the Shared Services division will include various finance and accounting services, information services (including telecommunications), human resources, certain legal services, document control and records center, building and property management, environmental services and corporate governance. These services will be shared in order to provide benefits from economies of scale and scope. In one instance – telecommunications service – it is critical to system reliability that this service be shared. Several areas in the state, including the Farmington area, lack the necessary telecommunications infrastructure to provide new service. If San Juan Generating Station cannot use the PNM network, the reliability of power supplies to the Albuquerque area from that station and the transmission system will be seriously impaired, if not curtailed altogether.

Certain elements of shared services that are otherwise supplied by the Shared Services division may be embedded, for the reasons I mentioned earlier. This is because, for these functions, a hybrid model is appropriate: Key parts of the function become embedded, whereas other parts of the function that are more transactional or less routinely demanded are placed in Shared Services, enabling business areas to benefit from their economies of scale or scope, which ultimately benefits consumers.

Q. HOW WILL UTILITYCO BE CHARGED FOR HOLDINGCO CORE SERVICES AND SHARED SERVICES?

A. UtilityCo will be charged for services provided by the HoldingCo core and Shared Services division by using traditional direct charge and fully allocated cost methodologies. PNM witness Thomas G. Sategna discusses these methodologies in his testimony.

Q. WHAT CODE OF CONDUCT ENFORCEMENT POLICIES AND PROCEDURES ARE CURRENTLY IN PLACE AT PNM?

A. PNM has a Corporate Compliance Program which addresses particular areas of law and conduct relevant to PNM's operations. These areas include: antitrust and other fair trade laws; securities; environmental issues; regulatory issues; books and records; political contributions and lobbying; protection of Company assets; fair competition; and conflicts of interest. A critical tool for achieving

compliance at all levels of the Company is PNM's Code of Conduct, entitled "Do the Right Thing." This Code of Conduct focuses on legal and ethical behavior in every transaction inside and outside the Company. It encourages prevention and quick identification and resolution of violations. The Chairman, President and Chief Executive Officer is the Compliance Officer for the Company. Business Unit compliance officers assist the President in implementing the Code. Disputes and interpretation of the Code are handled by an Ethics Committee which includes senior management. Recently, a new position of Director, Business Ethics and Corporate Compliance, reporting directly to the President has been created to assist the President, in assuring compliance and coordinating compliance activities. All employees are required to read, understand and comply with the Code of Conduct.

In addition, PNM has in place the Standards of Conduct for Wholesale Sales of Electricity in Interstate Commerce, pursuant to FERC Order No. 889. The purpose of these Standards of Conduct is to implement FERC Order 889 by ensuring that all PNM transmission customers (as defined in the Standards of Conduct) receive access to information that will enable them to obtain transmission services available under PNM's Open Access Transmission Tariff on a nondiscriminatory basis. These standards already provide for separation of PNM's wholesale electric supply merchant function from its transmission reliability function.

Q. DOES PNM HAVE IN PLACE POLICIES AND PROCEDURES REGARDING THE INAPPROPRIATE SHARING OF INFORMATION BETWEEN AFFILIATES?

A. Yes. PNM uses three methods for securing its computer and information systems: security policies and procedures, computer network and system security, and application software security. In addition, PNM controls and monitors access to building and physical facilities. Its Information Security policy provides that access to data and systems is given only to authorized personnel, and their access is limited to systems and data required to perform their duties. The current Information Security function along with planned enhancements will allow PNM to ensure that access to the data and systems of UtilityCo can be protected from unauthorized access. Security is also in place to control access to PNM's network, e-mail, and mainframe to ensure that users' access rights are (or can be) segregated. There are also network structures and internal firewalls to provide internal network security and to provide the level of segregation to prevent the sharing of information. With regard to telecommunications security, there is currently technology in PNM's system to isolate channels so that no one can have unauthorized access. PowerCo and the competitive affiliates will have their own PBX, circuits and switch, separate from those of UtilityCo. PowerCo will have no access to or control over UtilityCo's circuits or channels. These and other safeguards will ensure that each affiliate can keep information segregated and secure.

Q. WILL PNM COMPLY WITH CODE OF CONDUCT REQUIREMENTS OF THE RESTRUCTURING ACT, AND WITH CODE OF CONDUCT REGULATIONS OR ORDERS ISSUED BY THE COMMISSION?

A. Yes. The Company will file its statement of policies and procedures consistent with the Commission's Code of Conduct as required by Section 8(E) of the Restructuring Act. Obviously, it will comply with all final Code of Conduct regulations implemented by the Commission and with any specific final orders related to Code of Conduct issues. Of course, PNM reserves the right to file for variances under the Code of Conduct, if necessary.

Q. SECTION 6(A)(1) OF THE RESTRUCTURING ACT REQUIRES THAT A TRANSITION PLAN ADDRESS A UTILITY'S "PROPOSAL AND ALTERNATIVES TO SEPARATE ITS SUPPLY SERVICE AND ENERGY RELATED SERVICE ASSETS FROM ITS DISTRIBUTION AND TRANSMISSION SERVICES..." WHAT ALTERNATIVE SEPARATION PLANS DID PNM CONSIDER?

A. In brief, PNM considered the following alternatives:

- PowerCo as the parent company of Utility Co
- UtilityCo as the parent company of PowerCo
- UtilityCo and not PowerCo remaining as the 1917 corporation
- HoldingCo as the 1917 corporation
- Dissolving the 1917 corporation

Q. WHY DID PNM DECIDE NOT TO PURSUE THESE ALTERNATIVES?

A. As PNM witness Terry R. Horn will explain, PNM's evaluation was, and continues to be, that each of the alternatives has critical shortcomings and, on balance, does not provide the benefits offered by the holding company design being proposed.

III. OPERATION OF PNM DURING INTERIM PERIOD

Q. HOW WILL UTILITYCO FUNCTION DURING THE PERIOD BETWEEN THE IMPLEMENTATION OF PNM'S SEPARATION PLAN AND THE IMPLEMENTATION OF CUSTOMER CHOICE FOR EACH CUSTOMER CLASS?

A. During the period between the implementation of PNM's Separation Plan and the implementation of customer choice for small customers and educational institutions, UtilityCo will function as PNM traditionally has functioned – as a public utility offering fully bundled electric generation, transmission and distribution service. In other words, assuming implementation of the Separation Plan on July 1, 2000, and the implementation of customer choice for residential customers, small business customers and public post-secondary educational institutions and public schools on January 1, 2001, UtilityCo, even though it no longer owns electric generation assets, will provide fully bundled electric utility service during that time period since open access will not yet have occurred and

these customer classes will not then either have a choice of electricity suppliers or be required to choose an electricity supplier.

Similarly, during the interim period between the implementation of PNM's Separation Plan and the implementation of customer choice for medium, large commercial, and industrial customers on January 1, 2002, (a period of approximately 18 months, assuming implementation of the Separation Plan in July, 2000), UtilityCo will continue to offer fully bundled electric service to medium, large commercial and industrial customers.

UtilityCo intends to provide fully bundled service with the same high level of reliability PNM has traditionally provided and at rates in accordance with the rate freeze approved by the Commission in NMPRC Case No. 2761, PNM's most recent rate case. These rates will remain in effect for each class of customer until customer choice is available for each class, or until 2003, whichever occurs first. UtilityCo will be able to continue to provide fully bundled electric service because it will enter into agreements with PowerCo, allowing it to procure the same resources traditionally available to PNM for providing fully bundled service.

Q. WHAT SERVICES MUST UTILITYCO PROCURE TO PROVIDE FULLY BUNDLED ELECTRIC SERVICE DURING THE INTERIM PERIOD?

A. UtilityCo must procure electricity supply on a firm, full-requirements basis from PowerCo. UtilityCo also must have in place other agreements with PowerCo to ensure continued service and reliability.

Q. PLEASE DESCRIBE HOW UTILITYCO WILL OBTAIN ELECTRICITY SUPPLY AND ANCILLARY SERVICES DURING THE INTERIM PERIOD.

A. UtilityCo will enter into capacity, energy and ancillary services agreements with PowerCo (hereinafter collectively referred to as "Power Purchase Agreements").

Q. PLEASE DESCRIBE THE BASIC ELEMENTS OF THESE POWER PURCHASE AGREEMENTS UTILITYCO EXPECTS TO ENTER INTO WITH POWERCO.

A. Under these Power Purchase Agreements UtilityCo will secure firm, full-requirements supply and generation-based ancillary services from PowerCo for all customers receiving bundled electric service under current tariffs. These agreements will have provisions that ensure that all of UtilityCo's requirements for generation necessary to serve its customers will be fully met on a real-time basis. The ancillary services to be provided under these agreements will include the spinning and supplemental reserves, and other generation services necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system. The effective date of

these agreements will be coincident with the formation of a holding company structure. From that date until the January 1, 2001 start of open access, bundled service will be provided to all of PNM's customers by means of this contract. During the year 2001, all customers except residential, small business customers, and public post-secondary institutions and public schools will continue to receive bundled electric service. These agreements terminate on the date of full open access.

Q. PLEASE IDENTIFY ANY OTHER AGREEMENTS BETWEEN UTILITYCO AND POWERCO WHICH UTILITYCO MUST HAVE IN PLACE FOR CONTINUED SERVICE AND RELIABILITY.

A. UtilityCo will enter into various other agreements with PowerCo that will include provisions for interconnection, network integration transmission service, transmission switchyard use and generation re-dispatch.

Q. WHAT IS THE SCHEDULE FOR DEVELOPING THE AGREEMENTS DESCRIBED ABOVE?

A. PNM anticipates that the Power Purchase Agreements and other agreements will be completed and filed with the FERC, as appropriate, by March, 2000. Again, however, customers' bills will not be affected by the contract price since they will continue to receive bundled service under the present bundled rates.

Q. WILL NATURAL GAS UTILITY SERVICE TO CUSTOMERS BE AFFECTED DURING THE INTERIM PERIOD?

A. No. Although gas assets and operations will be conveyed to the new UtilityCo, PNM's gas customers will continue to receive safe and reliable gas utility service during the interim period.

Q. HOW WILL POWERCO FUNCTION DURING THE PERIOD BETWEEN SEPARATION AND OPEN ACCESS?

A. PowerCo will provide electric supply to UtilityCo as described above. Otherwise, PowerCo will continue to provide wholesale electric service as it has in the past and currently does, and will also function as a competitive firm offering and providing electric supply and energy-related services after it receives its license. PowerCo will pursue business opportunities lawfully available to it in New Mexico and elsewhere.

IV. RATIONALE FOR FILING PNM'S SEPARATION PLAN AT THIS TIME

Q. WHY IS PNM FILING THE APPLICATION REGARDING ITS SEPARATION PLAN AT THIS TIME?

A. PNM is filing the Application regarding its Separation Plan at this time because the mandates of the Restructuring Act require a major effort, with critical

completion dates, in an extremely brief period of time. Actually separating the regulated businesses from the competitive businesses is a massive undertaking, and the deadline is fast approaching. Further, PNM perceives that earlier separation rather than later may be considered beneficial since competition is already starting to emerge even though open access dates have not yet arrived. By submitting its Separation Plan application at this time and obtaining early approval, the work required by the Act can be more manageably addressed by both PNM and the Commission. PNM therefore is submitting its Separation Plan application to facilitate an orderly compliance with this particular requirement under the Restructuring Act.

Q. PLEASE DISCUSS THE SPECIFIC TIME CONSTRAINTS THAT HAVE PROMPTED PNM TO SUBMIT ITS SEPARATION PLAN APPLICATION AT THIS TIME.

A. In order for PNM to carry out its Separation Plan contemplating the formation of a separate corporation to provide electric and gas transmission and distribution services on a regulated basis and the formation of a common holding company, PNM must obtain a number of regulatory approvals and shareholder approvals promptly. A critical event is PNM's next annual shareholders meeting, scheduled for June 6, 2000.

At the June 6, 2000, annual shareholders meeting, shareholders will vote regarding whether they approve the formation of a holding company, by agreeing to exchange their shares of stock in PNM for shares of stock of a shell subsidiary corporation, which will then become the holding company. For this vote to occur, however, several necessary events must occur beforehand. These events are described in the testimony of Terry R. Horn.

Q. WHAT OTHER TIME CONSTRAINTS HAVE PROMPTED PNM TO FILE ITS SEPARATION PLAN APPLICATION AT THIS TIME?

A. As a practical matter, the thirty-one day period between the final date the statute allows for Commission approval of the Transition Plan on December 1, 2000, and the January 1, 2001, date on which open access commences, leaves little time for the Company to implement the Separation Plan, as well as all other requirements of the Transition Plan, and to prepare to facilitate open access. Approval of the Separation Plan by June 1, 2000, will afford the Company a better opportunity to make the changes necessary to meet the scheduled open access date. Once the Separation Plan is approved the Company will be in a position to complete: the formation and capitalization of HoldingCo and UtilityCo; the separation of assets among these companies as required by the Restructuring Act; and the execution of appropriate intercompany agreements. Commission authorizations granted by June 1, 2000, would allow PNM to initiate its Separation Plan in June, 2000, provided other approvals and necessary transactions can be completed.

Q. IS PNM ALSO SUBMITTING APPLICATIONS FOR AUTHORIZATIONS FROM OTHER REGULATORY AGENCIES?

A. Yes. PNM will be submitting requests for necessary authorizations from the Nuclear Regulatory Commission ("NRC"), the FERC, the SEC and the Federal Communications Commission ("FCC"). Again, prompt authorization from all applicable regulatory agencies is critical to allow PNM sufficient time to carry out the many tasks necessary for PNM to comply with the January 1, 2001,deadline contained in the Restructuring Act.

Q. WHY SHOULD THE COMMISSION ENTERTAIN THIS APPLICATION NOW AND GRANT APPROVAL OF PNM'S SEPARATION PLAN BY JUNE 1, 2000?

A. First of all, approval of PNM's Separation Plan by June 1, 2000, will help PNM achieve the deadlines for customer choice imposed by the Restructuring Act. It is the necessary first step in implementing customer choice. Early approval of the Separation Plan will help smooth the transition to customer choice.

Second, early approval of the Separation Plan will not affect rates or service. All issues relating to utility rates and services, including any issues relating to the direct charges and allocations of shared services costs, will be addressed in PNM's March 1, 2000, filing. In fact, the rate freeze in effect as a result of Case No. 2761 means rates cannot change until customer choice is implemented.

The Commission is being asked to approve only the corporate structure proposed in this filing and the financings required to effect the separation. Prior to customer choice, customers will be unaffected by the approvals requested in this filing. PNM will continue to provide customers fully bundled electric utility service until the customer choice provisions of the Restructuring Act take effect.

Q. PLEASE DESCRIBE THE SCOPE OF THE EFFORT INVOLVED TO IMPLEMENT PNM'S SEPARATION PLAN.

A. The separation of PNM into three corporations will require that PNM complete a number of complex activities in a short period of time. First, PNM must obtain the regulatory authorizations described above. PNM also must obtain authorizations from its shareholders. In addition, PNM must obtain consents from lessors in the Palo Verde Nuclear Generating Station sale and leaseback transactions and in the Eastern Interconnection Project sale and leaseback transactions. The Company must also assign or divide all of its real and personal property and contractual rights and obligations.

Internally, implementation of PNM's Separation Plan and holding company design will require many complex activities including the formation and capitalization of the holding company and transmission and distribution services company, the allocation and assignment of transmission, distribution, generation and energy-related facilities, personnel, operations and services, and the execution

of appropriate intercompany agreements that will enable UtilityCo to continue to provide electric utility service as required under the Restructuring Act. Needless to say, implementation of this design, involving major efforts never before undertaken by this Company, will require considerable time and effort, and will involve profound changes to a consolidated organization presently consisting of more than 2,700 employees.

Q. ARE THERE OTHER CONSIDERATIONS THAT HAVE PROMPTED THIS SEPARATION PLAN FILING PRIOR TO FILING OTHER COMPONENTS OF PNM'S TRANSITION PLAN?

A. Yes. A filing of the Transition Plan in three parts is efficient from a case management standpoint, as it will reduce the sheer scope and number of subjects to be addressed in the Transition Plan that otherwise will be filed by March 1, 2000. In short, it spreads the Transition Plan case workload over a longer period of time. PNM believes early approval of this Application will benefit customers, the Commission, and PNM. In addition, an early filing is consistent with the Restructuring Act inasmuch as Section 6(A) of the Restructuring Act allows public utilities to file transition plans "no later than March 1, 2000."

Q. WHEN IS THE COMPANY REQUESTING THAT THE COMMISSION GRANT THE AUTHORIZATIONS REQUESTED HEREIN?

A. PNM is requesting that the Commission grant the authorizations requested in this part of the case by June 1, 2000, to allow the Company to implement its Separation Plan in July, 2000, after the authorizations have become final and no longer subject to appeal. Final, non-appealable authorizations are essential in order to close the proposed financing transactions. Commission approval by June 1, 2000, will assist PNM in complying with the January 1, 2001, completion date mandated under the Restructuring Act, as discussed above. PNM is hopeful that by filing at this time the Commission will be able to issue the authorizations sought within the requested time frame.

V. INTRODUCTION OF WITNESSES AND APPROVALS REQUESTED

Q. PLEASE SUMMARIZE YOUR TESTIMONY AND INTRODUCE THE OTHER PNM WITNESSES PROVIDING TESTIMONY IN THIS FILING.

A. My testimony has provided an overview of PNM's proposed Separation Plan and holding company design. I have also explained how PNM took code of conduct considerations into effect in designing its holding company structure. In addition, I have identified the various intercompany agreements that will be required to ensure fully bundled electric utility service to PNM's customers during the Interim Period. Finally, I have explained PNM's rationale for filing its Separation Plan at this time. I will conclude my testimony by identifying the approvals PNM is requesting.

The following PNM witnesses present further testimony showing that PNM's Separation Plan complies with the Restructuring Act and that the requested authorizations should be issued:

Procedures for separating assets among HoldingCo, UtilityCo & PowerCo
(Thomas G. Sategna, PNM Assistant Controller)

Mr. Sategna will address the procedures PNM intends to utilize to separate its assets among HoldingCo, UtilityCo and PowerCo. In addition, Mr. Sategna will describe the process by which the Company will charge for services provided by the HoldingCo.

Formation of holding company and financing – steps and costs
(Terry R. Horn, PNM Vice President and Treasurer)

Mr. Horn will describe the legal and financial steps required to carry out the Separation Plan and holding company design. He also describes alternatives to PNM's Separation Plan considered by the Company. In addition, Mr. Horn will provide the information required under 17 NMAC 1.2.51.2 in regard to the proposed securities issuances by UtilityCo.

Q. WHAT APPROVALS IS PNM REQUESTING IN THIS APPLICATION?

A. PNM is requesting all approvals necessary to implement its Separation Plan in accordance with Section 6 (A) (1) of the Restructuring Act not later than

June 1, 2000. To implement its Separation Plan PNM must perform the acts listed below. Insofar as Commission approval is needed, it is hereby requested.

1. Issuance of securities. PNM is specifically requesting authorization to issue securities pursuant to Section 62-6-6 of the Public Utility Act. PNM is not requesting approval in 30 days, since it appears inappropriate considering the Separation Plan issues raised in this filing. However, testimony submitted by Terry Horn is intended to comply with the requirements in that Section and with 17 NMAC 1.2.

2. Transfer assets from PNM – the 1917 corporation – to UtilityCo.

3. Obtain authorization for UtilityCo to operate as a regulated distribution company serving electric and gas service to retail customers. In this regard PNM requests Commission recognition that UtilityCo will succeed to PNM's Certificate of Convenience and Necessity pursuant to the terms of the Restructuring Act.

4. Approval of PNM's General Diversification Plan.

The specific authorizations requested under the Public Utility Act are set forth in PNM's application for this filing. PNM believes that the testimony submitted in

connection with this Application meets the requirements of the Public Utility Act, including the Restructuring Act.

VI. CONCLUSION

Q. DOES PNM BELIEVE THE SEPARATION PLAN PROPOSED IN THIS CASE PROMOTES THE PUBLIC INTEREST POLICIES EMBRACED BY THE RESTRUCTURING ACT AND IS A REASONABLE CHOICE AMONG AVAILABLE ALTERNATIVES?

A. Yes. The holding company and shared services design allows PNM to separate transmission, distribution, metering and billing from generation, power supply and energy-related services in compliance with Section 8(B) of the Restructuring Act. Further, it enables the regulated transmission and distribution entity, UtilityCo, to take advantage of legitimate economies of scale and scope, to the ultimate benefit of customers. Finally, PNM's proposed Separation Plan, involving two separate companies (UtilityCo and PowerCo) under a common holding company (HoldingCo), a Shared Services division within the holding company, and execution of appropriate intercompany agreements to ensure that UtilityCo can continue to provide safe and reliable energy delivery service, complies with the Restructuring Act and will provide both short-term and long-term benefits to consumers and the Company.

Q. WHAT SUBJECTS WILL PNM ADDRESS IN ITS MARCH 1, 2000, TRANSITION PLAN FILING?

A. PNM will address all other subjects required to be addressed by Section 6(A) of the Restructuring Act. These subjects include the items listed in Section 6(A)(2) through (13) of the Act.

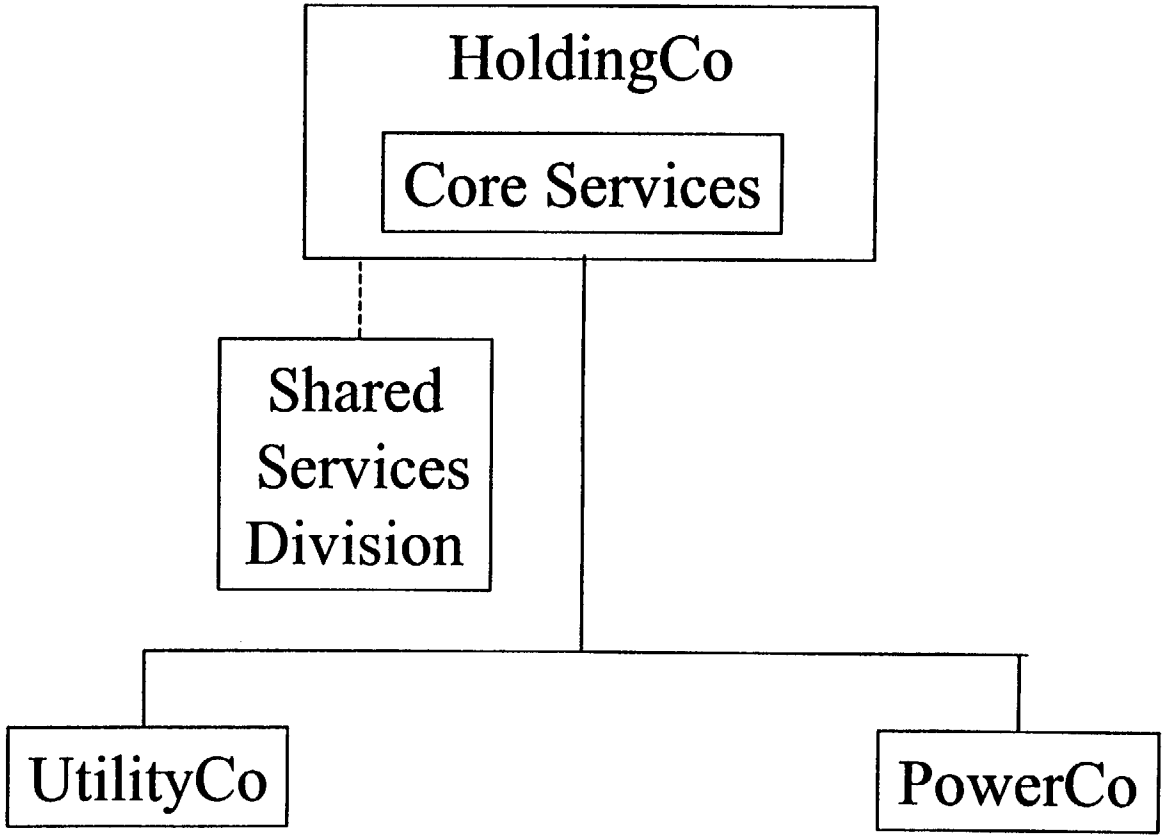
Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

PNM EXHIBIT _____ (RJF-1)

is included on the following pages

Public Service Company of New Mexico
Proposed Holding Company Design



Note: Chart does not show any of PNM's current subsidiary companies

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
	)	**Utility Case No. 3137**
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	**(PART II)**
PUBLIC SERVICE COMPANY OF NEW MEXICO	)	
PETITIONER.	)	

AFFIDAVIT

STATE OF NEW MEXICO)
) **ss**
COUNTY OF BERNALILLO)

Roger J. Flynn, upon being first duly sworn according to law, under oath, deposes and states: That I have read the foregoing Application and Testimony including Exhibits and it is true and accurate based on my own personal knowledge and belief.

