

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE )  
COMPANY OF NEW MEXICO'S )  
CONSOLIDATED APPLICATION FOR )  
APPROVALS FOR THE ABANDONMENT, ) 19-\_\_\_\_\_-UT  
FINANCING, AND RESOURCE REPLACEMENT )  
FOR SAN JUAN GENERATING STATION )  
PURSUANT TO THE ENERGY TRANSITION ACT )**

**DIRECT TESTIMONY  
OF  
CHARLES N. ATKINS II**

**July 1, 2019**

**NMPRC CASE NO. 19-\_\_\_\_-UT  
INDEX TO THE DIRECT TESTIMONY OF  
CHARLES N. ATKINS II**

**WITNESS FOR  
PUBLIC SERVICE COMPANY OF NEW MEXICO**

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PNM Exhibit CNA-1	Professional Resume of Charles N. Atkins II
PNM Exhibit CNA-2	Internal Revenue Service Revenue Procedure 2005-62
PNM Exhibit CNA-3	A list of utility securitization transactions since 1997
PNM Exhibit CNA-4	The Securities Firm Memorandum and Supporting Exhibits

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1

**I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND CURRENT**  
3 **EMPLOYMENT POSITION.**

4 **A.** My name is Charles N. Atkins II. I am a Senior Advisor at Guggenheim  
5 Securities, LLC, in New York. My business address is 330 Madison Avenue,  
6 New York, New York 10017.

7

8 **Q. PLEASE SUMMARIZE YOUR TESTIMONY IN THIS PROCEEDING.**

9 **A.** Pursuant to the Energy Transition Act, Public Service Company of New Mexico  
10 (“PNM” or “Company”) has requested that the New Mexico Public Regulation  
11 Commission (“Commission”) adopt the proposed Financing Order enabling the  
12 Company to use securitization as a means to finance certain Energy Transition  
13 Costs and related upfront financing costs associated with the proposed  
14 abandonment of the San Juan coal plant. My testimony provides background for  
15 the Financing Order proposed by the Company and describes how the proposed  
16 securitization is structured to achieve the highest possible credit ratings and price  
17 at the lowest market-clearing interest costs consistent with investor demand and  
18 market conditions at the time of pricing.

19

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1 **Q. PLEASE DISCUSS YOUR EDUCATIONAL BACKGROUND AND**  
2 **PROFESSIONAL EXPERIENCE.**

3 **A.** I am a graduate of Harvard Law School, with a Juris Doctor degree. I am also a  
4 graduate of Howard University's College of Arts and Sciences with a Bachelor of  
5 Arts degree in Political Science, with minor concentrations in Economics,  
6 Mathematics and Sociology (Honors Program, Magna Cum Laude, Phi Beta  
7 Kappa).

8  
9 My relevant professional experience includes 23 years of structured finance  
10 investment banking at Morgan Stanley, where I focused on corporate structured  
11 finance and the securitization of consumer, operating and new assets. I also served  
12 as an independent consultant to utilities, financial sponsors and other financial  
13 institutions as Chief Executive Officer of Atkins Capital Strategies LLC, from  
14 2013 to 2017. I joined Guggenheim Securities, LLC during 2017. I have been  
15 heavily involved in utility securitizations, and played a lead banking role in the  
16 first utility stranded cost securitization, which was the \$2.9 billion transaction for  
17 Pacific Gas and Electric in 1997. At Morgan Stanley, and as an independent  
18 consultant, I served as an advisor to utilities or as the senior Morgan Stanley  
19 banker where Morgan Stanley served as a lead or joint lead underwriter for 25  
20 utility securitization bond issues, plus two utility ring-fencing reorganization  
21 transactions totaling more than \$18.8 billion. I have provided testimony as an  
22 expert witness on behalf of utilities before regulatory commissions in Arkansas,

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1 Louisiana, Maryland and Texas. A copy of my professional resume is  
2 attached as PNM Exhibit CNA-1.  
3

4 **Q. DO YOU POSSESS ANY PROFESSIONAL LICENSES RELATED TO**  
5 **THE SECURITIES INDUSTRY?**

6 **A.** Yes. I am Series 7 (General Securities Representative Qualification) qualified by  
7 the Financial Industry Regulatory Authority that allows an individual to solicit,  
8 purchase, or sell all securities products, including asset-backed securities. I am  
9 also Series 79 (Investment Banking Representative) qualified, which allows an  
10 individual to advise on and facilitate debt and equity offerings (public offerings or  
11 private placements), mergers and acquisitions, tender offers, financial  
12 restructurings, asset sales, divestitures, corporate reorganizations and business  
13 combination transactions.  
14

**II. PURPOSE OF TESTIMONY**

15  
16 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

17 **A.** I am testifying on behalf of PNM.  
18

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

20 **A.** The purpose of my testimony is to:

- 21 1. Provide background information on the use of utility securitization in other  
22 jurisdictions (“utility securitization” is a generic term used to refer to

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1 securitizations for a number of different recovery purposes; some of the  
2 names used include rate reduction bonds, stranded cost bonds, energy  
3 transition bonds, storm recovery bonds, system restoration bonds, and  
4 restructuring bonds, among other names); as well as discuss some of the  
5 basic framework elements of the proposed Energy Transition Bonds;

- 6 2. Present a proposed preliminary energy transition bond structure and discuss  
7 certain structuring considerations; and
- 8 3. Discuss several of the key commercial terms of proposed Energy Transition  
9 Bonds that PNM expects will be required for a successful issuance of the  
10 Bonds, as well as, key provisions of the proposed Financing Order.