SIGNED this 15 day of November, 1999.

ROGER J. FLYNN

SUBSCRIBED AND SWORN to before me this 15th day of November, 1999.

NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

6/22/02

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	Utility Case No. 3137 PART II - Separation Plan
PUBLIC SERVICE COMPANY OF NEW MEXICO, PETITIONER.	)	

DIRECT TESTIMONY AND EXHIBITS

OF

THOMAS G. SATEGNA

November 1999

DIRECT TESTIMONY OF
THOMAS G. SATEGNA
NMPRC UTILITY CASE NO. 3137 (PART II)

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, POSITION WITH PUBLIC SERVICE COMPANY OF NEW MEXICO ("PNM" OR "COMPANY") AND YOUR QUALIFICATIONS.

A. My name is Thomas G. Sategna. My business address is Alvarado Square, Albuquerque, New Mexico 87158. I have been employed by PNM since 1977 and currently hold the position of Assistant Controller. My education and professional background are set out in PNM Exhibit___(TGS-1).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony in this proceeding is to briefly describe the process by which the Company intends to identify and separate its assets and liability account balances between the corporation which will provide generation, power supply and energy-related services on a competitive basis, and the corporation which will provide electric and gas transmission and distribution services on a regulated basis, under the proposed holding company structure described in the testimony of PNM witness Roger J. Flynn. The proposed capitalization of these two new companies is addressed in the testimony of PNM witness Terry R. Horn. In addition, I will also describe the process by which the Company will assign and allocate costs for certain services, including assets, between the regulated and competitive companies under the holding company structure.

Q. WHAT ARE THE TOTAL ASSETS, LIABILITIES AND CAPITALIZATION OF THE COMPANY?

A. The total assets, liabilities and capitalization of the Company as of December 31, 1998 are approximately $2.6 billion, $0.7 billion and $1.9 billion ($1.0 billion is long-term debt and $0.9 billion is equity), respectively. Attached as PNM Exhibit___(TGS-2) is a copy of the Company's December 31, 1998 consolidated balance sheet that was filed with the Company's Form 10-K with the Securities and Exchange Commission ("SEC") and which reflects these balances.

Q. HOW IS THE COMPANY PROPOSING TO SEPARATE ITS ASSETS AND LIABILITY ACCOUNT BALANCES BETWEEN THE REGULATED AND COMPETITIVE COMPANIES?

A. In brief, generation, power supply and energy-related services assets, liability account balances, personnel and operations will remain with the existing corporation, incorporated under New Mexico law in 1917, and will become the competitive businesses of the Company. Because no name has yet been identified for this company, it will be referred to as "PowerCo" or the "1917 Corporation" in my testimony.

Electric and gas distribution and transmission-related assets, liability account balances, personnel and operations will be transferred to a new corporation to be formed which will conduct the regulated businesses of the Company. This new corporation will assume the names "Public Service Company of New Mexico" and "PNM." This company, for clarity and ease of reference, will be referred to throughout this testimony as "UtilityCo."

Q. HOW WILL THE COMPANY IDENTIFY WHICH ASSET AND LIABILITY ACCOUNT BALANCES SHOULD BE ASSIGNED TO EACH COMPANY?

A. The primary driver for identifying which utility plant assets will be assigned to each company will be how the assets are classified for Federal Energy Regulatory Commission ("FERC") purposes. For example, those plant-related assets classified as generation-related will be assigned to PowerCo. Those utility plant-related assets classified as distribution or transmission-related will be assigned to UtilityCo.

All other asset account balances, including current assets such as accounts receivable and inventories, will be individually reviewed to determine the appropriate company assignment.

All liability account balances, including current liabilities and accumulated deferred taxes, will be individually reviewed to determine the appropriate company assignment.

As a general policy, assets and liability account balances associated with supply and energy services will remain with PowerCo, and assets and liability account balances associated with electric and gas distribution and transmission service will be assigned to UtilityCo.

Q. WILL ALL ELECTRIC DISTRIBUTION AND TRANSMISSION-RELATED ASSETS BE TRANSFERRED TO UTILITYCO, AND WILL ALL GENERATION ASSETS REMAIN WITH POWERCO?

A. For the most part, yes. One exception involves the assignment of the step-up transformers located at the power plants. Although classified for FERC purposes as transmission plant, these assets will be retained by PowerCo because the FERC has determined that they are essentially a component of the generating station and should not be included in the development of transmission rates. Therefore, all step-up transformers associated with all of the Company's generating plants will be retained by PowerCo.

If any other exceptions are identified in the final assignment of assets, they will be addressed in the Company's March 1, 2000, Transition Plan Filing.

Q. HAS THE COMPANY COMPLETED ANY WORK REGARDING THE SEPARATION OF ASSETS AND LIABILITIES BETWEEN UTILITYCO AND POWERCO?

A. Yes. During the past several years, for internal reporting purposes, the Company has functionally reported its operating results for gas services, electric distribution, electric transmission, bulk power and Energy Services. In addition, as a requirement of the SEC, the Company has disclosed its different business segments in its footnotes to the financial statements included in its Form 10-K,

which have been audited by the Company's independent accountants, Arthur Andersen LLP.

Q. WHAT IS THE APPROXIMATE DOLLAR VALUE OF THE ASSETS THAT WILL BE TRANSFERRED TO UTILITYCO?

A. The approximate dollar value of the gas and electric distribution and transmission assets that will be transferred to UtilityCo is approximately $1.2 billion, based on December 31, 1998 data. This amount was included in the segment footnote to the Company's financial statements included in the Company's Form 10-K. A copy of the footnote, which reflects this dollar amount, and other key operating statistics for these business segments is included as PNM Exhibit___(TGS-3).

Q. IS THE $1.2 BILLION ASSET VALUE DISCUSSED ABOVE THE SAME VALUE THAT MR. HORN INDICATES WILL REQUIRE FINANCING IN HIS TESTIMONY?

A. Yes. As Mr. Horn indicates, UtilityCo will need to finance approximately $.9 billion of assets ($1.2 billion of assets less current liabilities) with a combination of debt and equity.

Q. HOW WILL THE ASSETS BEING TRANSFERRED TO UTILITYCO BE VALUED?

A. All of the assets being assigned to UtilityCo will be assigned at their respective values on PNM's books at the time the transfer occurs. Plant-related assets will

be assigned at their net book value, that is, original cost less accumulated depreciation. This valuation is consistent with how these assets have been treated for ratemaking purposes in past regulatory proceedings.

Q. WILL THERE BE ANY CHANGES IN THE METHODOLOGY OF CALCULATING INCOMES TAXES AS A RESULT OF THE PROPOSED TRANSFER OF ASSETS BETWEEN UTILITYCO AND POWERCO?

A. There will be no changes in the methodology of calculating income taxes for UtilityCo or PowerCo resulting from the proposed holding company formation. Currently, the Company computes and pays income taxes on a consolidated basis. When formed, the holding company ("HoldingCo"), as parent, will file the federal and state consolidated tax returns. UtilityCo and PowerCo will be included in the tax returns as subsidiaries.

Additionally, the Company will seek a ruling from the Internal Revenue Service to ensure that the tax status of the two qualified nuclear decommissioning trusts relating to Palo Verde Nuclear Generating Station Units 1 and 2 remain the same after transition as they are today. At present, current deposits into these trusts are deductible for tax purposes.

Q. HOW WILL COSTS FOR CERTAIN SERVICES, INCLUDING COMMON ASSETS, BE ALLOCATED OR ASSIGNED BETWEEN UTILITYCO AND POWERCO?

A. Certain assets, personnel and operations will be in either HoldingCo or the Shared Services division of HoldingCo. The proposed HoldingCo and Shared Services structure is described in the testimony of PNM witness Roger J. Flynn. The assignment and allocation of these costs between UtilityCo and PowerCo will depend on the type and nature of the functions performed. For ratemaking purposes, UtilityCo's share of these costs will be included in the cost of service for establishing rates to be approved by the New Mexico Public Regulation Commission ("Commission" or "NMPRC").

Q. HAS THE COMPANY DETERMINED WHAT METHODOLOGIES WILL BE UTILIZED TO ASSIGN OR ALLOCATE THE COSTS FOR THESE SERVICES BETWEEN UTILITYCO AND POWERCO?

A. The methodologies that will be utilized will be based on the proportionate benefit UtilityCo and PowerCo receive associated with the service. The Company intends to utilize some of the same methodologies approved by the NMPRC in past electric and gas rate cases for these assignments. For example, the Company's downtown buildings will be allocated between PowerCo and UtilityCo based on the square footage occupied by each entity. Other services, such as payroll, asset management and accounts payable, all of which will be performed within the Shared Services division, will be allocated based on numbers of employees, quantity of assets managed and number of line items paid, respectively. The specific allocation methodologies for the assignment or

allocation of all of these services will be addressed in detail in the Company's Transition Plan to be filed by March 1, 2000.

Q. HAS THE COMPANY QUANTIFIED THE IMPACT ON EACH OF THE COMPANIES FOR THE ALLOCATION OF THESE SERVICES?

A. No, it has not. The Company is still in the process of determining precisely how these services will be split between UtilityCo and PowerCo. As discussed above, the Company will specifically identify the costs of these services being assigned or allocated to each company in its March 1, 2000, Transition Plan filing.

Q. ONCE THE COMPANY DETERMINES THE COSTS OF THE SERVICES IT PROPOSES TO ASSIGN OR ALLOCATE TO UTILITYCO, HOW DOES THE COMPANY PROPOSE TO ALLOCATE THESE COSTS BETWEEN THE ELECTRIC DISTRIBUTION AND TRANSMISSION OPERATIONS AND THE GAS DISTRIBUTION AND TRANSMISSION OPERATIONS?

A. The Company is still in the process of making final determinations as to which services and what dollar amounts will be assigned to the two companies. Once the dollar values of the services that will be assigned to UtilityCo are determined, the Company will propose methodologies in its Transition Plan filing to further allocate and assign these values among electric distribution, electric transmission and gas distribution and transmission. The Company anticipates that it will utilize methodologies similar to those used in previous rate cases for these assignments.

Q. WILL SERVICE AGREEMENTS BETWEEN THE ENTITIES BE DEVELOPED TO ADDRESS THE TYPES OF SERVICES TO BE ALLOCATED OR ASSIGNED, AND THE METHODOLOGIES TO BE UTILIZED FOR THESE ALLOCATIONS OR ASSIGNMENTS?

A. Yes. There will be service agreements between the Shared Services division of HoldingCo and the respective companies, UtilityCo and PowerCo, as the case may be, that will identify the types of services that will be either direct charged or allocated, and the methodologies that will be utilized to accomplish such charges or allocations.

Q. WILL THE COMMISSION'S APPROVAL OF THE COMPANY'S SEPARATION PLAN IMPACT CURRENT RATES?

A. No. The proposed assignment of assets and costs for certain services to UtilityCo will have no impact on current rates. The Company's rates approved by the Commission in Case No. 2761 will remain in effect until new rates are approved in conjunction with the Company's March 1, 2000, Transition Plan Filing.

Q. WHAT IS THE COMPANY'S SCHEDULE FOR COMPLETING ITS PLAN FOR THE PROPOSED SEPARATION AND TRANSFER OF ASSETS?

A. The Company is in the process of making final determinations as to the exact assignment of personnel and functions under the holding company structure. The

Company anticipates that it will begin the separation with its year 2000 budgeting process in anticipation of Commission approval of its Separation Plan. These assignments are necessary so that the impacts can be incorporated into the March 1, 2000, Transition Plan filing.

Q. IF THE COMMISSION APPROVES THE SEPARATION PLAN, IS IT ALSO APPROVING THE PLANT VALUES, CAPITAL STRUCTURE AND THE METHODOLOGY FOR ASSIGNMENT OF COSTS FOR CERTAIN SERVICES FOR RATEMAKING PURPOSES?

A. No. The Company recognizes that when it files its cost of service study, including its proposed capital structure, neither the Commission, Commission Staff or intervenors will be bound by any approvals granted by the Commission in this proceeding as it relates to the establishment of rates. All parties will be able to take whatever positions they believe are appropriate regarding the establishment of the Company's rates. Of course, approvals relating to the issuances of securities addressed by Mr. Horn will be final, as will approvals allowing the corporate restructuring to go forward.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

PNM EXHIBIT _____ (TGS-1)

is included on the following pages

EDUCATIONAL AND PROFESSIONAL SUMMARY

Name: Thomas G. Sategna

Address: Public Service Company of New Mexico
Alvarado Square
Albuquerque, NM 87158

Position: Assistant Controller

Education: B.B.A., Accounting, Eastern New Mexico University, 1976

Employment: Employed by Public Service Company of New Mexico since 1977. Positions held within the Company since employment date have been the following:

Joint Project Accountant
Joint Project Accounting Supervisor
Operations Accounting Supervisor
Financial Accounting Supervisor
Director, Cost of Service
Manager, Cost of Service and Special Projects
Controller, Electric Operations
Assistant Controller

Testimony Filed:

Nature of Proceeding	Regulatory Body	Filed Dates	Docket Number
In the Matter of Application of SDCW for Approval of a Utility Expansion Charge.	NMPUC	12/86	2057
In the Matter of the Effect of the Tax Reform Act of 1986 on Sangre de Cristo Water Company.	NMPUC	01/88	2160
WAPA/PNM Contract for System Interconnections and Transmission Service.	FERC	07/88	ER88-542
El Paso Electric Supplement to Interconnection Agreement.	FERC	07/88	ER88-543
In the Matter of Public Service Company of New Mexico's application for a change in rates pursuant to Advice Notice Nos. 193 and 194.	NMPUC	03/89	2262
APPA/PNM Power Sale Agreement.	FERC	03/91	ER91-340
In the Matter of the Application of Public Service Company of New Mexico for Approval to Sell a 10.04% Undivided Interest in San Juan Generating Station, Unit 4 to the City of Anaheim, CA, and for Related Orders and Approvals.	NMPUC	08/91	2408

Nature of Proceeding	Regulatory Body	Filed Dates	Docket Number
In the Matter of Public Service Company of New Mexico Petition for a Declaratory Order Construing the New Mexico Public Utility Commission's Statutes and Tariffs to Resolve a Controversy Between Public Service Company of New Mexico and the City of Albuquerque.	NMPUC	08/91	2409
In the matter of the application of PNM to Sell UW Transmission Line to the City of Farmington and for Related Orders and Approvals.	NMPUC	11/91	2430
Application of PNM for certain approvals relating to its purchase of Burnham Leasing Corporation's beneficial interests in certain Palo Verde Nuclear Generating Station Unit 1 and Unit 2 owner trusts including approval of a general diversification plan.	NMPUC	02/92	2444
In the matter of the application of Public Service Company of New Mexico for continued use of, and certain variances with respect to, its fuel and purchased power cost adjustment clause pursuant to NMPUC Rule 550.	NMPUC	02/93	2492
In the matter of: (1) the application by Public Service Company of New Mexico for abandonment of Prager, Santa Fe, and Person Generating Stations and (2) Public Service Company of New Mexico's Case No.2530 Proposed Electric Depreciation Rates.	NMPUC	07/93	2530
Water Depreciation Study	NMPUC	06/93	2534
In the matter of PNM for approval of the sale of 35MW to UAMPS	NMPUC	11/93	2553
In the matter of Public Service Company of New Mexico's filing for a $30 Million Reduction Retail Electric Rates.	NMPUC	06/94	2567
In the matter of PNM Gas Services, a Division of Public Service Company of New Mexico, for a revision to its rates, rules, forms, and charges pursuant to advise Notice Nos. 592, 593, and 594.	NMPUC	08/95	2662

In the matter of PNM's request for approval to establish a qualified Nuclear Decommissioning Trust for PNM's interest in the Palo Verde Nuclear Generating Station.	NMPUC	09/95	2674
Notice of Rate Change	FERC	04/96	ER96-1462-000
Tariff Filing	FERC	04/96	ER96-1551-
In the matter of the application of Public Service Company of New Mexico for a variance from the requirements of Rule 450 relating to acquisition of certain Palo Verde Generating Station Unit 1 and Unit 2 and Eastern Interconnection Project Lease Debt or for Alternative Relief.	NMPUC	05/96	2700
Public Service Company of New Mexico's Case-in-Chief	FERC	06/96	ER95-1800-000, et al.
In the matter of PNM's petition for declaratory order concerning its internal restructuring plan.	NMPUC	06/96	2620
In the matter of PNM Gas Services request for purchase of a 130-mile natural gas pipeline from the United States Department of Energy.	NMPUC	08/96	2728
In the matter of the Filing by PNM Electric Services of Advice Notice Nos. 246 and 247.	NMPUC	11/96	2688
In the matter of the Commission's investigation of the rates for gas service of PNM Gas Services, a division of Public Service Company of New Mexico.	NMPUC	10/97	2762
In the matter of the Commission's investigation of the rates for electric service of PNM Electric Services, a division of Public Service Company of New Mexico.	NMPUC	11/97	2761
Application of PNM for authorizations relating to the issuance of senior unsecured notes in connection with the refinancing of certain PVNGS Units 1&2 lease debt and for a variance from the requirements of Rule 450.	NMPUC	06/98	2837
Testimony in support of the Stipulation in the matter of the Commission's investigation of the rates for gas service of PNM Gas Services.	NMPUC	05/98	2762

Application of PNM for authorizations and approvals required in connection with the purchase of certain assets from Tri-State Generation and Transmission Assoc., Inc.	NMPUC	05/99	2989
Testimony in support of the Stipulation in the matter of the Commission's investigation of the rates for electric service of PNM Electric Services, a division of Public Service Company of New Mexico.	NMPUC	06/99	2761

PNM EXHIBIT _____ (TGS-2)

is included on the following pages

CONSOLIDATED BALANCE SHEETS

ASSETS

	As of December 31, 1998	1997
	(In thousands)	
Utility Plant, at original cost except PVNGS:		
Electric plant in service	$ 1,966,277	$ 1,958,912
Gas plant in service	467,758	441,045
Common plant in service	63,245	43,415
Plant held for future use	551	551
	2,497,831	2,443,923
Less accumulated depreciation and amortization	998,175	1,003,086
	1,499,656	1,440,837
Construction work in progress	66,677	104,497
Nuclear fuel, net of accumulated amortization of $21,898 and $21,263	27,426	27,816
Net utility plant	1,593,759	1,573,150
Other Property and Investments:		
Non-utility property, net of accumulated depreciation of $1,129 and $2,146	4,875	4,502
Other investments	518,959	307,261
Total other property and investments	523,834	311,763
Current Assets:		
Cash	2,573	8,705
Temporary investments, at cost	58,707	9,490
Receivables, net of allowance for uncollectible accounts of $836 and $783	197,906	216,305
Income taxes receivable	8,266	-
Fuel, materials and supplies, at average cost	33,137	33,664
Gas in underground storage, at average cost	2,537	13,158
Other current assets	4,666	4,509
Total current assets	307,792	285,831
Deferred charges	151,403	149,811
	$ 2,576,788	$ 2,320,555

CAPITALIZATION AND LIABILITIES

Capitalization:		
Common stock equity:		
Common stock outstanding--41,774 shares	$ 208,870	$ 208,870
Additional paid-in capital	465,386	469,073
Accumulated other comprehensive income, net of tax	1,127	486
Retained earnings since January 1, 1989	186,220	129,188
Total common stock equity	861,603	807,617
Minority interest	13,405	-
Cumulative preferred stock without mandatory redemption requirements	12,800	12,800
Long-term debt, less current maturities	1,008,614	713,995
Total capitalization	1,896,422	1,534,412
Current Liabilities:		
Short-term debt	26,620	114,100
Accounts payable	113,975	154,501
Dividends payable	147	7,248
Current maturities of long-term debt	-	350
Accrued interest and taxes	34,289	24,161
Other current liabilities	28,308	26,102
Total current liabilities	203,339	326,462
Deferred Credits:		
Accumulated deferred investment tax credits	54,404	57,823
Accumulated deferred income taxes	144,277	124,054
Other deferred credits	278,346	277,804
Total deferred credits	477,027	459,681
Commitments and Contingencies		
	$ 2,576,788	$ 2,320,555

The accompanying notes are an integral part of these financial statements.

PNM EXHIBIT _____ (TGS-3)

is included on the following pages

(13) Segment Information

In 1998, the Company adopted SFAS No. 131, *Disclosures about Segments of an Enterprise and Related Information*. The Company's principal business segments are the four regulated business units: Electric Service Business Unit ("Distribution"), Transmission Service Business Unit ("Transmission"), Bulk Power Business Unit ("Generation") and Gas Services Business Unit ("Gas"). The Company's non operating subsidiaries and Energy Services Business Unit are not reportable segments and are included in "Other" for reconciliation purposes. Intersegment revenues are determined based on a formula mutually agreed upon between affected segments and are not based on market rates. Such intersegment items are eliminated for consolidation purposes.

Summarized financial information by business segment for 1998, 1997 and 1996 is as follows:

	Electric					
	Distribution	Transmission	Generation	Gas	Other	Total
			(In thousands)			
1998:						
Operating revenues:						
External customers	$ 539,972	$ 15,596	$ 279,636	$ 255,975	$ 1,266	$ 1,092,445
Intersegment revenues	-	$ 29,091	$ 362,722	-	$ -	$ 391,813
Depreciation and amortization	$ 23,396	$ 8,527	$ 38,292	$ 15,863	$ 63	$ 86,141
Interest income	$ 9,200	$ 4,286	$ 15,001	$ 6,130	$ 424	$ 35,041
Net interest charges	$ 16,057	$ 7,547	$ 26,179	$ 13,784	$ (350)	$ 63,217
Operating income tax expense (benefit)	$ 10,217	$ 2,518	$ 27,632	$ 4,597	$ (3,658)	$ 41,306
Segment net income (loss)	$ 22,317	$ 6,828	$ 61,949	$ 11,056	$ (19,468)	$ 82,682
Total assets	$ 583,104	$ 197,085	$ 1,328,691	$ 443,750	$ 24,158	$ 2,576,788
Gross property additions	$ 50,399	$ 9,156	$ 30,969	$ 38,260	-	$ 128,784
1997:						
Operating revenues:						
External customers	$ 522,835	-	$ 199,603	$ 294,769	$ 3,314	$ 1,020,521
Intersegment revenues	-	-	$ 370,019	-	$ -	$ 370,019
Depreciation and amortization	$ 21,754	-	$ 46,335	$ 14,587	$ 18	$ 82,694
Interest income	$ 6,715	-	$ 12,714	$ 4,313	$ 34	$ 23,776
Net interest charges	$ 15,900	-	$ 27,613	$ 12,701	-	$ 56,214
Operating income tax expense (benefit)	$ 13,890	-	$ 22,556	$ 7,587	$ (2,092)	$ 41,941
Segment net income (loss)	$ 24,496	-	$ 51,260	$ 14,602	$ (9,363)	$ 80,995
Total assets	$ 607,898	-	$ 1,178,036	$ 479,320	$ 55,301	$ 2,320,555
Gross property additions	$ 45,302	-	$ 51,661	$ 31,408	-	$ 128,371

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	**Utility Case No. 3137 (PART II)**
PUBLIC SERVICE COMPANY OF NEW MEXICO	)	
PETITIONER.	)	

AFFIDAVIT

STATE OF NEW MEXICO)
) **ss**
COUNTY OF BERNALILLO)

Thomas G. Sategna, upon being first duly sworn according to law, under oath, deposes and states: That I have read the foregoing Application and Testimony including Exhibits and it is true and accurate based on my own personal knowledge and belief.

SIGNED this 17th day of November, 1999.

Thomas G. Sategna
THOMAS G. SATEGNA

SUBSCRIBED AND SWORN to before me this 17th day of November, 1999.

OFFICIAL SEAL
CINDY C. PENNINGTON
Notary Public
State of New Mexico
My Commission Expires June 1, 2002

Cindy C. Pennington
NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

June 1, 2002

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	**Utility Case No. 3137** **PART II - Separation Plan**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
PETITIONER.	)	

DIRECT TESTIMONY AND EXHIBITS

OF

TERRY R. HORN

November 1999

DIRECT TESTIMONY OF
TERRY R. HORN
NMPRC UTILITY CASE NO. 3137 (PART II)

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, POSITION WITH PUBLIC SERVICE COMPANY OF NEW MEXICO AND YOUR QUALIFICATIONS.

A. My name is Terry R. Horn. My address is Alvarado Square, Albuquerque, New Mexico 87158. I have been employed by Public Service Company of New Mexico ("PNM" or the "Company") since November, 1985, and currently hold the position of Vice President and Treasurer. My education and professional background are set out in more detail in PNM Exhibit ___ (TRH-1).

Q. WHAT ARE YOUR SPECIFIC RESPONSIBILITIES AS VICE PRESIDENT AND TREASURER AT PNM?

A. As Vice President and Treasurer I have responsibility for managing PNM's Treasury Department and its primary functions, including finance, cash management, investment management, risk management and treasury administration and compliance. Specifically in regard to this case, I have responsibility for planning and implementing certain steps necessary to separate electric and gas distribution and transmission assets from electric generation assets, that is, forming and financing a holding company and a separate subsidiary electric and gas distribution and transmission company consistent with the Electric Utility Industry Restructuring Act of 1999 ("Restructuring Act").

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to support PNM's Application which seeks New Mexico Public Regulation Commission ("NMPRC" or the "Commission") authorizations related to its Separation Plan. In particular, I address the specific steps necessary to (i) form and finance the proposed holding company ("HoldingCo") and (ii) form and finance the proposed new electric and gas distribution and transmission utility company ("UtilityCo").

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. My testimony is organized into the sections listed below:

I. Description of Current Assets and Financing of PNM

II. Discussion of Proposed Structure and Alternative Structures Considered

III. Detailed Description of the Steps in Formation of HoldingCo and Disaggregation

IV. PowerCo Debt

V. Description of the Capital Structure and Liquidity Facilities of UtilityCo after the Proposed Holding Company Formation and Disaggregation

VI. Lessor and Creditor Consents

VII. Nuclear Regulatory Commission ("NRC") Concerns

VIII. Estimated Financial and Legal Costs for Formation

IX. Specific Financing Authorizations Being Requested

I. DESCRIPTION OF CURRENT ASSETS AND FINANCING OF PNM

Q. PLEASE DESCRIBE PNM'S ASSETS AND FINANCING AS THEY PRESENTLY EXIST.

A. As PNM witness Thomas G. Sategna describes in his testimony, PNM, as of December 31, 1998, had approximately $2.6 billion of total assets financed with $1.0 billion of long-term debt, $.7 billion of other liabilities and $.9 billion of equity. At December 31, 1998, PNM's capital structure and liquidity facilities consisted of the following:

Description	Amount (000's)
Equity	
Common stock	$ 208,870
Preferred stock	12,800
Additional paid-in capital	465,386
Accumulated other comprehensive Income, net of tax	1,127
Retained earnings	186,220
Total Common and Preferred Equity	$ 874,403
Minority Interest	$ 13,405
Long-Term Debt	
SUNs (Taxable)	$ 435,000
PCBs (Tax-exempt)	
PCBs – secured by SUNs	463,345
PCBs – secured by FMBs	111,000
Total Long-Term Debt	$1,009,345

Off-Balance Sheet Obligations		
EIP Leases	$ 49,281	
PVNGS Leases	111,904	
Total Off-Balance Sheet Obligations	$ 160,185	

Liquidity Facilities	Capacity	Borrowing Outstanding
Revolver	$300,000,000	$ - 0 -
Securitization	80,000,000	- 0 -
Local bank lines of credit	25,000,000	- 0 -
Total Liquidity Facilities	$405,000,000	$ - 0 -

In the Company's 1998 Annual Report Form 10-K filed with the Securities and Exchange Commission ("SEC"), the Company's debt to capital ratio was 54%. Including off-balance sheet obligations, PNM's debt to capital ratio was 58% at December 31, 1998 and 56% at September 30, 1999. On August 26, 1999, both Moody's Investor Services, Inc. ("Moody's") and Standard and Poor's Rating Corporation ("S&P") raised their credit ratings of the Company to investment grade with ratings of Baa3 and BBB-, respectively. Duff and Phelps ("Duff") has PNM's credit rating at BBB-.

II. DISCUSSION OF PROPOSED STRUCTURE AND ALTERNATIVE STRUCTURES CONSIDERED

Q. PLEASE PROVIDE AN OVERVIEW OF THE ACTIONS PNM PROPOSES TO TAKE IN ORDER TO ACHIEVE THE SEPARATION OF ASSETS AND FORMATION OF A COMMON HOLDING COMPANY CONSISTENT WITH THE RESTRUCTURING ACT.

A. Certainly. As PNM witness Roger J. Flynn describes in his testimony, PNM plans to separate its electric and gas distribution and transmission assets from its electric generation assets into two separate corporations under a common holding company (the "Separation Plan"), consistent with the Restructuring Act. To achieve this structure, PNM will undertake the following:

1. PNM will form a holding company. This company, for ease of reference, will be referred to throughout this testimony as "HoldingCo."

2. PNM will form a distribution and transmission company ("UtilityCo") which will be assigned the name "Public Service Company of New Mexico," to hold the electric and gas distribution and transmission assets. UtilityCo will be a wholly-owned subsidiary of HoldingCo.

3. PNM's electric and gas distribution and transmission assets will be transferred to UtilityCo.

4. The existing corporation, formed in 1917 and currently known or referred to as "PNM" or the "1917 Corporation", will retain the electric generation assets and will be a wholly-owned subsidiary of HoldingCo. This company, for ease of reference, will be referred to throughout this testimony as "PowerCo." A new name is in the process of being selected.

5. Regulated electric and gas distribution and transmission service will be provided to jurisdictional customers by UtilityCo.

Q. WHAT IS THE OVERALL CORPORATE AND ORGANIZATIONAL STRUCTURE THAT WILL RESULT FOLLOWING COMPLETION OF THE ACTIONS DESCRIBED ABOVE?

A. PNM Exhibit ____ (TRH-2) provides a schematic diagram showing the corporate and organizational structure resulting from the actions described above. This is the same structure described by PNM witness Roger J. Flynn in his testimony.

Q. DID PNM CONSIDER THE ALTERNATIVE OF HAVING POWERCO BE THE HOLDING COMPANY PARENT, WITH UTILITYCO AS A SUBSIDIARY?

A. Yes. After analysis, however, that structure was rejected.

Q. WHAT WERE PNM'S REASONS FOR NOT ADOPTING THE ALTERNATIVE OF HAVING POWERCO AS THE HOLDING COMPANY PARENT?

A. The Company believed that control of the regulated utility by PowerCo as a parent would most likely be perceived as maintaining rather than mitigating any anti-competitive and cross-subsidization risks. Although the Company believed that internal policies and procedures could resolve such issues, we concluded that this alternative should be rejected.

Q. DID PNM CONSIDER THE ALTERNATIVE OF HAVING UTILITYCO AS THE HOLDING COMPANY PARENT, WITH POWERCO AS THE SUBSIDIARY?

A. Yes.

Q. WHAT WAS PNM'S CONCLUSION REGARDING THAT ALTERNATIVE?

A. The Company believed that this alternative was unacceptable since it would effectively defeat the purpose of the Act by not deregulating the generation and

supply portion of PNM's business. Under this structure, the regulated utility parent would be subject to, among other NMPRC regulations, the Class II transaction regulations. This would impose severe restrictions on PowerCo's ability to obtain timely financing and in our view would not be consistent with the purpose of the Restructuring Act, to deregulate the generation and energy supply service business. The infusion of capital into the subsidiary would be a Class II transaction for the utility parent. The issuance of securities by the utility parent (such as common equity) to provide equity to the non-regulated subsidiary would require NMPRC approval, which would depend on the utility parent being able to meet the statutory tests to issue securities. Although the non-regulated subsidiary may generally do its own debt financing, the restrictions on financing from the utility parent would severely limit business flexibility. Overall, this structure would not provide the unregulated businesses with sufficient flexibility to compete in an unregulated business environment for the short or long term. Further, it may be perceived as not providing sufficient separation from UtilityCo.

Q. DID PNM CONSIDER THE ALTERNATIVE OF HAVING THE EXISTING 1917 CORPORATION REMAIN AS UTILITYCO, WITH THE GENERATION ASSETS BEING TRANSFERRED TO AN AFFILIATE IN THE HOLDING COMPANY STRUCTURE?

A. Yes.

Q. WHAT WAS THE COMPANY'S CONCLUSION WITH RESPECT TO THIS ALTERNATIVE?

A. The Company analyzed the costs and benefits depending on whether the existing 1917 corporation ends up as the generation company or ends up as the electric and gas transmission and distribution company. Transferring the electric and gas transmission and distribution assets to a new company or transferring the generation assets to a new company each entails substantial complexities. We reviewed a number of factors and issues affecting the selection of which business should continue as the 1917 corporation and which business should be transferred to the new corporation. I will discuss a number of the more significant factors which resulted in the conclusion that UtilityCo should be the new corporation.

First, the Four Corners project agreements contain rights of first refusal for the transfers of interests in the Four Corners Plant. These rights of first refusal include a three-year advance notice requirement and the ability of the other participants to acquire the interest proposed to be transferred by exercising their rights of first refusal. There are also Four Corners contracts which would be affected by a transfer to a new PowerCo (e.g. fuel contract, Navajo lease, Federal easement). Leaving the generating assets in the 1917 corporation obviates these issues to a large extent.

Second, if the PowerCo is the new corporation, it would need to become the lessee under the Palo Verde Nuclear Generating Station ("PVNGS") leases, the

licensee under the NRC licenses and the participant under the Arizona Nuclear Power Project Participation Agreement. These issues are mitigated if the 1917 corporation retains those positions rather than having an entirely new entity assume those positions. Furthermore, transfer of the decommissioning trust to a new PowerCo along with PVNGS could trigger significant federal tax issues.

Third, changing the entity which is the generating company would cause significant issues with respect to the San Juan Generating Station ("SJGS"), including transfer of the operating agent function. PNM is a signatory to the fuel agreement for SJGS. Changing the contracting party from the existing 1917 corporation to a newly created entity may entail substantial challenges which are again mitigated if the 1917 corporation remains as PowerCo.

Fourth, we also considered the substantial experience PNM has had with respect to transfers of similar (transmission and distribution) assets. This experience includes the acquisition of the entire gas distribution system from Southern Union Company, the sale of the Santa Fe water utility to the City of Santa Fe, the sale of gas gathering and processing assets, the disposition of the Las Vegas water utility to the City of Las Vegas, and the sale of the White Rock electric distribution system. Of course, PNM also has experience in sales of generating unit interests in San Juan Unit 4; however, these sales have not involved the substantial additional complexities involved in transferring all generation assets (San Juan, Four Corners, PVNGS, Reeves) to a new entity.

Overall, we determined that fewer, less difficult and probably less costly obstacles would have to be overcome to transfer the electric and gas transmission and distribution assets to a new company and to leave the generation assets in place in the existing corporation.

Q. DID YOU CONSIDER USING THE 1917 CORPORATION AS THE HOLDINGCO OR JUST DISSOLVING IT?

A. Yes, but the alternatives were quickly eliminated for obvious reasons. All the complexities associated with transfer of PowerCo assets would come into play as well as the complexities associated with the transfer of the gas and electric transmission and distribution assets. These alternatives are clearly not preferable.

III. DETAILED DESCRIPTION OF THE STEPS IN FORMING HOLDINGCO AND DISAGGREGATION.

Q. MR. HORN, PLEASE EXPLAIN THE FORMATION AND FINANCING STEPS REQUIRED IN FORMING HOLDINGCO.

A. First, a minimally capitalized subsidiary of PNM, HoldingCo, is created and incorporated in New Mexico. The formation of the "shell" corporation must take place before the Registration Statement on Form S-4 is filed with the Securities and Exchange Commission ("SEC") in March, 2000. PNM is separately requesting necessary NMPRC approval by February 1, 2000 to accomplish this in Part I of this case. This company will ultimately become the holding company for PNM's regulated and competitive businesses, UtilityCo and PowerCo,

respectively. After all regulatory approvals (identified in the testimony of Roger J. Flynn), financial consents and shareholders' approvals have been obtained, there will be a mandatory share exchange pursuant to New Mexico corporate law. The mandatory share exchange is a common procedure under corporate law for the formation of a holding company. Mandatory share exchanges are a common means for utilities to create holding companies. Some specific examples of utilities which created holding companies through mandatory share exchanges are Detroit Edison, Baltimore Gas and Electric and Rochester Gas and Electric. In the mandatory share exchange, all non-dissenting PNM shareholders will have their PNM common shares exchanged, on a one-for-one basis, for shares in HoldingCo. After this exchange, the former PNM common shareholders will own all the outstanding common shares of HoldingCo. PNM will be a wholly-owned subsidiary of HoldingCo through HoldingCo's ownership of all the outstanding shares of PNM. Any dissenting common shareholders will receive cash in an amount equal to fair value, for their PNM common shares rather than receiving shares of HoldingCo.

Q. PLEASE DISCUSS THE FORM S-4 FILING WITH THE SEC.

A. In connection with the stockholder meeting to approve the mandatory share exchange, PNM will prepare a proxy statement in compliance with the requirements of the Securities Exchange Act of 1934 (the "1934 Act"). Since the proxy statement also serves as an offering document with respect to the shares of the holding company, the proxy statement would also be a prospectus to be

prepared in compliance with the requirements of the Securities Act of 1933 (the "1933 Act").

The combined proxy statement/prospectus will be filed with the SEC in a registration statement on Form S-4. The registration statement would address holding company common stock to be issued pursuant to the mandatory share exchange, for then outstanding PNM common shares and any shares subject to issuance upon option exercise for any shareholder or employee plans. The SEC staff may have comments or raise issues regarding the registration statement. Once any issues are satisfactorily resolved, the registration statement would be declared effective by the SEC. The proxy/prospectus would then be mailed to PNM shareholders soliciting their votes prior to the annual shareholder's meeting scheduled for June 6, 2000.

Q. PLEASE EXPLAIN THE FORMATION AND FINANCING STEPS REQUIRED IN FORMING THE REGULATED AND COMPETITIVE SUBSIDIARIES.

A. After HoldingCo is formed and the mandatory share exchange has taken place, PNM will need to split its assets and operations into two companies, one regulated (UtilityCo) and one competitive (PowerCo). Both these companies will be wholly-owned subsidiaries of HoldingCo. The request to form and set up the holding company shell and the utility company shell was filed in Part I of this case. HoldingCo would own all common stock of UtilityCo. UtilityCo assets will

need to be transferred from PNM (hereinafter called PowerCo) to UtilityCo and a capital structure created for UtilityCo. When assets are removed from a corporation, consideration for the removed assets must be provided to compensate lenders and owners for the assets removed. This consideration can take many forms: cash, assumption of liabilities such as debt, a note, an exchange of assets, etc. The consideration provided to PowerCo by UtilityCo for its assets should be structured in a manner that creates a capital structure that provides an investment grade rating for UtilityCo. UtilityCo's capital structure will be part debt and part equity, very similar to PNM's historical capital structure.

A short-term bridge loan may be used to facilitate an orderly transition from one company to three companies. The permanent debt financing for the assets to be moved to UtilityCo may come from one or two sources. In one scenario, UtilityCo may issue up to $540 million of its own senior unsecured notes ("SUNs"). The proceeds from this debt issue would be used to purchase a portion of the UtilityCo assets from PowerCo. Or, alternatively, UtilityCo could issue fewer new SUNs and possibly obtain up to $400 million of existing PNM SUNs through an exchange offer. Holders of the $400 million of SUNs previously issued by PNM in August, 1998, ($435 million was initially issued and outstanding at December 31, 1998, and $35 million was repurchased and retired in June and July, 1999 at prices below par) could be offered the opportunity to exchange their SUNs into SUNs as to which UtilityCo would be the obligor. UtilityCo would receive assets from PowerCo equal to the amount of the SUNs it

acquired in the exchange offer. Either one of these strategies could be used depending on the capital markets at the time. We are seeking approval in this filing for authority to pursue whichever alternative is appropriate given capital market conditions at the time the Separation Plan is implemented.

In addition to the debt transactions and transfer of short-term assets and liabilities, all transmission and distribution assets still remaining in PowerCo, approximately $360 million, will be contributed to UtilityCo, thus creating the equity of UtilityCo. At this point, UtilityCo will have a debt to capital ratio of approximately 60%, which should allow UtilityCo to obtain a BBB+ investment grade rating. All assets will be transferred to UtilityCo at net book value.

Q. WHY WOULD A SHORT-TERM BRIDGE LOAN BE USED?

A. It will be difficult to coordinate the timing of all the capital market transactions and there could be substantial delays or additional costs. Therefore, UtilityCo may use a short-term bridge bank loan which will allow a more orderly and efficient transition from one company into three. UtilityCo would enter into a bank bridge loan for approximately $500 million. Subject to the decision to use or not use the $400 million SUNs exchange offer and the timing of the exchange offer, some or all of the $500 million available under the bridge loan would be borrowed by UtilityCo and used to purchase assets from PowerCo. After the exchange offer or UtilityCo's new SUNs issuance discussed above, the bridge loan would be repaid. The bridge loan facility would then either be terminated or

reduced and converted to UtilityCo's bank liquidity facility. UtilityCo's liquidity facilities are discussed in more detail later in this testimony.

Q. PLEASE EXPLAIN IN GREATER DETAIL THE CAPITAL STRUCTURE PLANNED FOR UTILITYCO.

A. A solid investment grade credit rating, at or near BBB+, has been targeted for UtilityCo. This should allow UtilityCo to have access to most capital markets and to obtain cost effective long-term and short-term debt financing. To determine what capital structure is required to obtain BBB+ credit ratings, we used S&P published quantitative criteria for determining the credit rating of a regulated utility company such as UtilityCo. As described in Mr. Sategna's testimony, the assets of UtilityCo will have a book value of approximately $1.2 billion. S&P's published ratings criteria allow total debt to total capital of approximately 60% for a BBB+ credit rating, assuming a business position of "1". A business position "1" utility has the strongest business profile based upon S&P's reviews of regulation, markets, operations, competitiveness and management. Therefore, assuming UtilityCo is viewed to have a business position of "1" by S&P, UtilityCo with its $1.2 billion of assets and $.3 billion of other book or accounting liabilities can have approximately 60% of the $.9 billion net amount, or approximately $540 million of debt. As discussed previously, UtilityCo will issue new debt in the form of SUNs and may have additional SUNs debt outstanding as a result of an exchange offer with current holders of PNM SUNs. Between the two transactions, UtilityCo will have debt financing of approximately $540

million in the form of SUNs. Approval to issue and exchange up to $600 million of SUNs is being requested to allow for asset growth or other adjustment that might be required to properly leverage UtilityCo. The SUNs newly issued by UtilityCo will carry the interest rate demanded by the market for the maturity issued at the time of issuance. The current estimated interest rates that could be obtained by a BBB+ regulated electric and gas distribution and transmission utility for varying maturities, including issuance expenses, were provided by Morgan Stanley Dean Witter and are listed below:

Commercial Paper	2 Year	5 Year	7 Year	10 Year	20 Year	30 Year
5.75%	7.15%	7.59%	7.77%	7.83%	8.19%	8.28%

As previously discussed, PNM currently has approximately $400 million of SUNs outstanding in two series that might be effectively transferred to UtilityCo through an exchange offer with the PNM SUNs holders. One series of approximately $265 million has a maturity date of August 1, 2005 and an interest rate of 7.1%. The remaining $135 million has a maturity date of August 1, 2018 and an interest rate of 7.5%. In an exchange offer, it is our expectation that these respective interest rates would probably remain unchanged. In addition, the EIP lease and its approximate 16 years of remaining lease payment obligations will be transferred to UtilityCo.

Q. PLEASE EXPLAIN THE POTENTIAL SUNS EXCHANGE OFFER IN GREATER DETAIL.

A. Depending upon capital market conditions, interest rates and potentially other factors at the time UtilityCo is capitalized, it might be appropriate to offer the holders of PNM's $400 million of taxable SUNs issued in August, 1998, the opportunity to exchange their securities for similar securities issued by UtilityCo. SUNs holders would receive the same principal and interest payments as before the exchange, but UtilityCo would be the obligor rather than PowerCo. If this approach is used, there may be a minimal fee paid to the SUNs holders (an "exchange fee"). The UtilityCo SUNs and the exchange offer documents would be registered with the SEC and the various rules governing exchange offers would be followed. There would be no assurance that the SUNs holders would be willing to exchange their securities for UtilityCo SUNs. If the holders would not exchange their SUNs, or if, for other reasons, newly issued UtilityCo SUNs would be more appropriate, then UtilityCo would issue SUNs directly into the capital markets and use the proceeds generated to purchase the transmission and distribution assets from PowerCo.

Q. WHAT WILL HAPPEN TO THE $12.8 MILLION OF PREFERRED STOCK THAT IS CURRENTLY OUTSTANDING AT PNM?

A PNM proposes to move, if economically feasible at the time, the preferred stock to UtilityCo via an exchange offer similar to that being proposed on the SUNs. Because it is currently an obligation of the 1917 corporation, the preferred stock

would otherwise remain with PowerCo unless an exchange offer was used to move it to UtilityCo or the preferred stock was redeemed. Due to the small size of the issue, the legal, banking and other expenses involved in an exchange offer could cause the exchange not to be a viable economic alternative. Also, the extremely low dividend rate on the preferred stock might cause the holders not to accept an exchange offer without a demand for a current market dividend rate which would cause the exchange to fail the economic viability test as well.

IV. POWERCO DEBT

Q. WHAT DEBT WILL REMAIN WITH POWERCO AFTER UTILITYCO'S CREATION AND FINANCING?

A. After the formation and financing of UtilityCo, PowerCo will retain all $586 million of currently outstanding pollution control revenue bonds ("PCBs"), which are secured by SUNs and FMBs. Some or all of the $400 million of taxable SUNs could remain with PowerCo if it were more appropriate that UtilityCo be capitalized with newly issued SUNs. PowerCo will also retain the PVNGS leases and the approximate remaining 16 years of rental payment obligations.

Q. WHY DOES PNM DEEM IT APPROPRIATE FOR THE PCBS TO REMAIN WITH POWERCO?

A. The PCBs are a direct result of owning and operating electric generation assets. PNM has been able to issue PCBs over the years only because it built and

operated electric generation facilities that included certain pollution control and solid waste facilities that qualified under various sections of the Internal Revenue Code and Internal Revenue Service ("IRS") regulations for tax-exempt pollution control revenue bond financing. Under the appropriate code sections, cash raised by the issuance of PCBs was held in trust until it was expended for construction of the pollution control or solid waste facility or until the Company could certify to the trustee that the Company had already paid for the qualifying pollution control equipment at the generation facility.

Q. DO OTHER GENERATION COMPANIES THAT ARE EXPECTED TO COMPETE WITH POWERCO IN SUPPLYING ELECTRICITY HAVE PCBS?

A. Yes. All companies that have built electric generation facilities with qualifying pollution control and solid waste facilities have been able to issue PCBs. A few regional examples of such companies, or their generation affiliates, that could compete with PowerCo are Arizona Public Service Company, Southwestern Public Service Company, El Paso Electric Company, Texas-New Mexico Power, Plains Electric Generation and Transmission Cooperative, Inc., Tri-State Generation and Transmission Association, Inc. and Edison International. This is not meant to be an exhaustive list, but an indication that many electric generation companies have historically had the opportunity to issue PCBs.

Q. WOULD REMOVING THE PCBS FROM POWERCO PUT IT AT A COMPETITIVE DISADVANTAGE VIS-A-VIS OTHER GENERATION COMPANIES?

A. Definitely. If other generation and supply companies have tax-exempt financing and PowerCo does not, it will be at an unfair competitive disadvantage.

Q. YOU MENTIONED THAT UTILITYCO WILL BE ABLE TO ISSUE DEBT AT A COST AS LOW AS THE PCBS IN THE FUTURE. PLEASE EXPLAIN FURTHER.