11

12 **Q. WHAT EXHIBITS TO THE SECURITIZATION APPLICATION DO YOU**  
13 **SPONSOR?**

14 **A.** I am sponsoring the following exhibits described below and attached to my  
15 testimony:

- 16 • PNM Exhibit CNA-1: Professional resume of Charles N. Atkins II
- 17 • PNM Exhibit CNA-2: Internal Revenue Service Revenue Procedure  
18 2005-62
- 19 • PNM Exhibit CNA-3: A list of utility securitization transactions since  
20 1997
- 21 • PNM Exhibit CNA-4: The Securities Firm Memorandum addressed to the  
22 Company, required by Section 4 (B) (5) of the Energy Transition Act,  
23 which includes details of the preliminary proposed transaction structure

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1 and compares the proposed transaction to the “AAAsf” rating criteria  
2 published by Fitch Ratings, Inc. (the “sf” designation is used by Fitch for  
3 structured finance ratings). Fitch Ratings, Inc. is a nationally recognized  
4 statistical rating organization for issuances similar to the proposed energy  
5 transition bond transaction. The current utility securitization ratings  
6 criteria published by Fitch Ratings, Inc., as well as the State Board of  
7 Finance attestation concerning the qualifications of Guggenheim  
8 Securities, LLC to prepare the Securities Memorandum, are included  
9 among several Supporting Exhibits to the Securities Firm Memorandum.  
10

11 **III. SECURITIZATION BACKGROUND**

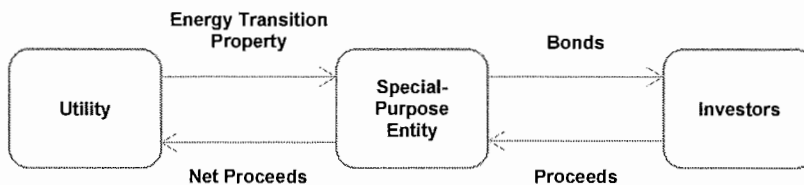
12 **Q. PLEASE PROVIDE A BASIC DESCRIPTION OF SECURITIZATION.**

13 **A.** Securitization is the process in which an owner of a cash flow-generating asset  
14 sells the asset for an upfront payment, done in a manner that legally isolates (or  
15 de-links) the cash flow-generating asset from the credit quality of the  
16 owner/seller. The sale process is intended to protect investors from any changes  
17 in credit circumstances, or even the bankruptcy, of the entity that sold the asset.  
18 Therefore, the “credit” of a securitization is the ability of the legally isolated asset  
19 to produce a set of payments (or cash flows) for investors, who purchased a  
20 securitized interest in the asset. Fixed income debt securities collateralized by the  
21 legally isolated asset are issued to investors, and those investors rely solely on the

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1           legally isolated asset and associated cash flows to pay interest and principal on the  
2           issued debt securities. The debt securities are non-recourse to the selling entity.

3  
4           In the context of utility securitization, the underlying cash flow-generating asset is  
5           an intangible property right authorized by the state legislation and created  
6           pursuant to a financing order. This property right includes the right to impose  
7           upon the utility’s customers charges required to pay the interest, principal and  
8           other ongoing financing costs associated with the debt securities issued in the  
9           securitization on a timely basis, as scheduled. This property right is also referred  
10          to as the collateral for the transaction. The utility sells the property right to a  
11          newly-established, special-purpose entity (“SPE”) which, as its name implies,  
12          functionally does nothing other than purchase the collateral and issue bonds to  
13          investors to fund that purchase. The conveyance of the property right from the  
14          utility to the SPE is also referred to as a “true sale,” as it legally isolates the  
15          collateral from the seller of the collateral. A true sale of the collateral supports the  
16          “bankruptcy remoteness” of the SPE and the securitization debt. To have the  
17          funds needed to purchase the collateral, the SPE issues debt securities to  
18          investors, collateralized by the property right. In exchange for the issued debt,  
19          investors pay an upfront purchase price, which is passed through the SPE back to  
20          the utility. Below is a simplified indicative schematic of the transaction closing  
21          mechanics described above:





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1 In addition to the essential structure described above, the securitization process  
2 also includes another key component: ongoing collections of the cash generated  
3 by the collateral. Here, a trustee (“Trustee,” typically a commercial bank  
4 experienced with securitization trust services) and the utility play important roles.  
5 The utility will continue to perform its routine billing and collecting functions. In  
6 the context of securitization, this function is referred to as servicing and the utility  
7 takes on the role as the servicer. In addition to its routine billing and collecting  
8 functions, as servicer, the utility will also perform certain reporting duties with  
9 respect to the amount of money collected. The servicer will perform these  
10 functions for the SPE pursuant to a contractual arrangement known as the  
11 servicing agreement. The Trustee also plays an important role in the safekeeping  
12 of the ongoing collections and distributing them to investors. After receiving its  
13 collections, the servicer remits the monies to the SPE trust account held at the  
14 Trustee, which maintains those monies until it periodically remits them to  
15 investors according to a pre-determined set of payment priorities (the “waterfall”  
16 and schedule (typically semi-annually in utility securitizations). The Trustee  
17 serves as a representative of the bondholding investors and ensures that their  
18 rights are protected in accordance with the terms of the transaction.