A. It is anticipated, but not guaranteed, that UtilityCo will be able to issue debt at interest rate levels at or near the levels of the PCBs. It is planned for UtilityCo to be a solid investment grade rated company. We are targeting a BBB+ credit rating. The table data below, provided by Salomon Smith Barney, Inc., shows selected utilities with credit ratings from BBB+ to BBB and the interest rates on their taxable debt issued during 1999.

Utility	Term	Issuance Date	Interest Rate	Treasury Spread	Credit Rating
Texas-NM Power	10 yrs.	01/06/99	6.25 %	155 b.p.	BBB
Arizona Public Service	5 yrs.	02/18/99	5.875 %	93 b.p.	BBB
MidAmerican Funding	2 yrs.	03/09/99	5.85 %	80 b.p.	BBB+
MidAmerican Funding	10 yrs.	03/09/99	6.339%	112.5 b.p.	BBB+

Utility	Term	Issuance Date	Interest Rate	Treasury Spread	Credit Rating
MidAmerican Funding	30 yrs.	03/09/99	6.927%	130 b.p.	BBB+
Entergy Mississippi	5 yrs.	04/28/99	6.20%	110 b.p.	BBB+
Appalachian Power	10 yrs.	05/13/99	6.60%	113 b.p.	BBB+
Conectiv	7 yrs.	05/20/99	6.73%	113 b.p.	BBB+
Ohio Power	5 yrs.	06/22/99	6.75%	102 b.p.	BBB+
PS Co. of Colorado	10 yrs.	07/13/99	6.875%	128 b.p.	BBB+

Q. HOW DOES THIS COMPARE TO THE CURRENT INTEREST RATES FOR THE PCB'S?

A. The current interest rates for the PCB's range from 5.7% to 6.6%. The weighted average rate is 6.16%.

V. DESCRIPTION OF THE CAPITAL STRUCTURE AND LIQUIDITY FACILITIES OF UTILITYCO AFTER THE PROPOSED HOLDING COMPANY FORMATION AND DISAGGREGATION

Q. HOW WILL UTILITYCO FINANCE GROWTH IN FUTURE YEARS?

A. UtilityCo will need to maintain its debt to capital ratio at a level that keeps its BBB+ credit rating. Over long periods of time, financing for capital expenditures will need to be approximately 60% debt and 40% equity. Therefore, over time, UtilityCo earnings over the 40% needed to maintain the target debt to capital ratio should be dividended to HoldingCo. This will provide a long-term benchmark for

preventing payment of "excessive dividends" to HoldingCo pursuant to Rule 450. However, at any specific point in time, a given capital expenditure may be 100% debt or equity financed but over the long-term, the target debt to capital balance will need to be maintained. If too much debt is used, credit ratings will suffer. If too much equity is used, credit ratings will improve but more costly equity will be replacing debt in the capital structure. Traditionally, to lower the cost of equity, utilities have tended to finance periods of above average growth with issuances of equity and debt, keeping their dividend pay-out ratio constant. Over time and barring any equity infusions, at least 60% of UtilityCo earnings will need to be sent to HoldingCo in the form of dividends to maintain the appropriate capital structure for UtilityCo. Of course, flexibility as to UtilityCo's capital structure should be maintained, as the appropriate capital structure necessary to maintain investment grade rating may fluctuate as rating agencies evaluate their criteria over time.

Q. PLEASE DISCUSS THE LIQUIDITY FACILITIES NEEDED FOR UTILITYCO.

A. UtilityCo will need short-term debt facilities, as PNM has historically had, for managing the timing differences between incoming cash flows and outgoing cash flows. Currently, it is intended that UtilityCo have, at least initially, a $150 million unsecured revolving credit facility very similar to PNM's current $300 million unsecured revolving credit facility. This credit facility could be drawn upon directly, or used to support a commercial paper program, whichever was the

most cost efficient. In addition, a smaller version of PNM's current $80 million securitization of accounts receivable may be useful for UtilityCo. The securitization of accounts receivable would not take place immediately because banks will want UtilityCo to develop a stable history of its receivables after the implementation of customer choice and the negotiation of inter-company contracts associated with the remainder of PNM's Transition Plan. In addition, as experience is gained with UtilityCo's needs, the liquidity facility may be resized.

Q. WHO WILL BE THE BANKS INVOLVED IN THE UTILITYCO REVOLVING LINE OF CREDIT AND ASSET SECURITIZATION?

A. It is expected that UtilityCo will use the same banks that currently participate in PNM's existing revolving credit arrangement and asset securitization.

Q. DO YOU EXPECT A CHANGE IN PRICING ON THE LIQUIDITY FACILITY?

A. Yes. However, this change would be the result of changed market conditions and not the result of UtilityCo having a different credit rating standing relative to PNM's current credit rating. If the new UtilityCo revolving credit arrangement were negotiated today, the pricing would be substantially higher than PNM currently enjoys and the term would be shorter. This is due to numerous recent market factors such as bank mergers and consolidations, the Asian financial crisis and current interest rate and liquidity conditions. The pricing increase will be somewhat mitigated by the improved credit rating that is being targeted for

UtilityCo. Citibank has provided indicative pricing for an UtilityCo-like company, which is presented below:

		BBB+	BBB	BBB-	Existing Revolver
Interest Rate On Borrowings	Bp over Libor	100	125	137.5	45.0
Participation Fee	Bp Upfront	7.5	15	20	N/A
Commitment Fee On Unused	Bp	17.5	25	30	18.75
Term		3 yr.	3 yr.	3 yr.	5 yr.

Q. WILL UTILITYCO REINSTATE A FIRST MORTGAGE BOND INDENTURE FOR ITS DEBT FINANCING NEEDS?

A. No. Covenants in UtilityCo's unsecured indenture can be structured, as are PNM's currently, to provide bondholders sufficient protections such that SUNs can be issued at or near first mortgage bond interest rates and the constraining covenants of first mortgage bond indentures (i.e., asset sales restrictions, coverage ratios, leverage tests, etc.) will not be present. The need for flexibility is higher in today's evolving electric utility industry. Inflexible indenture covenants could be very costly in the future.

Q. PLEASE DESCRIBE THE SUNS INDENTURE.

A. UtilityCo's indenture will be substantially similar to the indenture used by PNM to issue the $435 million of SUNs in August, 1998, and approved by the

Commission in Case No. 2837. A copy of this indenture is attached as PNM Exhibit ____ (TRH-3).

Q. WHAT WILL BE THE MATURITIES OF THE UTILITYCO SUNs DEBT?

A. At the present time, it would appear that the new SUNs would be issued in various tranches with varying maturities, generally less than 20 years. Use of various maturities will reduce rollover risk while taking advantage of the lower interest rates that generally accompany shorter maturities. This plan may change based upon the conditions in the market at the time of issuance.

If the exchange offer for some or all of the $400 million of SUNs currently outstanding were used, the SUNs previously issued would probably keep their current interest rates and maturity schedules. If, today, UtilityCo were to issue $540 million of SUNs in the maturities and amounts shown below, the weighted average interest rate without an exchange offer and with an exchange offer would be 7.44% and 7.04%, respectively.

	Without Exchange		With Exchange	
Maturity	Amount	Interest Rate	Amount	Interest Rate
Variable Rate Debt	$75 M	5.75%	$ 75 M	5.75%
3 Year	$75 M	7.35%	$ 65 M	7.35%
5 Year	$115 M	7.59%	$ 265 M	7.10%
7 Year	$115 M	7.77%	$ 0	0.00%

	Without Exchange		With Exchange	
Maturity	Amount	Interest Rate	Amount	Interest Rate
10 Year	$115 M	7.83%	$ 0	0.00%
20 Year	$45 M	8.19%	$ 135 M	7.50%
	$540 M	7.44%	$ 540 M	7.04%

VI. LESSOR AND CREDITOR CONSENTS

Q. ARE THERE ANY CONSENTS UNDER ANY OF PNM'S FINANCING DOCUMENTS THAT ARE NEEDED TO ACCOMPLISH THE FUNCTIONAL SEPARATION REQUIRED BY THE RESTRUCTURING ACT?

A. Yes. Covenants in PNM's PVNGS Units 1 and 2 lease agreements limit the Company's ability, without the consent of the owner participants and the holder of the leveraged lease debt (PVNGS Capital Trust) in the lease transaction, (i) to enter into any merger or consolidation or (ii) except in connection with normal dividend policy, to convey, transfer, lease or dividend more than 5% of its assets in any single transaction or series of transactions. The sale of assets to the newly formed UtilityCo and the dividend of UtilityCo assets from PowerCo to HoldingCo to achieve functional separation as required by the Act will require lessor consent. If lessor consent is not obtained but PNM nonetheless were to proceed with its Separation Plan, PNM could face monetary claims in excess of $666 million ($265 million after reduction for the lease debt held by PVNGS

Capital Trust) if owner participants accelerated the lease payments under the terms of the leases. There are five parties which will need to give their consents under the leases: Citibank, N.A., Chase Manhattan Bank, Mellon Bank, N.A., First Chicago Leasing (now Bank One), and Chrysler Financial.

Prior written consent is required from the owner participants (but not the bondholders) under the Eastern Interconnect Project ("EIP") leases for the assignment, transfer, encumbrance or sublease of the EIP leases from PNM to UtilityCo. Two owner participants are involved, Dana Corporation and Phillip Morris. The EIP bondholders do, however, have the right to consent to releasing PowerCo as a co-obligor on the rental obligations backstopping their bonds. The EIP leases require all bondholders to agree to the release of PowerCo as obligor. Absent a release, PowerCo will likely remain as an indirect obligor on the EIP lease obligations while, simultaneously, UtilityCo will become an obligor.

Q. WILL THERE BE A CONSENT FEE CHARGED IN CONNECTION WITH THE PVNGS LEASES?

A. Yes, most likely. The expected future financial strength of PowerCo will be of paramount interest to the PVNGS owner participants and more than likely will be reflected in any consent costs and conditions imposed. Resolution of stranded cost recovery, decommissioning cost recovery, transition cost recovery and other major regulatory issues that will affect PowerCo's long-term financial integrity will drive owner participant concerns.

PNM has been advised that, at a minimum, the owner participants could likely condition their consent on the payment of a consent fee. The amount cannot presently be estimated because the requested consent is without precedent in the context of large electric generating units, whether nuclear or fossil. The owner participants may demand other concessions, including financial covenants applicable to PowerCo going forward, such as guarantees from UtilityCo or letters of credit to protect their remaining investment in the PVNGS leases. If letters of credit were to be demanded to protect the excess of total termination value less the amount of the lease debt held by PVNGS Capital Trust (a measure of the remaining aggregate owner participant investment), the amount of such letters of credit would exceed $265 million. There is substantial precedent in the area of nuclear sale and leaseback transactions for conditioning consent on the receipt of letters of credit.

Q. WILL THERE BE A CONSENT FEE CHARGED BY THE EIP LESSORS?

A. Yes. As I noted earlier, the EIP leases require all bondholders to agree to the release of PowerCo as obligor. Getting 100% bondholder release is highly unlikely. Therefore, the EIP lessors and bondholders will have the benefit of the credit worthiness of both UtilityCo and PowerCo. As a result, I am hopeful that the consent fees and non-monetary concessions may be substantially less in the case of the EIP leases.

Q. ARE ALL OF THE ABOVE CONSENT FEES NECESSITATED AS A DIRECT RESULT OF THE RESTRUCTURING ACT?

A. Yes.

VII. NUCLEAR REGULATORY COMMISSION CONCERNS

Q. WHAT APPROVALS WILL BE REQUIRED FROM THE NRC UNDER THE ATOMIC ENERGY ACT WITH RESPECT TO THE PROPOSED RESTRUCTURING?

A. PNM is a co-licensee with respect to the three PVNGS nuclear generating units subject to NRC jurisdiction. Separation of PNM's competitive and regulated businesses will involve three matters requiring NRC approval: (i) the indirect transfer of control (through creation of HoldingCo) of the NRC licenses; (ii) PNM's ceasing to qualify for a regulatory exemption from demonstrating its financial qualifications to be an NRC licensee; and (iii) PNM's transition from cost-of-service regulation to a non-bypassable wires charge as the basis for PNM to rely on the "pay-as-you-go" external sinking fund method of providing for PNM's share of PVNGS radiological decommissioning costs.

Q. WILL THE NRC APPROVALS BE AFFECTED BY THE NMPRC DECISIONS CONCERNING PNM'S TRANSITION PLAN?

A. Yes, to a great extent. Principally, the NRC is concerned about PowerCo's initial and ongoing financial integrity. The NMPRC regulatory decisions regarding

recovery of stranded costs, transition costs, decommissioning costs, the standard offer and rules of open access will have a substantial effect on any conditions imposed by the NRC on HoldingCo, PowerCo and UtilityCo. NRC approval may encompass any number of conditions, although none is known with certainty at this time. The NRC might require a credit line or other financial support from HoldingCo and UtilityCo. Or the NRC might grant a preliminary approval in conjunction with the Part II filing conditioned upon obtaining financial guarantees from HoldingCo or UtilityCo, or requiring other combinations of guarantees from both companies at a later time if it felt the Part III outcome was unsatisfactory with respect to PowerCo's ongoing financial integrity.

Q. WHAT OTHER ISSUES DO YOU FORESEE WITH RESPECT TO THE NRC APPROVAL PROCESS?

A. One issue we expect to face with respect to the NRC approvals, and in other arenas such as the lessor consents, will be uncertainties surrounding the status of PowerCo at the time we would seek to close the Separation Plan transactions. The goal will be to have this closing in the middle of the year 2000, but at that time all of the details surrounding PNM's Transition Plan filing will not have been concluded or approved by the NMPRC. Therefore, there may well be uncertainties regarding PowerCo that will affect its current and prospective credit ratings. Among the items which will not have been resolved will be stranded cost collection, the standard offer process and rules, the decommissioning cost collections, the non-bypassable wires charge structure, and the collection of

transition costs. These uncertainties may cause concerns at the NRC in terms of the timing of its approvals or conditions imposed (which could lead to a multiple step approval process which I discussed previously) and, incidentally, may increase the cost of the lessor consents.

VIII. ESTIMATED FINANCIAL AND LEGAL COSTS FOR FORMATION

Q. WHAT ARE THE ESTIMATED TRANSACTION EXPENSES, INCLUDING FINANCIAL AND LEGAL COSTS, INVOLVED WITH THE FORMATION STEPS YOU HAVE DESCRIBED IN YOUR TESTIMONY?

A. Estimated expenses for the financial transactions described in this testimony are included in PNM Exhibit___(TRH-4).

IX. SPECIFIC FINANCING AUTHORIZATIONS BEING REQUESTED

Q. WHAT ARE THE SPECIFIC AUTHORIZATIONS THAT PNM IS REQUESTING WITH RESPECT TO THE FINANCING MATTERS YOU HAVE DISCUSSED?

A. PNM is seeking approval of its General Diversification Plan (GDP) pursuant to Rule 450 insofar as those criteria are applicable under the Restructuring Act. In particular, the Company is seeking a final order granting all necessary approvals under Section 62-6-6 of the NMPUA relating to the issuance and assumption of securities by the regulated utility company in connection with the restructuring and the issuance or exchange of up to $600 million of SUNs debt at various

interest rates and terms, the $500 million bridge bank loan, the $150 million unsecured revolving credit facility and the $12.8 million preferred stock exchange. PNM is requesting a final order issued by the commission no later than June 1, 2000, so that PNM can complete the proposed financing transactions and begin implementing its Separation Plan.

Q. ARE YOU FAMILIAR WITH THE GDP FILED AS EXHIBIT A TO THE APPLICATION?

A. Yes I am.

Q. TO THE BEST OF YOUR KNOWLEDGE, ARE THE STATEMENTS IN THE GDP TRUE AND CORRECT?

A. Yes they are.

Q. DOES UTILITYCO INTEND TO USE PROCEEDS FROM THE PROPOSED TRANSACTIONS FOR PURPOSES AUTHORIZED UNDER THE PUBLIC UTILITY ACT?

A. Yes. UtilityCo intends to use proceeds for the purposes allowed under Section 62-6-6, NMSA 1978 as reflected below:

(1) the acquisition of property;

(2) the construction, completion, extension, or improvement of its facilities;

(3) the improvement or maintenance of its service;

(4) the discharge or lawful refunding of its obligations; or

(5) the reimbursement of money actually expended for such purposes from income or from any other money in the treasury not secured by or obtained from the issue, assumption or guarantee of securities, within five years next prior to the filing of the application in this case.

Q. IF THE COMMISSION AUTHORIZES THE PROPOSED TRANSACTIONS AS REQUESTED, AND THE TRANSACTIONS ARE IMPLEMENTED, WILL THE AGGREGATE AMOUNT OF UTILITYCO SECURITIES OUTSTANDING EXCEED THE FAIR VALUE OF UTILITYCO'S PROPERTY AND BUSINESS?

A. No.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

PNM EXHIBIT _____ (TRH-1)

is included on the following pages

EDUCATIONAL AND PROFESSIONAL SUMMARY

Name: Terry R. Horn

Address:
Public Service Company of New Mexico
Alvarado Square
Albuquerque, NM 87158

Educational Experience:
MBA--Finance, University of Houston - 1977
BBA--Finance/Economics, NMSU - 1974

Business Experience:

Public Service Company of New Mexico

Vice President and Treasurer:
December 1998 - Present

Director of Financial Management
Assistant Treasurer:
February 1991 – December 1998

Manager, Financing Projects:
April 1990 - February 1991

Financing Project Manager:
November 1985 - March 1990

Texaco, Inc.

Supervisor Information Systems/Staff Analyst:
1984 through 1985

Senior Analyst - 1983 through 1984
Analyst - 1981 through 1983
Senior Accountant - 1980 through 1981
General Accountant - 1977 through 1980
Accountant - 1975 through 1977
Jr. Accountant - 1975

NMPRC Proceedings:
Case No. 2354 - Revolver/TOP Securitization
Case No. 2385 - Revolver/TOP Securitization
Case No. 2482 - EIP SLOB Refunding
Case No. 2509 - PC Bond Refunding
Case No. 2515 - TOP Securitization
Case No. 2545 - A/R Securitization
Case No. 2587 - SGGC/SGPC Assets Sale
Case No. 2596 - Retirement of Drexel LOBs

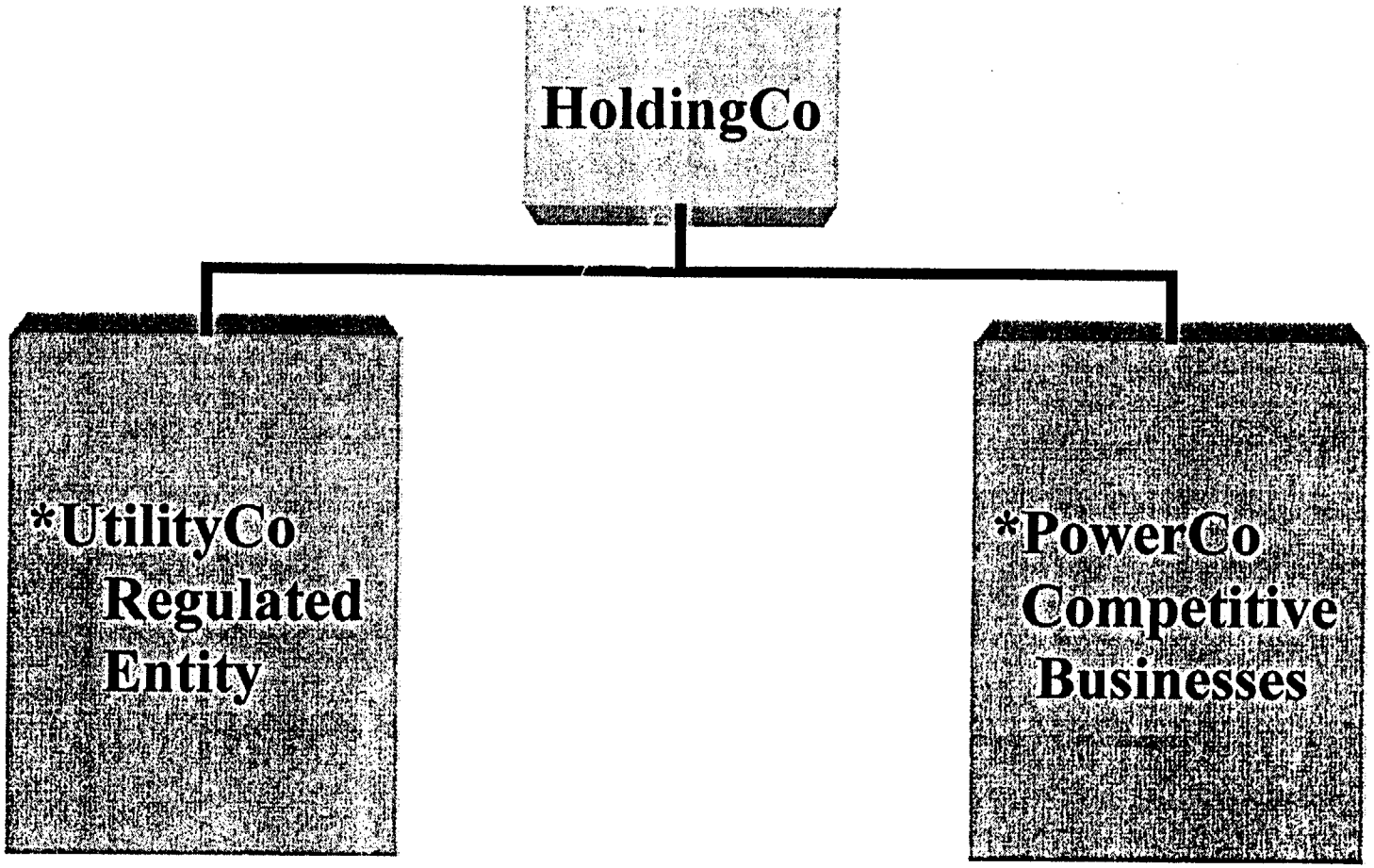
Case No. 2692 - Amended A/R Securitization
Case No. 2700 - Purchase of PVNGS LOBs
Case No. 2721 - PC Bond Refunding
Case No. 2796 - Revolver/SUNS Indenture
Case No. 2837 - SUNs/PVNGS Lease Financing
Case No. 2989 - Plains/Tri-State Merger
Case No. 3012 - $11.5 million PCB Issuance

PNM EXHIBIT _____ (TRH-2)

is included on the following pages

Holding Company Formation

Organizational Structure



PNM EXHIBIT _____ (TRH-3)

is included on the following pages

PUBLIC SERVICE COMPANY OF NEW MEXICO

to

THE CHASE MANHATTAN BANK

Trustee

INDENTURE

Dated as of August 1, 1998

(For Senior Notes)

Certain Sections of this Indenture relating to Sections 310 through 318, inclusive, of the Trust Indenture Act of 1939:

Trust Indenture Act Section	Indenture
§ 310 (a) (1)	6.09
(a) (2)	6.09
(a) (3)	Not Applicable
(a) (4)	Not Applicable
(b)	6.08 6.10
§ 311 (a)	6.13
(b)	6.13
§ 312 (a)	7.01 7.02
(b)	7.02
(c)	7.02
§ 313 (a)	7.03
(b)	7.03
(c)	7.03
(d)	7.03
§ 314 (a)	7.04
(a) (4)	1.01 10.04
(b)	Not Applicable
(c) (1)	1.02
(c) (2)	1.02
(c) (3)	Not Applicable
(d)	Not Applicable
(e)	1.02
§ 315 (a)	6.01
(b)	6.02
(c)	6.01
(d)	6.01
(e)	5.14
§ 316 (a)	1.01
(a) (1) (A)	5.02 5.12
(a) (1) (B)	5.13
(a) (2)	Not Applicable
(b)	5.08
(c)	1.04
§ 317 (a) (1)	5.03
(a) (2)	5.04
(b)	10.03
§ 318 (a)	1.07

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

TABLE OF CONTENTS

ARTICLE II

NOTE FORMS

ARTICLE III

THE NOTES

ARTICLE IV

SATISFACTION AND DISCHARGE

ARTICLE V

REMEDIES

ARTICLE VI

THE TRUSTEE

ARTICLE VII

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

ARTICLE IX

SUPPLEMENTAL INDENTURES

ARTICLE X

COVENANTS

ARTICLE XI

REDEMPTION OF NOTES

ARTICLE XII

SINKING FUNDS

ARTICLE XIII

DEFEASANCE AND COVENANT DEFEASANCE

ARTICLE XIV

MEETINGS OF HOLDERS; ACTION WITHOUT MEETING

ARTICLE XV

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

TESTIMONIUM

SIGNATURES AND SEALS

ACKNOWLEDGMENTS

INDENTURE dated as of August 1, 1998 between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a corporation duly organized and existing under the laws of the State of New Mexico (herein called the "Company"), having its principal office at Alvarado Square, Albuquerque, New Mexico 87158, and **THE CHASE MANHATTAN BANK**, a New York banking corporation, as Trustee (herein called the "Trustee").

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its senior notes (herein called the "**Notes**"), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Notes or of series thereof, as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 Definitions.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;

(2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term "**generally accepted accounting principles**" with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States of America;

(4) unless the context otherwise requires, any reference to an "**Article**" or a "**Section**" refers to an Article or a Section, as the case may be, of this Indenture; and

(5) the words "**herein,**" "**hereof**" and "**hereunder**" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"**Act**" when used with respect to any Holder, has the meaning specified in **Section 1.04**.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Authenticating Agent**" means any Person authorized by the Trustee pursuant to **Section 6.14** to act on behalf of the Trustee to authenticate Notes of one or more series or any Tranche thereof.

"**Board of Directors**" means either the board of directors of the Company or any duly authorized committee of that board.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary or Associate Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Business Day**" when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law, regulation or executive order to close, except as may be otherwise specified as contemplated by Section 3.01.

"**Capitalization**" means the total of all the following items appearing on, or included in, the consolidated balance sheet of the Company: (i) liabilities for indebtedness maturing more than twelve (12) months from the date of determination; and (ii) common stock, preferred stock, premium on capital stock, capital surplus, capital in excess of par value, and retained earnings (however the foregoing may be designated), less, to the extent not otherwise deducted, the cost of shares of capital stock of the Company held in its treasury. Subject to the foregoing, Capitalization shall be determined in accordance with generally accepted accounting principles and practices applicable to the type of business in which the Company is engaged and that are approved by independent accountants regularly retained by the Company, and may be determined as of a date not more than (sixty) 60 days prior to the happening of an event for which such determination is being made.

"**Commission**" means the Securities and Exchange Commission, from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Company**" means the Person named as the "**Company**" in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter " **Company**" shall mean such successor Person.

"**Company Request**" or "**Company Order**" means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or a Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"**Corporate Trust Office**" means the office of the Trustee in The City of New York, at which at any particular time its corporate trust business shall be principally administered, which office at the date hereof is located at 450 West 33rd Street - 15th Floor, New York, New York 10001.

"**Corporation**" means a corporation, association, company, joint-stock company or business trust.

"**Covenant Defeasance**" has the meaning specified in **Section 13.03**.

"**Debt**" means any outstanding debt for money borrowed evidenced by notes, debentures, bonds, or other securities.

"**Defaulted Interest**" has the meaning specified in **Section 3.07**.

"**Defeasance**" has the meaning specified in **Section 13.02**.

"**Depositary**" means, with respect to Notes of any series issuable in whole or in part in the form of one or more Global Notes, a clearing agency registered under the Exchange Act that is designated to act as Depositary for such Notes as contemplated by **Section 3.01**.

"**Dollar**" or "**$**" means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

"**Event of Default**" has the meaning specified in **Section 5.01**.

"**Exchange Act**" means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

"**Expiration Date**" has the meaning specified in Section 1.04.

"**Global Note**" means a Note that evidences all or part of the Notes of any series and bears the legend set forth in or contemplated by **Section 2.04** (or such legend as may be specified as contemplated by **Section 3.01** for such Notes).

"**Holder**" means a Person in whose name a Note is registered in the Note Register.

"**Indenture**" means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively. The term "Indenture" shall also include the terms of particular series of Notes established as contemplated by **Section 3.01**.

"**independent**" when applied to any accountant shall mean such a Person who is in fact independent, selected by the Company and approved by the Trustee in the exercise of reasonable care.

"**interest**" when used with respect to an Original Issue Discount Note which by its terms bears interest only after Maturity, means interest payable after Maturity.

"**Interest Payment Date**" when used with respect to any Note, means the Stated Maturity of an installment of interest on such Note.

"**Investment Company Act**" means the Investment Company Act of 1940 and any statute successor thereto, in each case as amended from time to time.

"**Maturity**" when used with respect to any Note, means the date on which the principal of such Note or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"**Net Tangible Assets**" means the amount shown as total assets on the consolidated balance sheet of the Company, less the following: (i) intangible assets including, but without limitation, such items as goodwill, trademarks, trade names, patents, and unamortized debt discount and expense and other regulatory assets carried as an asset on the Company's consolidated balance sheet; and (ii) appropriate adjustments, if any, on account of minority interests. Net Tangible Assets shall be determined in accordance with generally accepted accounting principles and practices applicable to the type of business in which the Company is engaged and that are approved by the independent accountants regularly retained by the Company, and may be determined as of a date not more than sixty (60) days prior to the happening of the event for which such determination is being made.

"**Notes**" has the meaning stated in the first recital of this Indenture and more particularly means any Notes authenticated and delivered under this Indenture.

"**Note Register**" and "**Note Registrar**" have the respective meanings specified in **Section 3.05.**

"**Notice of Default**" means a written notice of the kind specified in **Section 5.01(4)**.

"**Officers' Certificate**" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant

Treasurer, the Controller, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee; provided, that an Assistant Treasurer or Assistant Secretary need not be an officer of the Company under the Company's Bylaws. One of the officers signing an Officers' Certificate given pursuant to **Section 10.04** shall be the principal executive, financial or accounting officer of the Company.

"**Operating Property**" means (i) any interest in real property owned by the Company and (ii) any asset owned by the Company that is depreciable in accordance with generally accepted accounting principles.

"**Opinion of Counsel**" means a written opinion of counsel, who may be counsel for the Company, or other counsel who shall be acceptable to the Trustee.

"**Original Issue Discount Note**" means any Note which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to **Section 5.02**.

"**Outstanding**" when used with respect to Notes, means, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(1) Notes theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(2) Notes for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Notes; provided that, if such Notes are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;

(3) Notes as to which Defeasance has been effected pursuant to **Section 13.02**; and

(4) Notes which have been paid pursuant to **Section 3.06** or in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a protected purchaser in whose hands such Notes are valid obligations of the Company;

provided, however, that in determining whether or not the Holders of the requisite principal amount of the Notes Outstanding under this Indenture, or the Outstanding Notes of any series or Tranche, have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date or whether or not a quorum is present at a meeting of Holders, (A) the principal amount of an Original Issue Discount Note which shall be deemed to be Outstanding shall be the amount of the principal thereof which would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to **Section 5.02**, (B) if, as of such date, the principal amount payable at the Stated Maturity of a

Note is not determinable, the principal amount of such Note which shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by **Section 3.01**, (C) the principal amount of a Note denominated in one or more foreign currencies or currency units which shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by **Section 3.01**, of the principal amount of such Note (or, in the case of a Note described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Notes owned by the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor (unless the Company, such Affiliate or such obligor owns all Notes Outstanding under this Indenture, or all Outstanding Notes of each such series and each such Tranche, as the case may be, determined without regard to this clause (D)) shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, or upon such determination as to the presence of a quorum, only Notes which the Trustee actually knows to be so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Notes and that the pledgee is not the Company or any other obligor upon the Notes or any Affiliate of the Company or of such other obligor.

"**Paying Agent**" means any Person authorized by the Company to pay the principal of or any premium or interest on any Notes on behalf of the Company.

"**Periodic Offering**" means an offering of Notes of a series from time to time any or all of the specific terms of which Notes, including without limitation the rate or rates of interest, if any, thereon, the Stated Maturity or Stated Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents at or about the time of the issuance of such Notes.

"**Person**" means any individual, corporation, partnership, joint venture, trust, unincorporated organization or government or any agency, instrumentality or political subdivision thereof.

"**Place of Payment**" when used with respect to the Notes of any series, or any Tranche thereof, means the place or places where the principal of and any premium and interest on the Notes of that series or Tranche are payable as specified as contemplated by **Section 3.01**.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under **Section 3.06** in exchange for or in lieu of a mutilated, destroyed, lost or stolen Note shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Note.

"**Redemption Date**" when used with respect to any Note to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"**Redemption Price**" when used with respect to any Note to be redeemed, means the

price at which it is to be redeemed pursuant to this Indenture.

"**Regular Record Date**" for the interest payable on any Interest Payment Date on the Notes of any series means the date specified for that purpose as contemplated by **Section 3.01**.

"**Required Currency**" has the meaning specified in Section 3.12.

"**Responsible Officer**" when used with respect to the Trustee, means any officer of the Trustee assigned by the Trustee to administer its corporate trust matters.

"**Sale and Lease-Back Transaction**" means any arrangement with any Person providing for the leasing to the Company of any Operating Property (except for temporary leases for a term, including any renewal thereof, of not more than forty-eight (48) months), which Operating Property has been or is to be sold or transferred by the Company to such Person; provided, however, Sale and Lease-back Transaction shall not include any arrangement (i) first entered into prior to the date specified in the first paragraph of this instrument and (ii) involving the exchange of any Operating Property for any property subject to an arrangement specified in the preceding clause (i).

"**Securities Act**" means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

"**Special Record Date**" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to **Section 3.07**.

"**Stated Maturity**" when used with respect to any Note or any installment of principal thereof or interest thereon, means the date specified in such Note as the fixed date on which the principal of such Note or such installment of principal or interest is due and payable.

"**Subsidiary**" means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, "**voting stock**" means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"**Tranche**" means a group of Notes which (a) are of the same series and (b) have identical terms except as to principal amount and/or date of issuance.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939 as in force at the date as of which this instrument was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, "**Trust Indenture Act**" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this instrument until a successor Trustee shall have become such with respect to one or more series of

Notes pursuant to the applicable provisions of this Indenture, and thereafter "**Trustee**" shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "**Trustee**" as used with respect to the Notes of any series shall mean the Trustee with respect to Notes of that series.

"**U.S. Government Obligation**" has the meaning specified in **Section 13.04**.

"**Value**" means, with respect to a Sale and Lease-Back Transaction, as of any particular time, the amount equal to the greater of (1) the net proceeds to the Company from the sale or transfer of the property leased pursuant to such Sale and Lease-Back Transaction or (2) the net book value of such property, as determined in accordance with generally accepted accounting principles by the Company at the time of entering into such Sale and Lease-Back Transaction, in either case multiplied by a fraction, the numerator of which shall be equal to the number of full years of the term of the lease that is part of such Sale and Lease-Back Transaction remaining at the time of determination and the denominator of which shall be equal to the number of full years of such term, without regard, in any case, to any renewal or extension options contained in such lease.

"**Vice President**" when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title "vice president".

Section 1.02 Compliance Certificates and Opinions.

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers' Certificate, if to be given by an officer or an Assistant Treasurer or Assistant Secretary of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

Every certificate (other than certificates pursuant to Section 314(a)(4) of the Trust Indenture Act) or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include,

(1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03 Form of Documents Delivered to Trustee.

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or an Assistant Treasurer or Assistant Secretary of the Company, stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally filed in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Anything in this Indenture to the contrary notwithstanding, if any such corrective document or instrument indicates that action has been taken by or at the request of the Company which could not have been taken had the original document or instrument not contained such error or omission, the action so taken shall not be invalidated or otherwise rendered ineffective but shall be and remain in full force and effect, except to the extent that such action was a result or willful misconduct or bad faith. Without limiting the generality of the foregoing, any Notes issues under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Notes, except as aforesaid.

Section 1.04 Acts of Holders; Record Dates.

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; or, alternatively, may be embodied in and evidenced by the record of Holders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders duly called and held in accordance with the provisions of Article Fourteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments of record are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "**Act**" of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to **Section 6.01**) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section. The record of any meeting of Holders shall be proved in the manner provided in **Section 14.06.**

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a signer acting in a capacity other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

The ownership of Notes shall be proved by the Note Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Note.

The Company may set any day as a record date for the purpose of determining the Holders of Outstanding Notes of any series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Notes of such series, provided that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Notes of the relevant series on such record date, and no other Holders, shall be entitled to take or revoke the relevant action, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Notes of

such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Notes of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Notes of the relevant series in the manner set forth in **Section 1.06**.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Notes of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in **Section 5.02**, (iii) any request to institute proceedings referred to in **Section 5.07(2)** or (iv) any direction referred to in **Section 5.12**, in each case with respect to Notes of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Notes of such series on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction or to revoke the same, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Notes of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Notes of the relevant series on the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Notes of the relevant series in the manner set forth in **Section 1.06**.

With respect to any record date set pursuant to this Section, the party hereto which sets such record date may designate any day as the "**Expiration Date**" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Notes of the relevant series in the manner set forth in **Section 1.06**, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section, the party hereto which set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Without limiting the foregoing, a Holder entitled hereunder to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal

amount of such Note or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

Section 1.05 Notices, Etc., to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, the Trustee by any Holder or by the Company, or the Company by the Trustee or by any Holder, shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and delivered personally to an officer or other responsible employee of the addressee, or transmitted by facsimile transmission or other direct written electronic means to such telephone number or other electronic communications address as the parties hereto shall from time to time designate, or transmitted by first-class mail, charges prepaid, to the applicable address set opposite such party's name below or to such other address as either party hereto may from time to time designate:

If to the Trustee, to:

The Chase Manhattan Bank
450 West 33rd Street - 15th Floor
New York, New York 10001-2697

Attention: Global Trust Services
Telephone: (212) 946-8595
Telecopy: (212) 946-8160

If to the Company, to:

Public Service Company of New Mexico
Alvarado Square MS-2704
Albuquerque, New Mexico 87158

Attention: Treasurer
Telephone: (505) 241-2700
Telecopy: (505) 241-2369

Any communication contemplated herein shall be deemed to have been made, given, furnished and filed if personally delivered, on the date of delivery, if transmitted by facsimile transmission or other direct written electronic means, on the date of transmission, and if transmitted by first-class mail, on the date of receipt.

Section 1.06 Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his or her address as it

appears in the Note Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 1.07 Conflict with Trust Indenture Act.

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act which would be required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 1.08 Effect of Headings and Table of Contents.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.09 Successors and Assigns.

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10 Separability Clause.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11 Benefits of Indenture.

The trusts created by this Indenture are for the equal and proportionate benefit and security of the Holders without any priority of any Note over any other Note. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 Governing Law.

This Indenture and the Notes shall be governed by and construed in accordance with the law of the State of New York, without regard to conflicts of laws principles thereof.

Section 1.13 Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Note shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Notes (other than a provision of any Note of any series, or any Tranche thereof, or in the indenture supplemental hereto, Board Resolution or Officers' Certificate which establishes the terms of such series of Notes or Tranche which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, and, if such payment is made or duly provided for on such Business Day, then no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, to such Business Day.

ARTICLE II

NOTE FORMS

Section 2.01 Forms Generally.

The definitive Notes of each series shall be in substantially the form thereof set forth in this Article, or in such other form or forms thereof established in the indenture supplemental hereto establishing such series or in a Board Resolution establishing such series, or in an Officers' Certificate pursuant to such supplemental indenture or Board Resolution, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depositary therefor or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution thereof. If the form or forms of Notes of any series are established in a Board Resolution or in an Officers' Certificate pursuant to a Board Resolution, such Board Resolution and Officers' Certificate, if any, shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by **Section 3.03** for the authentication and delivery of such Notes.

Unless otherwise specified as contemplated by Section 3.01, the Notes of each series shall be issuable in registered form without coupons. The definitive Notes shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Notes, as evidenced by their execution of such Notes.

Section 2.02 Form of Face of Note.

[Insert any legend required by the Internal Revenue Code and the regulations thereunder.]
PUBLIC SERVICE COMPANY OF NEW MEXICO

.....

No. ..... $ .....

CUSIP No. _____

Public Service Company of New Mexico, a corporation duly organized and existing under the laws of New Mexico (herein called the "**Company**," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to _____, or registered assigns, the principal sum of _____ Dollars on _____ [if the Note is to bear interest prior to Maturity, insert - , and to pay interest thereon from _____ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on _____ and _____ in each year, commencing _____, at the rate of ___% per annum, until the principal hereof is paid or made available for payment] [if applicable, insert - , provided that any principal and premium, and any such installment of interest, which is overdue shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest, which shall be the _____ or _____ (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Note (or one or more Predecessor Notes) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Notes of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture].

[If the Note is not to bear interest prior to Maturity, insert - The principal of this Note shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. Any such interest on overdue principal or premium which is not paid on demand shall bear interest at the rate of ___% per annum (to the extent that the payment of such interest on

interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.]

Payment of the principal of (and premium, if any) and [if applicable, insert - any such] interest on this Note will be made at the office or agency of the Company maintained for that purpose in _____, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts [if applicable, insert - ; *provided, however,* that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Note Register].

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____

Attest:

_____

Section 2.03 Form of Reverse of Note.

This Note is one of a duly authorized issue of senior notes of the Company (herein called the "**Notes**"), issued and to be issued in one or more series under an Indenture, dated as of [_____], 1998 (herein called the "**Indenture**", which term shall have the meaning assigned to it in such instrument), between the Company and The Chase Manhattan Bank, as Trustee (herein called the "**Trustee**," which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Notes and of the terms upon which the Notes are, and are to be, authenticated and delivered. This Note is one of the series designated on the face hereof [if applicable, insert - , limited in aggregate principal amount to $.....].

[If applicable, insert - The Notes of this series are subject to redemption upon not less than 30 days' notice by mail, [if applicable, insert - (1) on _____ in any year commencing with the year _____ and ending with the year _____ through operation of the sinking

fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [if applicable, insert - on or after _____, 19..], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [if applicable, insert - on or before _____, ___%, and if redeemed] during the 12-month period beginning _____ of the years indicated,

Year	Redemption Price	Year	Redemption Price

and thereafter at a Redemption Price equal to ___% of the principal amount, together in the case of any such redemption [if applicable, insert - (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Notes, or one or more Predecessor Notes, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert - The Notes of this series are subject to redemption upon not less than 30 days' notice by mail, (1) on _____ in any year commencing with the year ___ and ending with the year _____ through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [if applicable, insert - on or after _____], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning _____ of the years indicated,

Year	Redemption Price For Redemption Through Operation of the Sinking Fund	Redemption Price For Redemption Otherwise Than Through Operation of the Sinking Fund

and thereafter at a Redemption Price equal to ___% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Notes, or one or more Predecessor Notes, of record at the close of business on the relevant Record Dates referred to on

the face hereof, all as provided in the Indenture.]

[If applicable, insert - Notwithstanding the foregoing, the Company may not, prior to _____, redeem any Notes of this series as contemplated by [if applicable, insert - Clause (2) of] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than ___% per annum.]

[If applicable, insert - The sinking fund for this series provides for the redemption on _____ in each year beginning with the year _____ and ending with the year _____ of [if applicable, insert - not less than $_____ ("mandatory sinking fund") and not more than] $_____ aggregate principal amount of Notes of this series. Notes of this series acquired or redeemed by the Company otherwise than through [if applicable, insert - mandatory] sinking fund payments may be credited against subsequent [if applicable, insert - mandatory] sinking fund payments otherwise required to be made [if applicable, insert - , in the inverse order in which they become due].]

[If the Note is subject to redemption of any kind, insert - In the event of redemption of this Note in part only, a new Note or Notes of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If applicable, insert - The Indenture contains provisions for defeasance at any time of [the entire indebtedness of this Note] [or] [certain restrictive covenants and Events of Default with respect to this Note] [, in each case] upon compliance with certain conditions set forth in the Indenture.]

[If the Note is not an Original Issue Discount Note, insert - If an Event of Default with respect to Notes of this series shall occur and be continuing, the principal of the Notes of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the Note is an Original Issue Discount Note, insert - If an Event of Default with respect to Notes of this series shall occur and be continuing, an amount of principal of the Notes of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to _____ [insert formula for determining the amount]. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal, premium and interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on the Notes of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Notes at the time Outstanding of each series to be affected. The Indenture also contains

provisions permitting the Holders of specified percentages in principal amount of the Notes of each series at the time Outstanding, on behalf of the Holders of all Notes of such series, to waive compliance by the Company with certain provisions of the Indenture and to waive certain past defaults under the Indenture and their consequences, provided, however, that if any such past default affects more than one series of Notes, the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, shall have the right to waive such past default, and not the Holders of the Notes of any one such series. Any such consent or waiver by the Holder of this Note shall be conclusive and binding upon such Holder and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

As provided in and subject to the provisions of the Indenture, the Holder of this Note shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Notes of this series, the Holders of not less than a majority in aggregate principal amount of the Notes of all series at the time Outstanding in respect of which an Event of Default shall have occurred and be continuing shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee reasonable indemnity, and the Trustee shall not have received from the Holders of a majority in principal amount of Notes of all series at the time Outstanding in respect of which an Event of Default shall have occurred and be continuing a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Note for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Note at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Note Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Note are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Note Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Notes of this series are issuable only in registered form without coupons in denominations of $_____ and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Notes of this series are exchangeable for a like aggregate principal amount of Notes of this series and of like tenor of a different authorized

denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Note which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

Section 2.04 Form of Legend for Global Notes.

Unless otherwise specified as contemplated by **Section 3.01** for the Notes evidenced thereby, every Global Note authenticated and delivered hereunder shall bear a legend in substantially the following form:

> THIS NOTE IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS NOTE MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A NOTE REGISTERED, AND NO TRANSFER OF THIS NOTE IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

Section 2.05 Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication shall be in substantially the following form:

CERTIFICATION OF AUTHENTICATION

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

Dated:

[_____],
As Trustee

By: _____

ARTICLE III

THE NOTES

Section 3.01 Amount Unlimited; Issuable in Series.