19  
20 **Q. WHAT IS THE VOLUME OF UTILITY SECURITIZATIONS THAT**  
21 **HAVE BEEN TRANSACTED TO DATE, AND WHO ARE THE TYPICAL**  
22 **INVESTORS?**

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1    **A.**    Utility securitizations are structured based upon well-established legal and rating  
2           criteria and have been issued since 1997. These securitizations may have specific  
3           requirements for tax purposes, please see PNM Exhibit CNA-2. According to  
4           public records, including SEC registration filings, since 1997 to date, there have  
5           been 65 securitization transactions by or on behalf of investor-owned utilities.  
6           These transactions are well understood by many investors, and types of investors  
7           that have participated in utility securitizations include banks, institutional and  
8           retail trust funds, money managers, investment advisors, pension funds, insurance  
9           companies, securities lenders and state trust funds. I attach a list of investor-  
10          owned utility securitization transactions as PNM Exhibit CNA-3.

11

12    **Q.    HAVE OTHER COLLATERAL TYPES BEEN SECURITIZED IN A**  
13           **SIMILAR MANNER?**

14    **A.**    Yes, the market for securitized products or asset-backed securities (“ABS”) is  
15           very large. Examples of other collateral types include certain consumer-related  
16           cash flows, such as credit card receivables, auto loans, auto leases, and student  
17           loans. During 2018, an estimated \$516.9 billion of ABS was issued in the United  
18           States, and as of the end of May 2019, the year-to-date issuance for the U.S. ABS  
19           market has been over \$134.5 billion (Source: SIFMA, the leading trade  
20           association for broker-dealers, investment banks and asset managers in the United  
21           States). The investors who primarily purchase utility securitizations generally  
22           come from both the ABS market and the corporate fixed income debt market.

23

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1   **Q**    **PLEASE DESCRIBE THE FORMATION OF THE SPE THAT WILL**  
2           **ISSUE THE ENERGY TRANSITION BONDS.**

3   **A.**    PNM’s securitization transaction is generally expected to follow a process similar  
4           to the process for utility securitizations described above. PNM will form the SPE  
5           as a Delaware LLC, and a wholly-owned subsidiary of PNM. The SPE LLC  
6           Agreement will contain provisions designed to ensure that the SPE will be a  
7           bankruptcy-remote limited purpose entity. When I refer to “bankruptcy-remote,”  
8           I mean that the SPE is being structured so that in the unlikely event of a PNM  
9           bankruptcy, the SPE would not be consolidated with other PNM entities into  
10          PNM’s bankruptcy estate, and the payment of the securitization debt service  
11          would not be “stayed” or stopped during the bankruptcy process. Importantly, the  
12          SPE is structured to operate independently, requiring that fees paid to third-parties  
13          providing services to the SPE, including PNM as Servicer and Administrator, are  
14          set on an arms-length basis. These provisions supporting the bankruptcy-remote  
15          nature of the SPE are critical to achieving the desired “AAA” ratings for the  
16          Energy Transition Bonds. An illustrative draft form of the SPE LLC Agreement  
17          has been included as PNM Exhibit EAE-8 to the testimony of PNM Witness  
18          Eden.

19  
20   **Q.**    **WHAT MAKES UP THE “ENERGY TRANSITION PROPERTY” THAT**  
21           **THE COMPANY SELLS TO THE SPE?**

22   **A.**    The Energy Transition Property that is created pursuant to the Financing Order  
23           and sold to the SPE is the right to bill and collect a certain non-bypassable charge,

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1 the Energy Transition Charge, directly from all customers within the Company’s  
2 service territory receiving electric delivery service, applying the applicable  
3 customer allocations, in amounts necessary to pay principal and interest on the  
4 Energy Transition Bonds, as well as other amounts, timely and in full. Included  
5 in this property right is the requirement, over the full life of the transaction, to  
6 adjust the amount of the Energy Transition Charges owed by the Company’s retail  
7 electric customers, based principally upon variations in energy demand, energy  
8 consumption and the number of the Company’s customers, to ensure that the  
9 amounts collected are sufficient to pay all amounts owed with respect to the  
10 Energy Transition Bonds, on a timely basis as scheduled. This process is referred  
11 to as the “true-up” adjustment mechanism.