The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited. The Notes may be issued in one or more series, each of which series may be issued in one or more Tranches. Subject to the last paragraph of this Section, prior to the authentication and delivery of Notes of any series there shall be established by specification in an indenture supplemental hereto or in a Board Resolution, or in an Officers' Certificate pursuant to one or more indentures supplemental hereto or a Board Resolution:

(1) the title of the Notes of the series (which shall distinguish the Notes of such series from Notes of any other series);

(2) any limit upon the aggregate principal amount of the Notes of such series which may be authenticated and delivered under this Indenture (except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes of such series pursuant to **Section 3.04, 3.05, 3.06, 9.06 or 11.07** and except for any Notes which, pursuant to **Section 3.03**, are deemed never to have been authenticated and delivered hereunder);

(3) the Person or Persons (without specific identification) to whom interest on Notes of such series, or any Tranche thereof, shall be payable on any Interest Payment Date, if other than the Persons in whose names such Notes (or one or more Predecessor Notes) are registered at the close of business on the Regular Record Date for such interest;

(4) the date or dates on which the principal of the Notes of such series, or any Tranche thereof, is payable or any formula or other method or other means by which such date or dates shall be determined, by reference to an index or other fact or event ascertainable outside of this Indenture or otherwise (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension);

(5) the rate or rates at which the Notes of such series, or any Tranche thereof, shall bear interest, if any (including the rate or rates at which overdue principal shall bear interest, if different from the rate or rates at which such Notes shall bear interest prior to Maturity, and, if applicable, the rate or rates at which overdue premium or interest shall bear interest, if any), or any formula or other method or other means by which such rate or rates shall be determined, by reference to an index or other fact or event ascertainable outside of this Indenture or otherwise; the date or dates from which such interest shall accrue; and the Interest Payment Dates on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on such Notes on any Interest Payment Date;

(6) the right, if any, to extend the interest payment periods and the duration of such extension;

(7) the place or places at which or methods by which (A) the principal of and premium, if any, and interest, if any, on Notes of such series, or any Tranche thereof, shall be payable, (B) registration of transfer of Notes of such series, or any Tranche thereof, may be effected, (C) exchanges of Notes of such series, or any Tranche thereof, may be effected and (D) notices and demands to or upon the Company in respect of the Notes of such series, or any Tranche thereof, and this Indenture may be served; the Note Registrar and any Paying Agent or Agents for such series, or any Tranche thereof; and if such is the case, that the principal of such Notes shall be payable without presentment or surrender thereof;

(8) the period or periods within which, the price or prices at which and the terms and conditions upon which any Notes of such series, or any Tranche thereof, may be redeemed, in whole or in part, at the option of the Company and, if other than by a Board Resolution, the manner in which any election by the Company to redeem such Notes shall be evidenced;

(9) the obligation, if any, of the Company to redeem or purchase any Notes of such series, or any Tranche thereof, pursuant to any sinking fund or analogous provisions or at the option of the Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which any Notes of such series, or any Tranche thereof, shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(10) if other than denominations of $1,000 and any integral multiple thereof, the denominations in which any Notes of such series, or any Tranche thereof, shall be issuable;

(11) if the amount of principal of or any premium or interest on any Notes of such series, or any Tranche thereof, may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined to the extent not established pursuant to clause (5) of this paragraph;

(12) if other than Dollars, the currency, currencies or currency units in which the principal of or any premium or interest on any Notes of such series, or any Tranche thereof, shall be payable and the manner of determining the equivalent thereof in Dollars for any purpose, including for purposes of the definition of "Outstanding" in **Section 1.01**;

(13) if the principal of or any premium or interest on any Notes of such series, or any Tranche thereof, is to be payable, at the election of the Company or the Holder thereof, in one or more currencies or currency units other than that or those in which such Notes are stated to be payable, the currency, currencies or currency units in which the principal of or any premium or interest on such Notes as to which such election is made shall be payable, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);

(14) if other than the entire principal amount thereof, the portion of the principal amount of any Notes of such series, or any Tranche thereof, which shall be payable upon

declaration of acceleration of the Maturity thereof pursuant to **Section 5.02**;

(15) if the principal amount payable at the Stated Maturity of any Notes of such series, or any Tranche thereof, will not be determinable as of any one or more dates prior to the Stated Maturity, the amount which shall be deemed to be the principal amount of such Notes as of any such date for any purpose thereunder or hereunder, including the principal amount thereof which shall be due and payable upon any Maturity other than the Stated Maturity or which shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(16) if applicable, that the Notes of such series, or any Tranche thereof, in whole or any specified part, shall be defeasible pursuant to **Section 13.02** or that the Notes of such series, but not Tranches thereof alone, shall be defeasible pursuant to **Section 13.03**, or both such sections, and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Notes shall be evidenced;

(17) if applicable, that any Notes of such series, or any Tranche thereof, shall be issuable in whole or in part in the form of one or more Global Notes and, in such case, the respective Depositaries for such Global Notes, the form of any legend or legends which shall be borne by any such Global Note in addition to or in lieu of that set forth in **Section 2.04** and any circumstances in addition to or in lieu of those set forth in Clause (2) of the last paragraph of **Section 3.05** in which any such Global Note may be exchanged in whole or in part for Notes registered, and any transfer of such Global Note in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Note or a nominee thereof;

(18) any addition to or change in the Events of Default which applies to any Notes of such series, or any Tranche thereof, and any change in the right of the Trustee or the requisite Holders of such Notes to declare the principal amount thereof due and payable pursuant to **Section 5.02**;

(19) any addition to or change in the covenants set forth in **Article X** which applies to Notes of such series, or any Tranche thereof; and

(20) any other terms of such series, or any Tranche thereof (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by **Section 9.01(5)**).

All Notes of any one series or, if issued in Tranches thereof, any such Tranche, shall be substantially identical except as to denomination and except as may otherwise be determined in the manner provided for in this Indenture. With respect to Notes of a series subject to a Periodic Offering, the indenture supplemental hereto or the Board Resolution which establishes such series, or the Officer's Certificate pursuant to such supplemental indenture or Board Resolution, as the case may be, may provide general terms or parameters for Notes of such series and provide either that the specific terms of Notes of such series, or any Tranche thereof, shall be specified in a Company Order or that such terms shall be determined by the Company or its agents in accordance with procedures specified in a Company Order as contemplated by clause (b) of Section 3.03.

Section 3.02 Denominations.

Except as permitted by Section 9.01(4), the Notes of each series, or any Tranche thereof, shall be issuable only in fully registered form without coupons and only in such denominations as shall be specified as contemplated by **Section 3.01**. In the absence of any such specified denomination with respect to the Notes of any series, or any Tranche thereof,, the Notes of such series, or any Tranche thereof, shall be issuable in denominations of $1,000 and any integral multiple thereof.

Section 3.03 Execution, Authentication, Delivery and Dating.

Unless otherwise provided as contemplated by **Section 3.01** with respect to any series of Notes, or any Tranche thereof, the Notes shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or one of its Vice Presidents, or by any other officer or employee of the Company who is authorized by a Board Resolution to execute the Notes on behalf of the Company, under its corporate seal affixed thereto or reproduced thereon attested by its Secretary or one of its Assistant Secretaries. The signature of any of these individuals on the Notes may be manual or facsimile.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers or other employees of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices or be so employed prior to the authentication and delivery of such Notes or did not hold such offices or were not so employed at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Trustee shall authenticate and deliver Notes of a series, for original issue, at one time or from time to time in accordance with the Company Order referred to below, upon receipt by the Trustee of:

(a) the instrument or instruments establishing the form or forms and terms of such series as provided in Sections 2.01 and 3.01;

(b) a Company Order requesting the authentication and delivery of such Notes and, to the extent that the terms of such Notes shall not have been established in an indenture supplemental hereto or in a Board Resolution, or in an Officers' Certificate pursuant to a supplemental indenture or Board Resolution, all as contemplated by Sections 2.01 and 3.01, either (i) establishing such terms or (ii) in the case of Notes of a series subject to a Periodic Offering, specifying procedures, acceptable to the Trustee, by which such terms are to be established (which procedures may provide, to the extent acceptable to the Trustee, for authentication and delivery pursuant to oral or electronic instructions from the Company or any agent or agents thereof, which oral instructions are to be promptly confirmed electronically or in writing), in either case in accordance with the instrument or instruments delivered pursuant to clause (a) above;

(c) the Notes of such series, executed on behalf of the Company by officers or employees authorized as hereinabove in this Section provided;

(d) an Opinion of Counsel stating that:

(i) if the form or forms of such Notes have been established in the indenture supplemental hereto establishing such series or in a Board Resolution establishing such series, or in an Officers' Certificate pursuant to such supplemental indenture or Board Resolution, as permitted by **Section 2.01**, such form or forms have been duly authorized by the Company and established in conformity with the provisions of this Indenture;

(ii) such terms have been duly authorized by the Company and established in conformity with the provisions of this Indenture;

(iii) such Notes, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will have been duly issued under the Indenture and will constitute valid and legally binding obligations of the Company, entitled to the benefits provided by this Indenture, and enforceable in accordance with their terms, subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and (b) the qualification that certain waivers, procedures, remedies, and other provisions of such Notes and this Indenture may be unenforceable under or limited by state law; and

(iv) all consents or approvals of the New Mexico Public Utility Commission (or any successor agency), the Arizona Corporation Commission (or any successor agency) and of any federal regulatory agency required in connection with the Company's execution and delivery of this Indenture or such series of Notes, or any Tranche thereof, have been obtained and not withdrawn (except that no statement need be made with respect to state securities laws or the Federal Power Act).

provided, however, that, with respect to Notes of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of such Notes (provided that such Opinion of Counsel addresses the authentication and delivery of all Notes of such series) and that in lieu of the opinions described in clauses (ii) and (ii) above Counsel may opine that:

(x) when the terms of such Notes shall have been established pursuant to a Company Order or Orders or pursuant to such procedures (acceptable to the Trustee) as may be specified from time to time by a Company Order or Orders, all as contemplated by and in accordance with the instrument or instruments delivered pursuant to clause (a) above, such terms will have been duly authorized by the Company and will have been established in conformity with the provisions of this Indenture; and

(y) such Notes, when authenticated and delivered by the Trustee in accordance with this Indenture and the Company Order or Orders or specified procedures referred to in paragraph (x)

above and issued and delivered by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will have been duly issued under this Indenture and will constitute valid and legally binding obligations of the Company, entitled to the benefits provided by this Indenture, and enforceable in accordance with their terms, subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and (b) the qualification that certain waivers, procedures, remedies, and other provisions of such Notes and this Indenture may be unenforceable under or limited by state law.

With respect to Notes of a series subject to a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any such Notes, the form, terms thereof and the legality, validity, binding effect and enforceability thereof, and compliance of the authentication and delivery thereof with the terms and conditions of this Indenture, upon the Opinion of Counsel and other documents delivered pursuant to Sections 2.01 and 3.01 and this Section, as applicable, at or prior to the time of the first authentication of Notes of such series unless and until such opinion or other documents have been superseded or revoked or expire by their terms. In connection with the authentication and delivery of Notes of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Notes do not violate any applicable law or any applicable rule, regulation or order of any governmental agency or commission having jurisdiction over the Company.

If the form or terms of the Notes of any series have been established by or pursuant to a Board Resolution or an Officers' Certificate as permitted by Sections 2.01 and 3.01, the Trustee shall not be required to authenticate such Notes if the issue of such Notes pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Notes and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Notes, or any Tranche thereof, each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee or an Authenticating Agent by manual signature of an authorized officer, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Note shall have been authenticated and delivered hereunder to the Company but never have been issued and sold by the Company, and the Company shall deliver such Note to the Trustee for cancellation as provided in **Section 3.09** together with a written statement (which need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel) stating that such Note has never been issued and sold by the Company, for all purposes of this Indenture such Note shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 3.04 Temporary Notes.

Pending the preparation of definitive Notes of any series, or any Tranche thereof, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers or other employees of the Company executing such Notes may determine, as evidenced by their execution of such Notes.

If temporary Notes of any series, or any Tranche thereof, are issued, the Company will cause definitive Notes of such series or Tranche to be prepared without unreasonable delay. After the preparation of such definitive Notes, such temporary Notes shall be exchangeable for such definitive Notes upon surrender of such temporary Notes at the office or agency of the Company in a Place of Payment for such series or Tranche, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes of any series or Tranche, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Notes of the same series or Tranche, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Notes of any series or Tranche shall in all respects be entitled to the same benefits under this Indenture as definitive Notes of such series and Tranche and of like tenor authenticated and delivered hereunder.

Section 3.05 Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office or in any other office or agency of the Company in a Place of Payment being herein sometimes referred to as the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Trustee is hereby appointed "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. Anything herein to the contrary notwithstanding, the Company may designate one or more of its offices as an office in which a register with respect to the Notes of one or more series shall be maintained, and the Company may designate itself the Note Registrar with respect to one or more of such series; provided, however, that there shall be no more than one Note Register and one Note Registrar for each series of Notes. The Note Register shall be open for inspection by the Trustee and the Company at all reasonable times.

Except as otherwise specified as contemplated by Section 3.01 with respect to Notes of any series, or any Tranche thereof, upon surrender for registration of transfer of any Note of a series, or any Tranche thereof, at the office or agency of the Company in a Place of Payment for that series or Tranche, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of the same series and Tranche, of any authorized denominations and of like tenor and aggregate principal amount.

Except as otherwise specified as contemplated by Section 3.01 with respect to Notes of any series, or any Tranche thereof, at the option of the Holder, Notes of any series or Tranche

may be exchanged for other Notes of the same series and Tranche, of any authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Notes to be exchanged at such office or agency. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, the Trustee or the Note Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company, the Trustee or the Note Registrar, as the case may be, duly executed, by the Holder thereof or his attorney duly authorized in writing.

Except as otherwise specified as contemplated by Section 3.01 with respect to Notes of any series, or any Tranche thereof, no service charge shall be made for any registration of transfer or exchange of Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to **Section 3.04, 9.06** or **11.07** not involving any transfer.

If the Notes of any series, or any Tranche thereof, are to be redeemed, the Company shall not be required (A) to issue, register the transfer of or exchange any Notes of that series, or any Tranche thereof, during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of any such Notes selected for redemption and ending at the close of business on the day of such mailing, or (B) to register the transfer of or exchange any Note so selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

The provisions of Clauses (1), (2), (3) and (4) below shall apply only to Global Notes:

(1) Each Global Note authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Note or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Note or a nominee thereof unless (A) such Depositary (i) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note or (ii) has ceased to be a clearing agency registered under the Exchange Act, (B) there shall have occurred and be continuing an Event of Default with respect to such Global Note or (C) there shall exist such circumstances, if any, in addition to or in lieu of the foregoing as have been specified for this

purpose as contemplated by **Section 3.01**.

(3) Subject to Clause (2) above, any exchange of a Global Note for other Notes may be made in whole or in part, and all Notes issued in exchange for a Global Note or any portion thereof shall be registered in such names as the Depositary for such Global Note shall direct.

(4) Every Note authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Note or any portion thereof, whether pursuant to this Section, **Section 3.04, 3.06, 9.06** or **11.07** or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Note, unless such Note is registered in the name of a Person other than the Depositary for such Global Note or a nominee thereof.

Section 3.06 Mutilated, Destroyed, Lost and Stolen Notes.

If any mutilated Note is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Note of the same series and Tranche and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of the same series and Tranche and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Note of any series, or any Tranche thereof, issued pursuant to this Section in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes of that series and Tranche duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes.

Section 3.07 Payment of Interest; Interest Rights Preserved.

Except as otherwise provided as contemplated by **Section 3.01** with respect to any series of Notes, or any Tranche thereof, interest on any Note which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Note (or one or more Predecessor Notes) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Note of any series, or any Tranche thereof, which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes of such series, or such Tranche, as the case may be (or their respective Predecessor Notes) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note of such series, or Tranche, as the case may be, and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of Notes of such series, or Tranche, as the case may be, in the manner set forth in **Section 1.06**, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes of such series, or Tranche, as the case may be (or their respective Predecessor Notes) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

(2) The Company may make payment of any Defaulted Interest on the Notes of any series, or any Tranche thereof, in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Notes may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Note delivered under this

Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Note.

Section 3.08 Persons Deemed Owners.

Prior to due presentment of a Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of principal of and any premium and (subject to **Section 3.07**) any interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.09 Cancellation.

All Notes surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold, and all Notes so delivered shall be promptly cancelled by the Trustee. No Notes shall be authenticated in lieu of or in exchange for any Notes cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Notes held by the Trustee shall be disposed of as directed by a Company Order; *provided, however,* that the Trustee shall not be required to destroy such cancelled Notes.

Section 3.10 Computation of Interest.

Except as otherwise specified as contemplated by **Section 3.01** for Notes of any series, or any Tranche thereof, interest on Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 3.11 CUSIP Numbers.

The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers.

Section 3.12 Payment to Be in Proper Currency.

In the case of the Notes of any series, or any Tranche thereof, denominated in any currency other than Dollars or in a composite currency (the "Required Currency"), except as otherwise specified with respect to such Notes as contemplated by Section 3.01, the obligation of the Company to make any payment of the principal thereof, or the premium or interest thereon, shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable. If any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency. The costs and risks of any such exchange, including without limitation the risks of delay and exchange rate fluctuation, shall be borne by the Company, the Company shall remain fully liable for any shortfall or delinquency in the full amount of Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefor except in the case of its negligence or willful misconduct. The Company hereby waives any defense of payment based upon any such tender or recovery which is not in the Required Currency, or which, when exchanged for the Required Currency by the Trustee, is less than the full amount of Required Currency then due and payable.

ARTICLE IV

SATISFACTION AND DISCHARGE

Section 4.01 Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Notes herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in **Section 3.06** and (ii) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in **Section 10.03**) have been delivered to the Trustee for cancellation; or

(B) all such Notes not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements

satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payment, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Notes, money in an amount sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Notes which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under **Section 6.07**, the obligations of the Company to any Authenticating Agent under **Section 6.14** and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section, the obligations of the Trustee under **Section 4.02** and the last paragraph of **Section 10.03** shall survive.

If the Company shall have paid or caused to be paid the principal of and premium, if any, and interest on any Note, as and when the same shall have become due and payable or the Company shall have delivered to the Trustee for cancellation any outstanding Note, such Note shall cease to be entitled to any lien or benefit under this Indenture.

Section 4.02 Application of Trust Money.

Subject to the provisions of the last paragraph of **Section 10.03**, all money deposited with the Trustee pursuant to **Section 4.01** shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest for whose payment such money has been deposited with the Trustee.

ARTICLE V

REMEDIES

Section 5.01 Events of Default.

"**Event of Default**," wherever used herein with respect to Notes of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(1) default in the payment of any interest upon any Note of that series when it becomes due and payable, and continuance of such default for a period of 60 days; or

(2) default in the payment of the principal of or any premium on any Note of that series at its Maturity; or

(3) default in the deposit of any sinking fund payment, when and as due by the terms of a Note of that series; or

(4) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Notes other than that series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of a majority in principal amount of the Outstanding Notes of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "**Notice of Default**" hereunder, unless the Trustee, or the Trustee and Holders of a principal amount of Notes of such series not less than the principal amount of Notes the Holders of which gave such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, that the Trustee, or the Trustee and the Holders of such principal amount of Notes, as the case may be, shall be deemed to have agreed to an extension of such period if corrective action is initiated by the Company within such period and is being diligently pursued; or

(5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition by one or more persons other than the Company seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days; or

(6) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or

proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the authorization of such action by the Board of Directors; or

(7) any other Event of Default provided with respect to Notes of that series.

Section 5.02 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default with respect to Notes of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of a majority in principal amount of the Outstanding Notes of that series may declare the principal amount of all the Notes of that series (or, if any Notes of that series are Original Issue Discount Notes, such portion of the principal amount of such Notes as may be specified by the terms thereof) to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Notes, the Trustee or the Holders of not less than a majority in principal amount of the Outstanding Notes of all such series, considered as one class (and not the Holders of the Notes of any one of such series), may make such declaration of acceleration.

At any time after such a declaration of acceleration with respect to Notes of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the related Event of Default and its consequences will be automatically waived, resulting in an automatic rescission and annulment of the acceleration of the Notes if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest on all Notes of that series,

(B) the principal of (and premium, if any, on) any Notes of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Notes,

(C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Notes, and

(D) all amounts due to the Trustee under Section 6.07; and

(2) any other Event of Default with respect to Notes of that series, other than the non-payment of the principal of Notes of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

No such rescission shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 5.03 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if

(1) default is made in the payment of any interest on any Note when such interest becomes due and payable and such default continues for a period of 60 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Note at the Maturity thereof, or

(3) default is made in the deposit of any sinking fund payment, when and as due by the terms of a Note of that series,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Notes, the whole amount then due and payable on such Notes for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Notes, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 6.07.

If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Notes, wherever situated.

If an Event of Default with respect to Notes of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Notes of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.04 Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Notes or the property of the Company or such other

obligor or their creditors, the Trustee (irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal, premium, if any, and interest, if any, owing and unpaid in respect of the Notes and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for amounts due to the Trustee under Section 6.07) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 6.07.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

Section 5.05 Trustee May Enforce Claims Without Possession of Notes.

All rights of action and claims under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes in respect of which such judgment has been recovered.

Section 5.06 Application of Money Collected.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any premium or interest, upon presentation of the Notes in respect of which or for the benefit of which such monies shall have been collected and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid for principal of and any premium and interest on the Notes in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for principal and any premium and interest, respectively; and

THIRD: To the payment of the balance, if any, to the Company or any other Person or Persons legally entitled thereto.

Section 5.07 Limitation on Suits.

No Holder of any Note of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Notes of that series;

(2) the Holders of not less than a majority in aggregate principal amount of the Outstanding Notes of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class, shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Notes of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Section 5.08 Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Note shall have

the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 3.07) interest on such Note on the respective Stated Maturities expressed in such Note (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and such Holder shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative.

Except as otherwise provided in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder of any Notes to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12 Control by Holders.

If an Event of Default shall have occurred and be continuing in respect of a series of Notes, the Holders of a majority in principal amount of the Outstanding Notes of such series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Notes of such series; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Notes, the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, shall have the right to make such direction, and not the Holders of the Notes of any one of such series; and provided, further, that

(1) such direction shall not be in conflict with any rule of law or with this Indenture,

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) subject to the provisions of Section 6.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

Section 5.13 Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Notes of any series may on behalf of the Holders of all the Notes of such series waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of or any premium or interest on any Note of such series, or

(2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Note of such series affected,

provided, however, that if any such default shall have occurred and be continuing with respect to more than one such series of Notes, the Holders of a majority in aggregate principal amount of the Outstanding Notes of all such series, considered as one class, shall have the right to waive such default, and not the Holders of the Notes of any one such series.

Upon any such waiver, such default shall cease to exist, and any and all Events of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 5.14 Undertaking for Costs.

The Company and the Trustee agree, and each Holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Notes

of all series in respect of which such suit may be brought, considered as one class, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or premium, if any, or interest, if any, on any Note on or after the Stated Maturity or Maturities expressed in such Note (or, in the case of redemption, on or after the Redemption Date).

Section 5.15 Waiver of Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI

THE TRUSTEE

Section 6.01 Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default with respect to Notes of any series,

(1) the Trustee undertakes to perform, with respect to Notes of such series, such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may, with respect to Notes of such series, conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) In case an Event of Default with respect to Notes of any series shall have occurred and be continuing, the Trustee shall exercise, with respect to Notes of such series, such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful

misconduct, except that

(1) this clause (c) shall not be construed to limit the effect of clause (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Notes of any one or more series, as provided herein, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Notes of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

Section 6.02 Notice of Defaults.

If a default occurs hereunder with respect to Notes of any series, the Trustee shall give the Holders of Notes of such series notice of such default known to the Trustee as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 5.01(4) with respect to Notes of such series, no such notice to Holders shall be given until at least 75 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Notes of such series.

Section 6.03 Certain Rights of Trustee.

Subject to the provisions of Section 6.01 and to applicable provisions of the Trust Indenture Act:

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, or as otherwise expressly provided herein, and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(4) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any Holder pursuant to this Indenture, unless such Holder shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall (subject to applicable legal requirements) be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(8) except as otherwise provided in Section 5.01(4), the Trustee shall not be charged with knowledge of any Event of Default with respect to the Notes of any series for which it is acting as Trustee unless either (i) a Responsible Officer of the Trustee shall have actual knowledge of the Event of Default, or (ii) written notice of such Event of Default shall have been given to the Trustee by the Company, any other obligor on the Notes or by any Holder of such Notes.

Section 6.04 Not Responsible for Recitals or Issuance of Notes.

The recitals contained herein and in the Notes, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no

representations as to the validity or sufficiency of this Indenture or of the Notes . Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Notes or the proceeds thereof.

Section 6.05 May Hold Notes.

The Trustee, any Authenticating Agent, any Paying Agent, any Note Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Notes and, subject to Sections 6.08 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Note Registrar or such other agent.

Section 6.06 Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on or investment of any money received by it hereunder except as expressly provided herein or otherwise agreed with, and for the sole benefit of, the Company.

Section 6.07 Compensation and Reimbursement.

The Company agrees

(1) to pay to the Trustee from time to time such compensation as shall be agreed to in writing between the Company and the Trustee for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith; and

(3) to indemnify the Trustee for, and to hold it harmless from and against, any and all loss, damage, claims, liability or expense incurred without negligence, willful misconduct or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including liability which the Trustee may incur as a result of failure to withhold, pay or report any tax, assessment or other governmental charges and the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Notes upon all property and funds held or collected by the Trustee as such, except as otherwise provided in Sections 4.02 and 13.05. "Trustee" for purposes

of this Section shall include any predecessor Trustee; provided. however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

In addition to the rights provided to the Trustee pursuant to the provisions of the immediately preceding paragraph of this Section 6.07, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(5) or Section 5.01(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the termination of this Indenture.

Section 6.08 Conflicting Interests.

If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such conflicting interest or resign, to the extent, in the manner and with the effect, and subject to the conditions provided in the Trust Indenture Act and this Indenture. To the extent permitted by such Act. the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee (i) under this Indenture with respect to Notes of more than one series or (ii) the Indenture, dated as of March 11, 1998, between the Company and The Chase Manhattan Bank, as trustee, or with respect to the securities of any or all of the series issued thereunder.

Section 6.09 Corporate Trustee Required; Eligibility.

There shall at all times be one (and only one) Trustee hereunder with respect to the Notes of each series, which may be Trustee hereunder for Notes of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to the Notes of any series shall cease to be eligible in accordance with the provisions of this Section. it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.

(b) The Trustee may resign at any time with respect to the Notes of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor

Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Notes of such series.

(c) The Trustee may be removed at any time with respect to the Notes of any series by Act of the Holders of a majority in principal amount of the Outstanding Notes of such series, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 6.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note for at least six months, or

(2) the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Notes, or (B) subject to Section 5.14, any Holder who has been a bona fide Holder of a Note for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Notes and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Notes of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Notes of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Notes of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Notes of any particular series) and shall comply with the applicable requirements of Section 6.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Notes of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Notes of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Notes of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Notes of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 6.11, any Holder who has been a bona fide Holder of a Note of such series for at least six months may, on behalf of himself and all others

similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Notes of such series.

(f) So long as no event which is, or after notice or lapse of time, or both, would become, an Event of Default shall have occurred and be continuing, and except with respect to a Trustee appointed by Act of the Holders of a majority in principal amount of the Outstanding Notes pursuant to subsection (e) of this Section, if the Company shall have delivered to the Trustee (1) a Board Resolution appointing a successor Trustee, effective as of a date specified therein, and (2) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee in accordance with Section 6.11, the Trustee shall be deemed to have resigned as contemplated in subsection (b) of this Section, the successor Trustee shall be deemed to have been appointed by the Company pursuant to subsection (e) of this Section and such appointment shall be deemed to have been accepted as contemplated in Section 6.11, all as of such date, and all other provisions of this Section and Section 6.11 shall be applicable to such resignation, appointment and acceptance except to the extent inconsistent with this clause (f).

(g) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Notes of any series and each appointment of a successor Trustee with respect to the Notes of any series to all Holders of Notes of such series in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee with respect to the Notes of such series and the address of its Corporate Trust Office.

Section 6.11 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee with respect to all Notes, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee, but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Notes of one or more (but not all) series of one or more series, the Company, the retiring Trustee, and each successor Trustee with respect to the Notes of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Notes of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Notes, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Notes of that or those series as to which the retiring Trustee is not retiring shall continue to be

vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Notes of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Notes of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in clause (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 6.12 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Notes shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Notes so authenticated with the same effect as if such successor Trustee had itself authenticated such Notes.

Section 6.13 Preferential Collection of Claims Against Company.

If the Trustee shall be or become a creditor of the Company or any other obligor upon the Notes (other than by reason of a relationship described in Section 311(b) of the Trustee Indenture Act), the Trustee shall be subject to any and all applicable provisions of the Trust Indenture Act regarding the collection of claims against the Company or such other obligor. For purposes of Section 311(b) of the Trust Indenture Act:

(a) the term "cash transaction" means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in

currency or in checks or other orders drawn upon banks or bankers and payable upon demand;

(b) the term "self-liquidating paper" means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 6.14 Appointment of Authenticating Agent.

The Trustee may appoint an Authenticating Agent or Agents with respect to the Notes of one or more series, or any Tranche thereof, of Notes which shall be authorized to act on behalf of the Trustee to authenticate Notes of such series or Tranche issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Notes so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Notes by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an

Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company and shall give notice of such appointment in the manner provided in Section 1.06 to all Holders of Notes of the series, or any Tranche thereof, with respect to which such Authenticating Agent will serve. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section and to reimburse such Authenticating Agent, from time to time, for its reasonable out-of-pocket expenses incurred under this Section.

If an appointment with respect to the Notes of one or more series or Tranche is made pursuant to this Section, the Notes of such series or Tranche may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

Dated:

_____,
As Trustee

By: _____
Authenticating Agent

By: _____
Authorized Officer

ARTICLE VII

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.01 Company to Furnish Trustee Names and Addresses of Holders.

The Company will furnish or cause to be furnished to the Trustee

(1) fifteen days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Notes of each series as of such Regular Record Date, and

(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Note Registrar.

Section 7.02 Preservation of Information; Communications to Holders.

The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Note Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.01 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Notes, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

Every Holder of Notes, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

Section 7.03 Reports by Trustee.

The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. If required by Section 313(a) of the Trust Indenture Act, the Trustee shall, within sixty days after each May 15 following the date of this Indenture deliver to Holders a brief report, dated as of such May 15, which complies with the provisions of such Section 313(a).

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Notes are listed, with the Commission and with the Company. The Company will promptly notify the Trustee when any Notes are listed on any stock exchange.

Section 7.04 Reports by Company.

The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee

within 15 days after the same is so required to be filed with the Commission.

Delivery of such information, documents and reports to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

Section 8.01 Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(1) the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a Person organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of and any premium, and interest on all the Notes and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Company as a result of such transaction as having been incurred by the Company at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing; and

(3) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

Section 8.02 Successor Substituted.

Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 8.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor

Person shall be relieved of all obligations and covenants under this Indenture and the Notes outstanding hereunder.

ARTICLE IX

SUPPLEMENTAL INDENTURES

Section 9.01 Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Notes, all as provided in Article VIII; or

(2) to add to the covenants of the Company or other provisions for the benefit of the Holders of all or any series of Notes, or any Tranche or Tranches thereof (and if such covenants are to be for the benefit of less than all series of Notes, or Tranches thereof, stating that such covenants are expressly being included solely for the benefit of such series or Tranche or Tranches) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Events of Default for the benefit of the Holders of all or any series of Notes, or any Tranche or Tranches thereof (and if such additional Events of Default are to be for the benefit of less than all series of Notes, or any Tranches thereof, stating that such additional Events of Default are expressly being included solely for the benefit of such series or Tranche or Tranches); or

(4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Notes in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Notes in uncertificated form; or

(5) to change or eliminate any provision of this Indenture or to add any new provision to this Indenture; provided, however, that if such change, elimination or addition shall adversely affect the interests of the Holders of Notes of any series, or a Tranche thereof, Outstanding on the date of such indenture supplemental hereto in any material respect, such change, elimination or addition shall become effective (1) with respect to such series or Tranche only pursuant to the provisions of Section 9.02 hereof or (2) when no Note of such series or Tranche remains Outstanding; or

(6) to secure the Notes; or

(7) to establish the form or terms of Notes of any series or Tranche as permitted by

Sections 2.01 and 3.01; or

(8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11; or

(9) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other changes to the provisions hereof or to add other provisions with respect to matters or questions arising under this Indenture, provided that such other changes or additions shall not adversely affect the interests of the Holders of Notes of any series in any material respect.

Without limiting the generality of the foregoing, if the Trust Indenture Act as in effect at the date specified in the first paragraph of this instrument or at any time thereafter shall be amended and

(x) if any such amendment shall require one or more changes to any provisions hereof or the inclusion herein of any additional provisions, or shall by operation of law be deemed to effect such changes or incorporate such provisions by reference or otherwise, this Indenture shall be deemed to have been amended so as to conform to such amendment to the Trust Indenture Act, and the Company and the Trustee may, without the consent of any Holders, enter into an indenture supplemental hereto to effect or evidence such changes or additional provisions; or

(y) if any such amendment shall permit one or more changes to, or the elimination of, any provisions hereof which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein, this Indenture shall be deemed to have been amended to effect such changes or elimination, and the Company and the Trustee may, without the consent of any Holders, enter into an indenture supplemental hereto to evidence such amendment hereof.

Section 9.02 Supplemental Indentures With Consent of Holders.

With the consent of the Holders of not less than a majority in aggregate principal amount of the Notes of all series then Outstanding under this Indenture, considered as one class, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by or pursuant to a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture; provided, however, that if there shall be Notes of more than one series Outstanding hereunder and if a proposed supplemental indenture shall directly affect the rights of the Holders of Notes of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Notes of all series so directly affected, considered as one class, shall be required; and provided, further, that if the Notes of any series shall have been issued in more than one Tranche and if the proposed supplemental indenture shall directly affect the rights of the Holders

of one or more, but less than all, of such Tranches, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Notes of all Tranches so directly affected, considered as one class, shall be required; and provided, further, that no such supplemental indenture shall:

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Note, or reduce the principal amount thereof or the rate of interest thereon (or the amount of any installment of interest thereon) or change the method of calculating such rate or reduce any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Note or any other Note which would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.02, or change the coin or currency (or other property) in which any Note or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), without, in any such case, the consent of the Holder of such Note, or

(2) reduce the percentage in principal amount of the Outstanding Notes of any series or Tranche, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of any default hereunder and its consequences, or reduce the requirements of Section 14.04 for quorum or voting, without, in any such case, the consent of the Holder of such Note, or

(3) modify any of the provisions of this Section, Section 5.13 or Section 10.08 with respect to the Notes of any series, or any Tranche thereof, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Note affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section and Section 10.08, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.01(8).

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Notes, or one or more Tranches thereof, or which modifies the rights of the Holders of Notes of such series or Tranche or Tranches with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Notes of any other series or Tranche.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof. A waiver by a Holder of such Holder's right to consent under this Section shall be deemed to be a consent of such Holder.

Section 9.03 Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture

permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture permitted by this Article may be executed on behalf of the Company by any officers or employees that are authorized to do so in a Board Resolution, under its corporate seal affixed thereto or reproduced thereon attested to by its Secretary or one of its Assistant Secretaries.

Section 9.04 Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby. Any supplemental indenture permitted by this Article may restate this Indenture in its entirety, and, upon the execution and delivery thereof, any such restatement shall supersede this Indenture as theretofore in effect for all purposes.

Section 9.05 Conformity with Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

Section 9.06 Reference in Notes to Supplemental Indentures.

Notes of any series, or any Tranche thereof, authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes of any series, or any Tranche thereof, so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Notes of such series or Tranche.

ARTICLE X

COVENANTS

Section 10.01 Payment of Principal, Premium and Interest.

The Company covenants and agrees for the benefit of each series of Notes that it will

duly and punctually pay the principal of and any premium and interest on the Notes of that series in accordance with the terms of the Notes and this Indenture.

Section 10.02 Maintenance of Office or Agency.

The Company will maintain in each Place of Payment for the Notes of any series, or any Tranche thereof, an office or agency where such Notes may be presented or surrendered for payment, where such Notes may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of such Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Notes of one or more series, or any Tranche thereof, may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Notes of any series or Tranche for such purposes. The Company will give prompt written notice to the Trustee, and prompt notice to Holders in the manner specified in Section 1.06, of any such designation or rescission and of any change in the location of any such other office or agency.

Section 10.03 Money for Notes Payments to Be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to any series of Notes, or any Tranche thereof, it shall, on or before each due date of the principal of or any premium or interest on any of the Notes of that series or Tranche, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for the Notes of any series, or any Tranche thereof, it will, on or prior to each due date of the principal of or any premium or interest on any Notes of that series or Tranche, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for the Notes of any series, or any Tranche thereof, other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (1) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (2) during the continuance of any default by the Company (or any other

obligor upon the Notes of that series or Tranche) in the making of any payment in respect of the Notes of that series or Tranche, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Notes of that series or Tranche.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any Note of any series, or any Tranche thereof, and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 10.04 Statement by Officers as to Default.

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.05 Restrictions on Liens.

(a) So long as any Notes are Outstanding, the Company will not issue, assume, or guarantee any Debt secured by any mortgage, security interest, pledge, or lien (herein referred to as a "mortgage") of or upon any Operating Property of the Company, whether owned at the date specified in the first paragraph of this instrument or thereafter acquired, without in any such case effectively securing the Outstanding Notes (together with, if the Company shall so determine,

any other Debt of or guaranteed by the Company ranking senior to, or equally with, the Notes) equally and ratably with such Debt; provided, however, that the foregoing restriction shall not apply to Debt secured by any of the following:

(i) mortgages on any property existing at the time of acquisition thereof;

(ii) mortgages on property of a corporation existing at the time such corporation is merged into or consolidated with the Company, or at the time of a sale, lease, or other disposition of the properties of such corporation or a division thereof as an entirety or substantially as an entirety to the Company, provided that such mortgage as a result of such merger, consolidation, sale, lease, or other disposition is not extended to property owned by the Company immediately prior thereto;

(iii) mortgages on property to secure all or part of the cost of acquiring, constructing, developing, or substantially repairing, altering, or improving such property, or to secure indebtedness incurred to provide funds for any such purpose or for reimbursement of funds previously expended for any such purpose, provided such mortgages are created or assumed contemporaneously with, or within eighteen (18) months after, such acquisition or completion of construction, development, or substantial repair, alteration, or improvement or within six (6) months thereafter pursuant to a commitment for financing arranged with a lender or investor within such eighteen (18) month period;

(iv) mortgages in favor of the United States of America or any State thereof, or any department, agency, or instrumentality or political subdivision of the United States of America or any State thereof, or for the benefit of holders of securities issued by any such entity, to secure any Debt incurred for the purpose of financing all or any part of the purchase price or the cost of constructing, developing, or substantially repairing, altering, or improving the property subject to such mortgages;

(v) mortgages on any property (x) which, at any time subsequent to January 1, 1985 through the date specified in the first paragraph of this instrument, was leased to the Company, or, (y) pursuant to the terms of any lease to the Company in effect at any time subsequent to January 1, 1985 through the date specified in the first paragraph of this instrument, title to which would not have been vested in the Company (assuming such lease remained in effect on the date of determination as such lease was in effect immediately prior to the date of this Indenture); or

(vi) any extension, renewal or replacement (or successive extensions, renewals, or replacements), in whole or in part, of any mortgage referred to in the foregoing clauses (i) to (v), inclusive; provided, however, that the principal amount of Debt secured thereby and not otherwise authorized by said clauses (i) to (v), inclusive, shall not exceed the principal amount of Debt, plus any premium or fee payable in connection with any such extension, renewal, or replacement, so secured at the time of such extension, renewal, or replacement.

(b) Notwithstanding the provisions of Section 10.05(a), so long as any Notes are Outstanding, the Company may issue, assume, or guarantee Debt, or permit to exist Debt,

secured by mortgages which would otherwise be subject to the restrictions of Section 10.05(a) up to an aggregate principal amount that, together with the principal amount of all other Debt of the Company secured by mortgages (other than mortgages permitted by Section 10.05(a) that would otherwise be subject to the foregoing restrictions) and the Value of all Sale and Lease-Back Transactions in existence at such time (other than any Sale and Lease-Back Transaction that, if such Sale and Lease-Back Transaction had been a mortgage, would have been permitted by Section 10.05(a), other than Sale and Lease-Back Transactions permitted by Section 10.10 because the commitment by or on behalf of the purchaser was obtained no later than eighteen (18) months after the later of events described in (i) or (ii) of Section 10.10, and other than Sale and Lease-Back Transactions as to which application of amounts have been made in accordance with clause (z) of Section 10.10), does not at the time exceed the greater of ten percent (10%) of Net Tangible Assets or ten percent (10%) of Capitalization.

(c) If at any time the Company shall issue, assume, or guarantee any Debt secured by any mortgage and if Section 10.05(a) requires that the Outstanding Notes be secured equally and ratably with such Debt, the Company will promptly execute, at its expense, any instruments necessary to so equally and ratably secure the Outstanding Notes and deliver the same to the Trustee along with:

(i) An Officers' Certificate stating that the covenant of the Company contained in Section 10.05(a) has been complied with; and

(ii) An Opinion of Counsel to the effect that the Company has complied with the covenant contained in Section 10.05(a), and that any instrument executed by the Company in the performance of such covenant complies with the requirements of such covenant.

In the event that the Company shall hereafter secure Outstanding Notes equally and ratably with any other obligation or indebtedness pursuant to the provisions of this Section 10.05, the Trustee is hereby authorized to enter into an indenture or agreement supplemental hereto and to take such action, if any, as it may, in its sole and absolute discretion, deem advisable to enable it to enforce effectively the rights of the Holders of Outstanding Notes so secured, equally and ratably with such other obligation or indebtedness.

Section 10.06 Corporate Existence.

Subject to the rights of the Company under Article VIII, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 10.07 Maintenance of Properties.

The Company shall cause (or, with respect to property owned in common with others, make reasonable effort to cause) all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and shall cause (or, with respect to property owned in common with others, make reasonable effort to cause) to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as, in

the judgment of the Company, may be necessary so that the business carried on in connection therewith may be properly conducted; provided, however, that nothing in this Section shall prevent the Company from discontinuing, or causing the discontinuance of, the operation and maintenance of any of it properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business.

Section 10.08 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in (a) Section 10.02 or any additional covenant or restriction specified with respect to the Notes of any series, or any Tranche thereof, as contemplated by Section 3.01 if before the time for such compliance the Holders of at least a majority in aggregate principal amount of the Outstanding Notes of all series and Tranches with respect to which compliance with Section 10.02 or such additional covenant or restriction is to be omitted, considered as one class, shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition and (b) Section 10.07 or Article VIII if before the time for such compliance the Holders of at least a majority in principal amount of Notes Outstanding under this Indenture shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition; but, in the case of (a) or (b), no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

Section 10.09 Calculation of Original Issue Discount.

The Company shall file with the Trustee promptly at the end of each calendar year a written notice specifying the amount of original issue discount (including daily rates and accrual periods) accrued on Outstanding Notes as of the end of such year.

Section 10.10 Restrictions on Sale and Lease-Back Transactions.

So long as any Notes are Outstanding, the Company will not enter into any Sale and Lease-Back Transaction with respect to any Operating Property if, in any case, the commitment by or on behalf of the purchaser is or was obtained more than eighteen (18) months after the later of (i) the completion of the acquisition, construction, or development of such Operating Property or (ii) the placing in operation of such Operating Property or of such Operating Property as constructed, developed, or substantially repaired, altered, or improved, unless (x) the Company would be entitled pursuant to Section 10.05(a) to issue, assume, or guarantee Debt secured by a mortgage on such Operating Property without equally and ratably securing the Notes or (y) the Company would be entitled pursuant to Section 10.05(b), after giving effect to such Sale and Lease-Back Transaction, to incur $1.00 of additional Debt secured by mortgages (other than mortgages permitted by Section 10.05(a)) or (z) the Company shall apply or cause to be applied, in the case of a sale or transfer for cash, an amount equal to the net proceeds thereof (but not in excess of the net book value of such Operating Property at the date of such sale or transfer) and, in the case of a sale or transfer otherwise than for cash, an amount equal to the fair value (as

determined by the Board of Directors) of the Operating Property so leased, to the retirement, within one hundred eighty (180) days after the effective date of such Sale and Lease-Back Transaction, of Debt of the Company ranking senior to, or equally with, the Notes; provided, however, that the amount to be applied to such retirement of Debt shall be reduced by an amount equal to the principal amount, plus any premium or fee paid in connection with any redemption in accordance with the terms of Debt voluntarily retired by the Company within such one hundred eighty (180) day period, excluding retirement pursuant to mandatory sinking fund or prepayment provisions and payments at maturity.

ARTICLE XI

REDEMPTION OF NOTES

Section 11.01 Applicability of Article.

Notes of any series, or any Tranche thereof, which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.01 for such Notes of such series or Tranche) in accordance with this Article.

Section 11.02 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Notes shall be evidenced by a Board Resolution, in an Officers' Certificate or in another manner specified as contemplated by Section 3.01 for such Notes. In case of any redemption at the election of the Company, the Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Notes of such series to be redeemed and, if applicable, of the tenor of the Notes to be redeemed. In the case of any redemption of Notes (a) prior to the expiration of any restriction on such redemption provided in the terms of such Notes or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Notes or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

Section 11.03 Selection by Trustee of Notes to be Redeemed.

If less than all the Notes of any series, or any Tranche thereof, are to be redeemed, the particular Notes to be redeemed shall be selected by the Trustee from the Outstanding Notes of such series or Tranche, not previously called for redemption, by such method as shall be provided for any particular series or, in the absence of any such provision, by such method of random selection as the Trustee shall deem fair and appropriate and which may, in any case, provide for the selection for redemption of portions (equal to the minimum authorized denomination for Notes of such series or any integral multiple thereof) of the principal amount of Notes of such series of a denomination larger than the minimum authorized denomination for Notes of such series; provided, however, that if, as indicated in an Officers' Certificate, the Company shall have offered to purchase all or any principal amount of the Notes then

Outstanding of any series, and less than all of such Notes as to which such offer was made shall have been tendered to the Company for such purchase, the Trustee, if so directed by Company Order, shall select for redemption all or any principal amount of such Notes which have not been so tendered.

The Trustee shall promptly notify the Company in writing of the Notes selected for redemption as aforesaid and, in case of any Notes selected for partial redemption as aforesaid, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Notes shall relate, in the case of any Notes redeemed or to be redeemed only in part, to the portion of the principal amount of such Notes which has been or is to be redeemed.

Section 11.04 Notice of Redemption.

Except as otherwise specified as contemplated by Section 3.01 for Notes of any series, or Tranche thereof, notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Notes to be redeemed, at his address appearing in the Note Register.

All notices of redemption shall identify the Notes to be redeemed (including CUSIP number) and shall state:

(1) the Redemption Date,

(2) the Redemption Price,

(3) if less than all the Outstanding Notes of any series or Tranche and of a specified tenor consisting of more than a single Note are to be redeemed, the identification (and, in the case of partial redemption of any such Notes, the principal amounts) of the particular Notes to be redeemed and, if less than all the Outstanding Notes of any series or Tranche and of a specified tenor consisting of a single Note are to be redeemed, the principal amount of the particular Note to be redeemed,

(4) that on the Redemption Date the Redemption Price will become due and payable upon each such Note to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,

(5) the place or places where each such Note is to be surrendered for payment of the Redemption Price,

(6) that the redemption is for a sinking fund, if such is the case, and

(7) such other matters as the Company shall deem desirable or appropriate.

Unless otherwise specified with respect to any Notes of any series or Tranche thereof in accordance with Section 3.01, with respect to any notice of redemption of Notes at the election of the Company, unless, upon the giving of such notice, such Notes shall be deemed to have been paid in accordance with Article IV, such notice may state that such redemption shall be conditional upon the receipt by the Paying Agent or Agents for such Notes, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest, if any, on such Notes and that if such money shall not have been so received such notice shall be of no force or effect and the Company shall not be required to redeem such Notes. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and within a reasonable time thereafter notice shall be given, in the manner in which the notice of redemption was given, that such money was not so received and such redemption was not required to be made, and the Paying Agent or Agents for the Notes otherwise to have been redeemed shall promptly return to the Holders thereof any of such Notes which had been surrendered for payment upon such redemption.

Notice of redemption of Notes to be redeemed at the election of the Company, and any notice of non-satisfaction of a condition for redemption as aforesaid, shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company. Notice of mandatory redemption of Securities shall be given by the Trustee in the name and at the expense of the Company.

Section 11.05 Deposit of Redemption Price.

On or prior to any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest, if any, on, all the Notes which are to be redeemed on that date.

Section 11.06 Notes Payable on Redemption Date.

Notice of redemption having been given as aforesaid, and the conditions, if any, set forth in such notice having been satisfied, the Notes so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless, in the case of an unconditional notice of redemption, the Company shall default in the payment of the Redemption Price and accrued interest) such Notes shall cease to bear interest. Upon surrender of any such Note for redemption in accordance with said notice, such Note shall be paid by the Company at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.01 with respect to Notes of any series, or Tranche thereof, any installment of interest on any Note, the Stated Maturity of which is on or prior to the Redemption Date will be payable to the Holders of such Notes, or one or more Predecessor Notes, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.07.

Section 11.07 Notes Redeemed in Part.

Any Note which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Note without service charge, a new Note or Notes of the same series and Tranche and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Note so surrendered.

ARTICLE XII

SINKING FUNDS

Section 12.01 Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of Notes of any series, or any Tranche thereof, except as otherwise specified as contemplated by Section 3.01 for Notes of such series or Tranche.

The minimum amount of any sinking fund payment provided for by the terms of any Notes of any series, or any Tranche thereof, is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of Notes of any series, or any Tranche thereof, is herein referred to as an "optional sinking fund payment". If provided for by the terms of any Notes of any series, or any Tranche thereof, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.02. Each sinking fund payment shall be applied to the redemption of Notes of the series or Tranche as provided for by the terms of such Notes.

Section 12.02 Satisfaction of Sinking Fund Payments with Notes.