12

13 **Q. PLEASE FURTHER DESCRIBE THE SALE OF THE ENERGY**  
14 **TRANSITION PROPERTY BY PNM TO THE SPE.**

15 **A.** Pursuant to the Purchase Agreement, in consideration for the payment by the SPE  
16 of the purchase price for the Energy Transition Property, the Company will sell,  
17 assign, transfer and convey all right, title and interest of the Company in, to and  
18 under the Energy Transition Property to the SPE. An illustrative draft of the  
19 Energy Transition Property Purchase and Sale Agreement (the “Purchase  
20 Agreement”) between PNM and the SPE is attached to the testimony of PNM  
21 Witness Eden, as PNM Exhibit EAE-4. The Purchase Agreement will provide that  
22 such sale, transfer, assignment and conveyance is expressly stated to be an  
23 absolute transfer and true sale. Pursuant to Section 14(A) of the Energy

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1 Transition Act, if the sale agreement expressly so states, any sale, assignment or  
2 transfer of Energy Transition Property to a financing entity assignee that is wholly  
3 owned, directly or indirectly, by the utility shall be an absolute transfer and true  
4 sale of, and not a pledge of or secured transaction relating to, the seller's right,  
5 title and interest in, to and under the Energy Transition Property. As I mentioned  
6 previously, this "true sale" treatment is an essential component of legally isolating  
7 the Energy Transition Property collateral from the bankruptcy risk of PNM and  
8 achieving "AAA" ratings for the Energy Transition Bonds.

9  
10 **Q. PLEASE DESCRIBE THE ENERGY TRANSITION PROPERTY AND**  
11 **ENERGY TRANSITION CHARGES SUPPORTING THE ENERGY**  
12 **TRANSITION BONDS.**

13 **A.** The Energy Transition Property is defined in Section 2(I) of the Energy Transition  
14 Act as the rights and interests of a qualifying utility such as PNM, or an assignee  
15 (*i.e.* the SPE) pursuant to the Financing Order that acquires such rights and  
16 interests of PNM, including the right to impose, charge, collect and receive  
17 Energy Transition Charges in an amount necessary to provide for full payment  
18 and recovery of all Energy Transition Costs identified in the Financing Order,  
19 including all revenues or other proceeds arising from those rights and interests.  
20 As set forth in Section 2(G) of the Energy Transition Act, the Energy Transition  
21 Charges are to be the non-bypassable charges paid by all PNM customers to  
22 recover the Energy Transition Costs, which include upfront and ongoing  
23 Financing Costs.

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1

2 The Energy Transition Charges will be designed to provide for amounts sufficient  
3 to pay the principal of and interest on the Energy Transition Bonds as scheduled  
4 and in full, as well as other ongoing Financing Costs associated with the Energy  
5 Transition Bonds. Included in the Energy Transition Property is the True-Up  
6 Adjustment Mechanism, which is a requirement to adjust the amount of the  
7 Energy Transition Charges owed by PNM’s customers to ensure that the amounts  
8 actually collected are sufficient to pay all amounts owed with respect to the  
9 Energy Transition Bonds as scheduled and in full, including ongoing Financing  
10 Costs. The process for implementing the True-Up Adjustment Mechanism is  
11 described in the testimony of PNM Witness Settlage.

12

13 **Q. HOW ARE ENERGY TRANSITION BONDS DIFFERENT FROM**  
14 **CORPORATE BONDS?**

15 **A.** The Energy Transition Bonds will be structured to amortize with scheduled  
16 principal payments through specific points in time prior to the rated legal final  
17 maturity date of the Energy Transition Bonds. These points in time are referred to  
18 as the expected or scheduled maturities for each of the multiple tranches of bonds  
19 issued in the transaction. (I will describe the “tranching” of the Energy Transition  
20 Bonds below.) Amortizing, or sinking-fund, structures are distinct from a  
21 traditional utility corporate bond, which generally have only a single “bullet”  
22 principal payment at the bond maturity date. Another difference is that the  
23 Energy Transition Bonds will be structured with a time gap between each

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1           tranche’s scheduled maturity and the rated legal maturity of that tranche. This  
2           time gap, sometimes called a “maturity cushion,” provides extra time to pay the  
3           outstanding principal amount of the tranche in full in the event that unforeseen  
4           circumstances such as significant declines from either the forecasted energy  
5           demand, forecasted consumption, and/or forecasted number of customers, cause a  
6           material decrease in Energy Transition Charge collections.

7

8   **Q.    ARE THERE “OTHER AMOUNTS” BEYOND DEBT SERVICE**  
9   **REQUIRED TO BE COLLECTED IN CONNECTION WITH THE**  
10 **ENERGY TRANSITION BONDS?**

11 **A.**    There will be other amounts in addition to the bond principal and interest that will  
12       be payable on an ongoing basis over the life of the transaction. These costs,  
13       which are required ongoing financing costs, include, but are not limited to,  
14       servicing fees, trustee fees, rating agency surveillance fees, legal fees,  
15       administrative fees, audit fees, other operating expenses and credit enhancement  
16       expenses (if any). Generally, these amounts are SPE expenses that are required to  
17       keep the transaction working as designed, without reliance on PNM or any other  
18       source of funds. It is essential to the SPE’s status as a bankruptcy-remote entity  
19       for the transaction structure to provide for the full payment of ongoing financing  
20       costs. These anticipated fees and expenses are estimated in the testimony of PNM  
21       Witness Eden, and included as PNM Exhibit EAE-3.

22

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1 **Q. IN YOUR EXPERIENCE, ARE THE COSTS ESTIMATED BY PNM**  
2 **WITHIN THE RANGE OF COSTS YOU HAVE PREVIOUSLY SEEN FOR**  
3 **SIMILAR EXPENSES?**

4 **A.** Yes, I have provided input on and reviewed the preliminary expense estimates  
5 provided by PNM Witness Eden, as well as the supporting examples provided  
6 from previous transactions. While PNM's proposed securitization is not expected  
7 to occur until 2022, and costs may change, these estimated costs are within the  
8 ranges found in other utility securitization transactions.

9

10 **Q. IN ADDITION TO THE ENERGY TRANSITION PROPERTY, ARE**  
11 **THERE ANY OTHER COMPONENTS OF THE COLLATERAL FOR**  
12 **THIS TRANSACTION?**

13 **A.** Yes, the collateral for the transaction includes other components in addition to the  
14 Energy Transition Property. However, that property right is the principal asset  
15 pledged as collateral. Pursuant to the Indenture, the other collateral includes a  
16 collection account, which is established by the SPE as a trust account to be held  
17 by the Trustee to ensure the scheduled payment of principal, interest and other  
18 costs associated with the Energy Transition Bonds are paid in full and on a timely  
19 basis. The collection account, in turn, is comprised of the three subaccounts:

- 20 • the general subaccount;
- 21 • the capital subaccount;
- 22 • and the excess funds subaccount.



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1           The collateral also consists of the SPE's rights under certain agreements it enters  
2           into as part of the transaction, including the Purchase Agreement and the  
3           Servicing Agreement.

4

5   **Q.   PLEASE DESCRIBE THE SUBACCOUNTS OF THE COLLECTION**  
6   **ACCOUNT REFERRED TO ABOVE.**

7   **A.**   The general subaccount is the subaccount in which the Trustee deposits Energy  
8           Transition Charge remittances it receives from the Servicer. Monies in this  
9           subaccount will be applied by the Trustee on a periodic basis to make payments  
10          according to a prescribed order (or "waterfall"), which generally includes the  
11          payment of SPE expenses required to maintain the operations of the transaction,  
12          then interest on the Energy Transition Bonds, and then principal on the Energy  
13          Transition Bonds. An illustrative draft of a form of the indenture between the SPE  
14          as Bond Issuer and the Trustee for the bondholders, is included with the testimony  
15          of PNM Witness Eden, as PNM Exhibit EAE-5.

16

17          The capital subaccount represents the equity capital of the SPE and is funded by  
18          an amount contributed by PNM at issuance that is equal to 0.50% of the initial  
19          capitalization of the Energy Transition Bond transaction (*i.e.* the aggregate  
20          amount of the equity contribution and the principal amount of the Energy  
21          Transition Bonds issued, combined). If that subaccount is drawn upon, it is  
22          replenished from Energy Transition Charge collections through the true-up and  
23          any available excess Energy Transition Charge collections. The Company's

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1 proposed equity investment of 0.50% has been derived from guidance from the  
2 Internal Revenue Service through its Revenue Procedure 2005-62 and the  
3 requirements of Section 4(B)(8) of the Energy Transition Act. The testimony of  
4 PNM Witness Eden addresses the Company's return on this capital contribution at  
5 a rate equivalent to the interest rate on the longest-dated tranche of bonds issued  
6 in the transaction. The I.R.S. Revenue Procedure sets forth the way an investor-  
7 owned utility may treat, for federal income tax purposes, the issuance of a  
8 financing order by a state regulatory agency and the securitization of the rights  
9 created by the financing order. Having an equity investment in the SPE of at least  
10 0.50% is within the safe harbor provided in the Revenue Procedure, and helps to  
11 ensure that the Company will not recognize in its taxable income the cash  
12 proceeds received from the issuance of the Energy Transition Bonds. Rather, the  
13 Energy Transition Bonds will be considered borrowings of the Company for  
14 federal income tax purposes. Internal Revenue Service Revenue Procedure 2005-  
15 62 is included in my testimony as PNM Exhibit CNA-2.

16  
17 The excess funds subaccount is where any monies on deposit in the general  
18 account that are not required to meet the scheduled interest and principal  
19 obligations of the Bonds will be deposited. The initial balance is zero, and the  
20 target ongoing balance is also zero. To the extent there are funds on deposit in  
21 this subaccount, those amounts will be considered in the next available true-up  
22 process and the subaccount value will again be generally targeted to be zero.  
23 Stated differently, to the extent Energy Transition Charge collections are higher

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1 than expected in any given true-up calculation period, those amounts do not pay  
2 down the principal balance of the Bonds beyond the scheduled principal payment  
3 for that period. Rather, the amounts on deposit in the general subaccount above  
4 and beyond the scheduled obligations will be moved to the excess funds  
5 subaccount. Those amounts will then reduce the amount of Energy Transition  
6 Charge collections needed in the subsequent true-up calculation period.

7  
8 **Q. PLEASE DESCRIBE THE TREATMENT OF ANY FUNDS REMAINING**  
9 **IN THE VARIOUS SUBACCOUNTS AT THE FINAL MATURITY OF**  
10 **THE TRANSACTION.**

11 **A.** Funds remaining in the general subaccount and the excess funds subaccount will  
12 be returned to the SPE upon final payment in full of the Energy Transition Bonds  
13 and all other Financing Costs, and equivalent amounts will be credited to  
14 customers in the form of a credit to their electricity bills. Monies remaining in the  
15 PNM-funded capital subaccount along with the authorized return, will be returned  
16 to the Company through the SPE without any equivalent credit to customers'  
17 electric bills, since the capital subaccount was funded at issuance with the  
18 Company's own funds.