The Company (1) may deliver Outstanding Notes of a series, or any Tranche thereof (other than any previously called for redemption) and (2) may apply as a credit Notes of such series or Tranche, which have been (a) redeemed either at the election of the Company pursuant to the terms of such Notes or through the application of permitted optional sinking fund payments pursuant to the terms of such Notes or (b) purchased by the Company in the open market, by tender offer or otherwise, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Notes of such series required to be made pursuant to the terms of such Notes as and to the extent provided for by the terms of such Notes; provided that the Notes to be so credited have not been previously so credited. The Notes to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Notes so to be redeemed, for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 12.03 Redemption of Notes for Sinking Fund.

Not less than 45 days prior to each sinking fund payment date for the Notes of any series, or any Tranche thereof, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for such series or Tranche pursuant to the terms of such Notes, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Notes of such series or Tranche pursuant to Section 12.02 and stating the basis for such credit and that such Notes have not been previously so credited and will also deliver to the Trustee any Notes to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Notes to be redeemed upon such sinking fund payment date in the manner specified in Section 11.03 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.04. Such notice having been duly given, the redemption of such Notes shall be made upon the terms and in the manner stated in Sections 11.06 and 11.07.

ARTICLE XIII

DEFEASANCE AND COVENANT DEFEASANCE

Section 13.01 Company's Option to Effect Defeasance or Covenant Defeasance.

The Company may elect, at its option at any time, to have Section 13.02 applied to any Notes or the Notes of any series, or any Tranche thereof, as the case may be, designated pursuant to Section 3.01 as being defeasible pursuant to such Section 13.02, in accordance with any applicable requirements provided pursuant to Section 3.01 and upon compliance with the conditions set forth below in this Article. The Company may elect, at its option at any time, to have Section 13.03 applied to the Notes or the Notes of any series, but not to Tranches thereof alone, as the case may be, designated pursuant to Section 3.01 as being defeasible pursuant to Section 13.03, in accordance with any applicable requirements provided pursuant to Section 3.01 and upon compliance with the conditions set forth below in this Article. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 3.01 for such Notes.

Section 13.02 Defeasance and Discharge.

Upon the Company's exercise of its option (if any) to have this Section applied to any Notes or the Notes of any series, or any Tranche thereof, as the case may be, the Company shall be deemed to have been discharged from its obligations with respect to such Notes as provided in this Section on and after the date the conditions set forth in Section 13.04 are satisfied (hereinafter called "Defeasance"). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by such Notes and to have satisfied all its other obligations under such Notes and this Indenture insofar as such Notes are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Notes to receive, solely from the trust fund described in Section 13.04 and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Notes when

payments are due, (2) the Company's obligations with respect to such Notes under Sections 3.04, 3.05, 3.06, 10.02 and 10.03 and with respect to the Trustee under Section 6.07, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article. Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section applied to any Notes notwithstanding the prior exercise of its option (if any) to have Section 13.03 applied to such Notes.

Section 13.03 Covenant Defeasance.

Upon the Company's exercise of its option (if any) to have this Section applied to the Notes or the Notes of any series, but not to Tranches thereof alone, as the case may be, (1) the Company shall be released from its obligations under Sections 10.05, 10.07, and 10.10, and any covenants provided pursuant to Section 3.01(19), 9.01(2), 9.01(6) or 9.01(7) and 5.01(7) for the benefit of the Holders of such Notes and (2) the occurrence of any event specified in Section 5.01(4) (with respect to any of Sections 10.05, 10.07, and 10.10, and any such covenants provided pursuant to Section 3.01(19), 9.01(2), 9.01(6) or 9.01(7)) and 5.01(7)) shall be deemed not to be or result in an Event of Default with respect to such Notes as provided in this Section on and after the date the conditions set forth in Section 13.04 are satisfied (hereinafter called "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that, with respect to such Notes, the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 5.01(4)), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Notes shall be unaffected thereby.

Section 13.04 Conditions to Defeasance or Covenant Defeasance.

The following shall be the conditions to the application of Section 13.02 or Section 13.03, as the case may be:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Notes, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee to pay and discharge, the principal of and any premium and interest on such Notes on the respective Stated Maturities or on any Redemption Date established pursuant to Clause (9) below, in accordance with the terms of this Indenture and such Notes. As used herein, "U.S. Government Obligation" means (x) any security which is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United

States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(2) In the event of an election to have Section 13.02 apply to any Notes or the Notes of any series, or any Tranche thereof, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Notes will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Notes and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 13.03 apply to the Notes or the Notes of any series, but not Tranches thereof alone, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Notes will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Notes and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that neither such Notes nor any other Notes of the same series, as the case may be, if then listed on any securities exchange, will be delisted as a result of such deposit.

(5) No event which is, or after notice or lapse of time or both would become, an Event of Default with respect to such Notes or any other Notes shall have occurred and be continuing at the time of such deposit or, with regard to any such event specified in Sections 5.01(5) and (6), at any time on or prior to the 90th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 90th day).

(6) Such Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Notes are in default within the meaning of such Act).

(7) Such Defeasance or Covenant Defeasance shall not result in a breach or violation

of, or constitute a default under, any other agreement or instrument to which the Company is a party or by which it is bound.

(8) Such Defeasance or Covenant Defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act unless such trust shall be registered under such Act or exempt from registration thereunder.

(9) If the Notes are to be redeemed prior to Stated Maturity (other than from mandatory sinking fund payments or analogous payments), notice of such redemption shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee shall have been made.

(10) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

Section 13.05 Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions.

Subject to the provisions of the last paragraph of Section 10.03, all money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 13.04 in respect of any Notes shall be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Notes, of all sums due and to become due thereon in respect of principal and any premium and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 13.04 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Notes.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 13.04 with respect to any Notes which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Notes.

Section 13.06 Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Notes by reason of any order or judgment of any court or

governmental authority enjoining, restraining or otherwise prohibiting such application, then the obligations under this Indenture and such Notes from which the Company has been discharged or released pursuant to Section 13.02 or 13.03 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such Notes, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.05 with respect to such Notes in accordance with this Article; provided, however, that if the Company makes any payment of principal of or any premium or interest on any such Note following such reinstatement of its obligations, the Company shall be subrogated to the rights (if any) of the Holders of such Notes to receive such payment from the money so held in trust.

ARTICLE XIV

MEETINGS OF HOLDERS; ACTION WITHOUT MEETING

Section 14.01 Purposes for Which Meetings May Be Called.

A meeting of Holders of Notes of one or more, or all, series, or one or more Tranches thereof, may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Notes of such series or Tranches.

Section 14.02 Call, Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Notes of one or more, or all, series, or one or more Tranches thereof, for any purpose specified in Section 14.01, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine, or, with the approval of the Company, at any other place. Notice of every such meeting, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.06, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) If the Trustee shall have been requested to call a meeting of the Holders of Notes of one or more, or all, series, or one or more Tranches thereof, by the Company or by the Holders of 33% in aggregate principal amount of Notes of all of such series and Tranches, considered as one class, for any purpose specified in Section 14.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have given the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Notes of such series and Tranches, in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or in such other place as shall be determined or approved by the Company, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in clause (a) of this Section.

(c) Any meeting of Holders of Notes of one or more, or all, series, or one or more

Tranches thereof, shall be valid without notice if Holders of all Outstanding Notes of such series, or Tranches are present in person or by proxy and if representatives of the Company and the Trustee are present, or notice is waived in writing before or after the meeting by the Holders of all Outstanding Notes of such series or Tranches or by such of them as are not present at the meeting in person or by proxy, and by the Company and the Trustee.

Section 14.03 Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Notes of one or more, or all, series, or Tranche or Tranches thereof, a Person shall be (a) a Holder of one or more Outstanding Notes of such series, or Tranches, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Notes of such series or Tranches by such Holder or Holders. The only persons who shall be entitled to attend any meeting of Holders of Notes of any series or Tranches shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 14.04 Quorum: Action.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Notes of the series and Tranches with respect to which a meeting shall have been called as hereinbefore provided, considered as one class, shall constitute a quorum for a meeting of Holders of Notes of such series and Tranches; provided, however, that if any action is to be taken at such meeting which this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Notes of such series and Tranches, considered as one class, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Notes of such series and Tranches, considered as one class, shall constitute a quorum. In the absence of a quorum within one hour of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Notes of such series and Tranches, be dissolved. In any other case the meeting may be adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Except as provided by clause (e) of Section 14.05, notice of the reconvening of any meeting adjourned for more than 30 days shall be given as provided in clause (a) of Section 14.02 not less than ten days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Notes of such series and Tranches, which shall constitute a quorum.

Except as limited by Section 9.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in aggregate principal amount of the Outstanding Notes of the series and Tranches with respect to which such meeting shall have been called, considered as one class; provided, however, that, except as so limited, any resolution with respect to any action which this Indenture expressly provides may be taken by the Holders of a specified

percentage, which is less than a majority, in principal amount of the Outstanding Notes of such series and Tranches, considered as one class, may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Notes of such series and Tranches, considered as one class.

Any resolution passed or decision taken at any meeting of Holders of Notes duly held in accordance with this Section shall be binding on all the Holders of Notes of the series and Tranches, with respect to which such meeting shall have been held, whether or not present or represented at the meeting.

Section 14.05 Attendance at Meetings; Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Attendance at meetings of Holders of Notes may be in person or by proxy; and, to the extent permitted by law, any such proxy shall remain in effect and be binding upon any future Holder of the Notes with respect to which it was given unless and until specifically revoked by the Holder or future Holder of such Notes before being voted.

(b) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Notes in regard to proof of the holding of such Notes and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Notes shall be proved in the manner specified in Section 1.04 and the appointment of any proxy shall be proved in the manner specified in Section 1.04. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.04 or other proof.

(c) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in clause (b) of Section 14.02, in which case the Company or the Holders of Notes of the series and Tranches calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in aggregate principal amount of the Outstanding Notes of all series and Tranches represented at the meeting, considered as one class.

(d) At any meeting each Holder or proxy shall be entitled to one vote for each $1 principal amount of Notes held or represented by him or her; provided, however, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Note or proxy.

(e) Any meeting duly called pursuant to Section 14.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in aggregate principal

amount of the Outstanding Notes of all series and Tranches represented at the meeting, considered as one class; and the meeting may be held as so adjourned without further notice.

Section 14.06 Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Notes, of the series and Tranches, with respect to which the meeting shall have been called, held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports of all votes cast at the meeting. A record of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 14.02 and, if applicable, Section 14.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 14.07 Action Without Meeting.

In lieu of a vote of Holders at a meeting as hereinbefore contemplated in this Article, any request, demand, authorization, direction, notice, consent, waiver or other action may be made, given or taken by Holders by written instruments as provided in Section 1.04.

ARTICLE XV

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 15.01 Liability Solely Corporate.

No recourse shall be had for the payment of the principal of or premium, if any, or interest, if any, on any Notes, or any part thereof, or for any claim based thereon or otherwise in respect thereof, or of the indebtedness represented thereby, or upon any obligation, covenant or agreement under this Indenture, against any incorporator, stockholder, employee, officer or director, as such, past, present or future of the Company or of any predecessor or successor corporation (either directly or through the Company or a predecessor or successor corporation), whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Indenture and all Notes are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any incorporator, stockholder, employee, officer or director, past, present or future, of the Company or of any predecessor or successor corporation, because

of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the Notes or to be implied herefrom or therefrom, and that any such personal liability is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution of this Indenture and the issuance of the Notes.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: _____
Mitchell J. Marzec
Treasurer

Attest:

_____
Name:
Assistant Secretary

THE CHASE MANHATTAN BANK,
as Trustee

By: _____
Patricia Morabito
Vice President

Attest:

_____
Name:
Senior Trust Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 6th day of August before me personally came Mitchell J. Marzec, to me known, who, being by me duly sworn, did depose and say that he is Treasurer of Public Service Company of New Mexico, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

Notary Public

TANYA R. SRIPANICH
Notary Public, State of New York
No. 31-5067918
Qualified in New York County
Commission Expires Oct. 28, 1998

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 6th day of August, before me personally came Patricia Morabito, to me known, who, being by me duly sworn, did depose and say that she is Vice President of The Chase Manhattan Bank, one of the corporations described in and which executed the foregoing instrument; that she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that she signed her name thereto by like authority.

Notary Public

EMILY FAYAN
Notary Public, State of New York
No. 24-4737006
Qualified in Kings County
Certificate Filed in New York County
Commission Expires December 31, 1999

PNM EXHIBIT _____ (TRH-4)

is included on the following pages

ESTIMATED FINANCIAL TRANSACTION EXPENSES

FINANCIAL TRANSACTION	Estimated Expense
Mandatory Share Exchange	$ 442,000
$400 Million SUNs Exchange	$ 2,961,000
$140 Million New SUNs Offering	$ 1,229,000
$150 Million Revolver at UtilityCo	$ 435,000
$150 Million Revolver at HoldingCo/PowerCo	$ 435,000
$12.8 Million Preferred Stock Exchange	$ 232,000
$500 Million Bridge Bank Loan	$ 322,000
Total Estimated Financial Transaction Expenses	$ 6,056,000

Footnotes:

1. The amounts reflected above are just estimates and the actual expenses incurred executing these transactions may be more or less than estimated.
2. Lessor consents costs have not been estimated and are not included in the amounts reflected above.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	**Utility Case No. 3137 (PART II)**
PUBLIC SERVICE COMPANY OF NEW MEXICO	)	
PETITIONER.	)	

AFFIDAVIT

STATE OF NEW MEXICO)
) **ss**
COUNTY OF BERNALILLO)

Terry R. Horn, upon being first duly sworn according to law, under oath, deposes and states: That I have read the foregoing Application and Testimony including Exhibits and it is true and accurate based on my own personal knowledge and belief.

SIGNED this 17th day of November, 1999.

TERRY R. HORN

SUBSCRIBED AND SWORN to before me this 17th day of November, 1999.

OFFICIAL SEAL
CINDY C. PENNINGTON
Notary Public
State of New Mexico
My Commission Expires June 1, 2002

NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

June 1, 2002

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S TRANSITION PLAN FILED PURSUANT TO THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999	)	
	)	**Utility Case No. 3137**
PART II – AUTHORIZATIONS REQUESTED IN CONNECTION WITH PNM'S SEPARATION PLAN	)	**PART II - Separation Plan**
PUBLIC SERVICE COMPANY OF NEW MEXICO	)	
PETITIONER.	)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **"Application and Direct Testimony and Exhibits of Roger J. Flynn, Thomas G. Sategna, and Terry R. Horn"** was mailed first-class, postage prepaid this 17th day of November, 1999 to each of the following individuals:

Steven S. Michel, Esq.
368 Hillside Avenue
Santa Fe, NM 87501

Richard N. Carpenter, Esq.
Sunny J. Nixon, Esq.
Carpenter & Nixon, LLP
P.O. Box 1837
Santa Fe, NM 87504-1837

Nann Houliston, Esq.
Utility Counsel
1 Civic Plaza, Room 3013
Albuquerque, NM 87102

F. Choi Lee, Director Energy Management
Phelps Dodge Mining Company
2600 N. Central Avenue
Phoenix, AZ 85004-3014

Ray Stanley
Ray Stanley & Associates
1750 N. Collins, Suite 209
Richardson, TX 75080

Randy E. Lovato, Esq.
Plains Electric Gen. & Trans. Coop. Inc.
2401 Aztec Road N.E.
Albuquerque, NM 87107

Andres Valdez
140 Washington, S.E.
Albuquerque, NM 87108

Jeffrey D. Rudolph
Manager of Rates and Regulatory Affairs
Plains Electric Gen. & Trans. Coop. Inc.
P.O. Box 6551
Albuquerque, NM 87197-6551

Dr. John C. Tysseling
Energy, Economic &
Environmental Consultants
One Sycamore Plaza
5600 Wyoming Blvd. N.E., Suite 225
Albuquerque, NM 87109

Michael D. Dirmeier
Georgetown Consulting Group
456 Main Street
Ridgefield, CT 06877

Jeff Taylor, Esq.
Assistant Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Lewis O. Campbell, Esq.
Campbell & Snyder LLP
P.O. Box 30605
Albuquerque, NM 87190-0605

I. David Rosenstein
Lundberg, Marshall & Associates
Post Office Box 429349
Cincinnati, OH 45242-9349

Bruce C. Throne, Esq.
P. O. Box 9270
Santa Fe, NM 87504-9270

Leslie J. Lawner, Esq.
Enron Capital & Trade Resources Corp.
712 North Lea
Roswell, NM 88201

John Nielsen
Land and Water Fund of the Rockies
2260 Baseline Road, Suite 200
Boulder, CO 80302

Robert Bienstock, Esq.
University Counsel
150 Scholes Hall
University of New Mexico
Albuquerque, NM 87131

Michael B. Campbell, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87501

John Stutz
Tellus Institute
11 Arlington Street
Boston, Massachusetts 02116-3411

Jim Dittmer
Utilitech, Inc.
740 North Blue Parkway, Suite 204
Lee's Summit, MO 64086

Steven Ellinwood, Esq.
Law Department
Pittsburg & Midway Coal Mining Company
6400 South Fiddler's Green Circle
Englewood, CO 80111-4991

Jim Smith
Tri-Gas, Inc.
8200 Washington NE
Albuquerque, NM 87113

Garth Ashpaugh
Public Resources Management Group
225 South Swoope, Suite 211
Maitland, FL 32751

Fred Saffer
Fred Saffer & Associates
2111 East Michigan Street, Suite 219
Orlando, FL 32806

Lt. Col. Steven A. Gabrial
Capt. David Dusseau
Utility Litigation Team
General Litigation Team
139 Barnes Dr., Suite 1
Tyndall AFB, FL 32403-5319

Daniel A. Najjar
300 Paseo De Peralta, Suite 200
P.O. Box 4265
Santa Fe, NM 87501

James K Tarpey
Director, Regulatory Affairs
Enron Capital & Trade Resources Corp.
1 Tabor Center
1200 17th Street, Suite 2750
Denver, CO 80202

Richard Mietz, Esq.
NM Public Regulation Commission
224 East Palace Avenue
Santa Fe, NM 87501-2013

Sally Ann Stinner
Lundberg, Marshall & Associates
P.O. Box 4360
Rockville, MD 20849-4360

Nelson Gabay
810-A Aztec NW
Albuquerque, NM 87107

Cydney Beadles-Salazar, Esq.
Chief Staff Counsel
NM Public Regulation Commission
224 East Palace Avenue
Santa Fe, NM 87501

Timothy M. Sheehan, Esq.
Sheehan, Sheehan & Stelzner, P.A.
Post Office Box 271
Albuquerque, NM 87103

Tito D. Chavez, Esq.
Bernalillo County Legal Dept.
1 Civic Plaza, 10th Floor
Albuquerque, NM 87102

Stephen L. Joseph
3101 Old Pecos Trail
Santa Fe, NM 87501

DATED this 17th day of November, 1999.

By: Charles W. Gunter

Charles W. Gunter
Regulatory Project Manager
Public Service Company of New Mexico
Alvarado Square, MS 0920
Albuquerque, New Mexico 87158
(505) 241-2212

#30260

Exhibit 4 NPR

PROFORMA MANZANO ENERGY REVENUES FROM POWER SALES AT RATES SET BY FERC AND THE PRC AND OTHER REVENUES FROM REGULATORY SOURCES

Revenue Source	**August – Dec. 2000 Revenues ($thousands)**	**Jan. – Dec. 2001 Revenues ($thousands)**
Revenue from Retail Bundled Service		
Revenue from FERC Wholesale Third-Party Contract Customers		
Total Revenue from Regulated Power Sales		
Stranded Cost Recovery		
Decommissioning Cost Recovery		
Total Revenue from Regulated Power Sales and Regulatory Sources		
Total Revenue from Market-Based Tariff Sales		
Total Revenue		
Ratio of Revenue from Regulated Power Sales and Regulatory Sources to Total Revenue		

Exhibit 5 NPR
PROFORMA MANZANO ENERGY OPENING BALANCE SHEET

Assets (all figures in $thousands)	**Opening Amount**
Plant in Service	
CWIP	
Accumulated Depreciation	
Total Utility Plant	
Non-Utility Investment	
Current Assets	
Cash/Short-Term Investments	
Long-Term Investments	
Accounts Receivable	
Other Current Assets	
Total Current Assets	
Deferred Debits	
Total Assets	
Liabilities & Equity	
Equity	
Long-Term Debt	
Stock	
Retained Earnings	
Total	
Current Liabilities	
Short-Term Debt	
Accounts Payable	
Other Current Liabilities	
Total	
Deferred Credits	
ADIT & ADITC	
Other Deferred Credits	
Total	
Total Liabilities & Equity	
Debt to equity ratio:	

Exhibit 6 NPR

PROFORMA FIVE-YEAR PROJECTED MANZANO ENERGY INCOME STATEMENT

(All quantities in $thousands)	2000	2001	2002	2003	2004
Revenues					
Rev. from Bundled Service					
Stranded Cost Collection					
Nuclear Decommissioning Recovery					
FERC Tariff Customers					
Other					
Total					
Variable Costs					
General					
Total					
Gross Margin					
Non-Fuel O&M					
Direct					
Production Nuclear					
Palo Verde Leases					
Corporate					
Total					
Other Taxes					
Depreciation					
Income Taxes					
Interest Expense					
Total Expenses					
Other Income & Deductions					
Net Income					

Exhibit 7 NPR

PROFORMA FIVE-YEAR PROJECTED MANZANO ENERGY CASH FLOW STATEMENT

(All quantities in $thousands)	2000	2001	2002	2003	2004
CASH RECEIPTS					
Retail Revenues					
Revenues from Bundled Service					
Stranded Cost Collection					
Nuclear Decommissioning Recovery					
FERC Tariff Customers					
Other					
Total Cash Revenues					
Other Income					
Interest Income					
Short Term					
Long Term					
Total Interest Income					
Other Sources of Cash					
TOTAL CASH RECEIPTS					
CASH DISBURSEMENTS					
Variable Costs					
O&M					
Direct					
Production Nuclear					
Palo Verde Leases					
Corporate					
Total Cash O&M					
Total OtherTaxes					
Cash Income Taxes					
Interest Expense					
Short Term					
Long Term					
Other Interest Expense					
Total Interest Expense					
Other Deductions					
Net Construction Expenditures					
TOTAL DISBURSEMENTS					
NET CASHFLOW					
CASH, BEGINNING OF YEAR					
CASH, END OF YEAR					

Exhibit 8 NPR

PROFORMA MANZANO ENERGY'S SHARE OF PALO VERDE COSTS AND AVAILABLE FUNDS TO DEFRAY THOSE COSTS

ELEMENTS OF COST ($THOUSANDS)	YEAR 2000	2001	2002	2003	2004
Variable Costs					
Palo Verde Fuel Cash Expense					
Palo Verde Fuel Amortization Expense					
Total Variable Costs					
Palo Verde Decommissioning Costs					
Palo Verde Generation Costs					
Palo Verde O&M					
Palo Verde A & G					
Total Generation Costs					
Total Nuclear Related Costs					
1/2 Year Costs					
FUNDS AVAILABLE TO MEET NUCLEAR RELATED COSTS					
Beginning Cash Balance					
Net Cash Flow					
Ending Balance					

ATTACHMENT A

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

Terry R. Horn, upon being first duly sworn according to law, under oath, deposes and states:

1. I am the Vice President and Treasurer of Public Service Company of New Mexico ("PNM"). I have reviewed the Exhibits to the document entitled "Information Submittal In Support Of Application For NRC Consent To Proposed Indirect Transfers Of Control And Approval Of License Amendments To Reflect Name Change" and believe them to be true and correct.

2. Certain of the said Exhibits, specifically Exhibits 4, 5, 6, 7 and 8, contain commercial and financial information relating to the current and estimated future business operations of PNM and its affiliates that is considered confidential by PNM. Other than its disclosure in the cited Exhibits, the information in question is held in confidence and is generally not disclosed to parties outside PNM. Internal distribution of this information within PNM is limited to essential PNM personnel.

3. Public disclosure of the information contained in the cited Exhibits would be likely to cause substantial harm to PNM's competitive position in the electric power generation market because the information includes PNM's planning estimates of its economic performance, market penetration estimates and other sensitive business data.

4. For these reasons, I believe that the information contained in the cited Exhibits qualifies for withholding from public disclosure pursuant to 10 C.F.R. § 2.790(a)(4) and should be treated as confidential.

Terry R. Horn

SIGNED this 3rd day of March, 2000.

NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

5/3/00