19

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**IV. DESCRIPTION OF PROPOSED TRANSACTION**

***A. Transaction Structure***

**Q. PLEASE DESCRIBE THE PRELIMINARY STRUCTURE OF THE COMPANY'S PROPOSED ENERGY TRANSITION BONDS.**

**A.** The preliminary structure for the estimated \$361 million Energy Transition Bond transaction proposed by PNM is presented in the following table, PNM Table CNA-1. The table shows on a preliminary, indicative basis, five tranches of bonds, which will amortize in a sequential manner, along with the indicative credit spreads to benchmarks and the associated interest coupons, scheduled maturities and rated legal maturities. I recommend that the initial debt service payment be scheduled for approximately nine months after the closing of the transaction, with debt service payments thereafter occurring on a semiannual basis. Given the fact that Energy Transition Charges do not become effective on the transaction closing day, and also considering the expected billing cycles and other lags in collections, it will take some time for the full expected cash flow from Energy Transition Charges to be realized. The nine-month initial period allows more time for the full amount of expected Energy Transition Charge revenues to become available, and also provides for a mandatory true-up adjustment prior to the first debt service payment, to mitigate the transaction revenue impact of any unexpected changes in the PNM customer base or revenues.

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1

**PNM Table CNA-1**

<b>Assumptions</b>	
Total Debt	\$361,000,000
Scheduled Maturity (year)	25
Legal Final (year)	28
Annual Servicing Fee	\$180,500
Ongoing Expenses	\$334,530
Payment Frequency	Semi-Annual

Capital Structure									
Class	Balance (\$)	Benchmark	Benchmark Rate <sup>(1)</sup>	Spread	Coupon	WAL (yrs)	Prin Window (yrs)	Sch Mat (yrs)	Legal Final (yrs)
A-1	37,905,000	3yr UST	1.78%	+55	2.33%	2.5	0.7 - 4.2	4.2	7.2
A-2	48,013,000	5yr UST	1.83%	+92	2.75%	6.5	4.2 - 8.7	8.7	11.7
A-3	112,271,000	10yr UST	2.08%	+102	3.10%	12.8	8.7 - 16.7	16.7	19.7
A-4	81,947,000	30yr UST	2.59%	+131	3.90%	19.2	16.7 - 21.7	21.7	24.7
A-5	80,864,000	30yr UST	2.59%	+152	4.11%	23.6	21.7 - 25.2	25.2	28.2
<b>Total / WA</b>	<b>361,000,000</b>		<b>2.24%</b>	<b>+114</b>	<b>3.38%</b>	<b>14.7</b>	<b>0.7 - 25.2</b>		

(1) Benchmark Rates as of 6/14/19.

Required Asset Cash Flow (\$mm)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
Debt Service	\$22.4	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	\$22.2	-	-	-
Securing Fee	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	-	-	-
Ongoing Expenses	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	-	-	-
Annual Revenue Requirement	\$22.9	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	\$22.7	-	-	-

Bond Cash Flow (\$mm)	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	
Class A-1 Beginning Balance	\$37.8	\$29.8	\$19.5	\$9.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-1 Interest	1.0	0.6	0.4	0.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-1 Principal	8.2	10.2	10.5	9.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-1 Ending Balance	29.8	19.5	9.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-2 Beginning Balance	\$48.0	\$48.0	\$48.0	\$48.0	\$46.3	\$35.3	\$24.1	\$12.4	\$0.5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-2 Interest	1.5	1.3	1.3	1.3	1.2	0.9	0.6	0.3	0.0	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-2 Principal	-	-	-	1.7	11.0	11.3	11.6	11.9	0.5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-2 Ending Balance	48.0	48.0	46.0	46.3	35.3	24.1	12.4	0.5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-3 Beginning Balance	\$112.3	\$112.3	\$112.3	\$112.3	\$112.3	\$112.3	\$112.3	\$112.3	\$100.5	\$87.9	\$74.8	\$61.4	\$47.5	\$33.2	\$18.4	\$3.2	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-3 Interest	4.1	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.4	3.0	2.6	2.2	1.8	1.4	0.9	0.5	0.0	-	-	-	-	-	-	-	-	-	-	-	
Class A-3 Principal	-	-	-	-	-	-	-	-	11.8	12.7	13.0	13.5	13.9	14.3	14.8	15.2	3.2	-	-	-	-	-	-	-	-	-	-	-	
Class A-3 Ending Balance	112.3	112.3	112.3	112.3	112.3	112.3	112.3	112.3	100.5	87.9	74.8	61.4	47.5	33.2	18.4	3.2	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-4 Beginning Balance	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$81.9	\$69.4	\$53.1	\$36.2	\$18.5	\$0.2	-	-	-	-	-	-	-	
Class A-4 Interest	3.7	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.2	3.1	2.6	1.9	1.2	0.5	0.0	-	-	-	-	-	-	
Class A-4 Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12.5	16.3	17.0	17.6	18.3	0.2	-	-	-	-	-	-	
Class A-4 Ending Balance	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	81.9	69.4	53.1	36.2	18.5	0.2	-	-	-	-	-	-	-	
Class A-5 Beginning Balance	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9	\$80.9
Class A-5 Interest	3.9	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	3.3	
Class A-5 Principal	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Class A-5 Ending Balance	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	80.9	

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1 Notes:

- 2 (1) Structure is preliminary and subject to change based on market conditions and rating agency requirements at the time of  
3 pricing.
- 4 (2) Structure is based in part upon information supplied by the Company which is believed to be reliable but has not been  
5 verified. Potential application of franchise fees and gross receipts taxes is not reflected in the ongoing cost amounts. No  
6 representation or warranty is being made relating to this structure. Estimates of future performance are based on  
7 assumptions that may not be realized. Actual events may differ from those assumed and changes to any assumptions may  
8 have a material impact on any projections or estimates. Other events not taken into account may occur and may  
9 significantly affect the projections or estimates. Certain assumptions may have been made for modeling purposes only to  
10 simplify the presentation and/or calculation of any projections or estimates. No assurance can be given that any such  
11 assumptions will reflect actual future events.
- 12 (3) Assumes the forecast for power consumption, customer numbers and average collection curve provided by the Company.
- 13 (4) Assumes "AAAAsf" ratings.
- 14 (5) Assumes no collections for the first two months of the transaction.
- 15 (6) Benchmark rates as of June 14, 2019.
- 16

17 Please note that these terms are preliminary and estimated based on current  
18 market conditions. The final terms and conditions of the Energy Transition  
19 Bonds will not be known until they have been priced in the marketplace. Investor  
20 demand at the time of pricing will determine market-clearing interest rates and the  
21 final structure offered to investors. Therefore, this preliminary structure and  
22 pricing information is illustrative and subject to change, and the actual structure  
23 and pricing will differ, and may differ materially from this preliminary structure.

24

25 As you will note, the preliminary structure of the Bonds includes five tranches.  
26 Further details are included in PNM Exhibit CNA-4. The structure shown is  
27 designed, as of June 2019, to provide an efficient distribution of securities across  
28 the maturity spectrum and thus the lowest weighted average cost of funds to the  
29 issuer given the targeted approximate 25-year scheduled final maturity. The level  
30 of Energy Transition Charges paid by the Company's customers is directly  
31 affected by interest rates and the principal amortization structure of the Energy  
32 Transition Bonds. Because of the expected size of the transaction, several

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1           tranches (*i.e.*, individual bond tranches with different maturities and average  
2           lives) can be structured to take advantage of discrete pockets of investor demand  
3           across the entire term of the transaction and to maintain large enough tranche  
4           sizes to ensure secondary market liquidity for the Bonds, which is a consideration  
5           for investors during the bond marketing and pricing process. Liquidity in this  
6           context refers to the ability of a bondholder to sell the bond in the secondary  
7           market without having to discount significantly its price.

8  
9           Average life is a measure of the average amount of time it takes to repay in full  
10          the principal balance of a bond tranche. Regularly scheduled principal  
11          amortization throughout the life of the transaction, as opposed to a single bullet  
12          maturity, results in a shorter average life for the financing and lower interest  
13          costs, resulting in lower Energy Transition Charges for customers. Investors have  
14          nearly universally seen and accepted semiannual or quarterly amortization in  
15          these transactions. I have advised the Company that the proposed transaction  
16          should have a relatively level annual debt service and associated revenue  
17          requirement, such that as the Company's customer population and customer  
18          consumption may increase, all other things being equal, the Energy Transition  
19          Charges may be adjusted downward over the life of the transaction. Rating  
20          agency "AAA" or equivalent stress tests would tend to penalize transactions that  
21          use a different structuring approach, particularly one that significantly back-loads  
22          debt service.

23



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1 As previously noted, rating agency requirements and investor demand at the time  
2 of pricing will determine market-clearing interest rates and the final tranching  
3 offered to investors. Therefore, the structure and pricing information presented  
4 here are preliminary and subject to change, and the actual structure and pricing  
5 can be expected to differ, perhaps materially, from the information provided in  
6 PNM Table CNA-1 and PNM Exhibit CNA-4.

7  
8 **Q. PLEASE PROVIDE ADDITIONAL DETAILS AROUND THE**  
9 **PRELIMINARY STRUCTURE OF THE BONDS.**

10 **A.** Further details of the preliminary bond structure are provided in PNM Exhibit  
11 CNA-4, which outlines some of the structuring assumptions and displays the  
12 preliminary annual debt service schedules and annual revenue requirements.

13  
14 **Q. PLEASE DESCRIBE THE MECHANICS IN TERMS OF HOW THE**  
15 **BONDS ARE PRICED.**

16 **A.** The starting point for how each bond tranche is priced is the corresponding  
17 benchmark rate. In the preliminary structure above, U.S. Treasury benchmarks  
18 are listed. These benchmark rates are matched with the weighted average life of  
19 each tranche. Average life is a measure of the average amount of time it is  
20 expected to take to repay the principal balance of a bond tranche in full. The  
21 Treasury benchmark reflects the “risk-free” yield investors generally associate  
22 with securities issued by the United States Treasury. Some investors, particularly  
23 ABS investors, may evaluate the transaction from the perspective of swap

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1 benchmarks. Swap benchmarks reflect the yield demanded by investors for non-  
2 Treasury securities of similar terms, without regard to any further credit spread.  
3 Yields demanded by investors in the interest rate swap market for different terms  
4 are the basis for the swap benchmarks for similar terms. Investors in the ABS  
5 market generally use swap rates as benchmarks, whereas investors in the  
6 corporate bond market typically use Treasury rates as benchmarks. An effective  
7 marketing strategy for the Company transaction should enable investors to  
8 evaluate the transaction from the perspective of either or both benchmarks.

9  
10 The next consideration is the credit spread, which is generally the amount of yield  
11 above the given benchmark that is required by the marketplace to invest in the  
12 given bond tranche. To state the obvious, issuers would like this credit spread to  
13 be as small, or tight, as possible to the underlying benchmark (thereby lowering  
14 the coupon) and investors would like it to be higher, or wider, versus the  
15 underlying benchmark, all else being equal. While corporate investors assessing  
16 the attractiveness of a utility securitization may readily convert swap benchmarks  
17 to Treasury benchmarks, and thereby adjust proposed credit spreads accordingly,  
18 for investor convenience, underwriters sometimes give proposed price guidance to  
19 investors reflecting both benchmarks. The pricing credit spread is ultimately  
20 determined by market-clearing rates at the conclusion of the marketing process.

21

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1   **Q.   WHAT IS THE DIFFERENCE BETWEEN THE SCHEDULED FINAL**  
2   **MATURITY AND LEGAL FINAL MATURITY?**

3   **A.**   I briefly addressed this topic above in the context of the basic discussion of  
4   securitization and will address it more fully here. The scheduled final maturity of  
5   the Energy Transition Bonds represents the date at which final payment is  
6   expected to be made, but no legal obligation exists to retire the tranche in full by  
7   that date. The rated legal final maturity is the date by which the bond principal  
8   must be paid or a default will be declared. The proposed preliminary structure for  
9   this transaction utilizes a legal maturity that is approximately 36 months longer  
10   than the scheduled maturity for each bond tranche, known as a “maturity  
11   cushion.” The actual maturity cushion will be determined by the final “AAA”  
12   stress scenarios required by the rating agencies during the rating process for the  
13   Bonds, and may be shorter or longer than 36 months. The difference between the  
14   scheduled final maturity and legal final maturity provides additional credit  
15   protection by allowing shortfalls in principal payments to be recovered over this  
16   additional period due to any unforeseen circumstance. This gap between the two  
17   maturity dates is a benefit to the Company and contributes to the strong credit  
18   quality of the transaction, helping lower the cost of funds on the Bonds and  
19   therefore benefitting customers. Moreover, many investors in utility  
20   securitization are familiar with this concept, which occurs in most ABS  
21   transactions. The ratings on the Bonds are derived in part based on the  
22   assumption that the outstanding principal amount of the tranche will be paid in  
23   full by its legal final maturity date, and investors price the Bonds assuming the

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1 Bonds make the final scheduled principal payment in full at the earlier scheduled  
2 final maturity date.

3

4 **Q. SHOULD THE TRANSACTION BE STRUCTURED AS A PUBLIC, SEC-**  
5 **REGISTERED TRANSACTION?**

6 **A.** I recommend that the Bonds be marketed via an SEC-registered, public offering.  
7 In general, SEC-registered transactions are considered to be more liquid than Rule  
8 144A or other private placement transactions. Publicly offered transactions are  
9 not limited to “qualified institutional investors” or “accredited investors” upon  
10 initial issuance or resale, as privately placed transactions are, and this broader  
11 potential investor universe will potentially be more attractive to investors and  
12 more likely to obtain lower interest rate coupons on any particular pricing day.

13

14 **Q. WILL THE ENERGY TRANSITION BONDS PAY FIXED OR FLOATING**  
15 **INTEREST RATES?**

16 **A.** I recommend that the Energy Transition Bonds be issued as fixed-rate securities.  
17 First, most utility securitizations have been issued as fixed rate bonds to date.  
18 Second, fixed interest rates are necessary to maintain predictable revenue  
19 requirements over time. Maintaining predictable revenue requirements facilitates  
20 the ongoing management of the customer charge adjustment (or “true-up”)  
21 process. If floating rate bonds were issued, interest rate swaps would be required  
22 to create a fixed rate payment obligation. The use of interest rate swaps would  
23 create added risks for customers. For example, a swap incorporated as a part of

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1 the securitization structure would require an additional counterparty, so there is a  
2 risk of a ratings downgrade of or a default by the counterparty providing the  
3 swap.

4  
5 **Q. ARE THERE OTHER IMPORTANT CONSIDERATIONS REGARDING**  
6 **THE PRELIMINARY STRUCTURE OF THE BONDS?**

7 **A.** Yes, I reiterate that it will be beneficial for the Energy Transition Bonds be  
8 structured to have substantially level annual debt service. This is important  
9 because it will facilitate a modest decline in the aggregate Energy Transition  
10 Charges over the life of the Bonds, assuming actual load growth.

11  
12 ***B. Energy Transition Charge Collection***

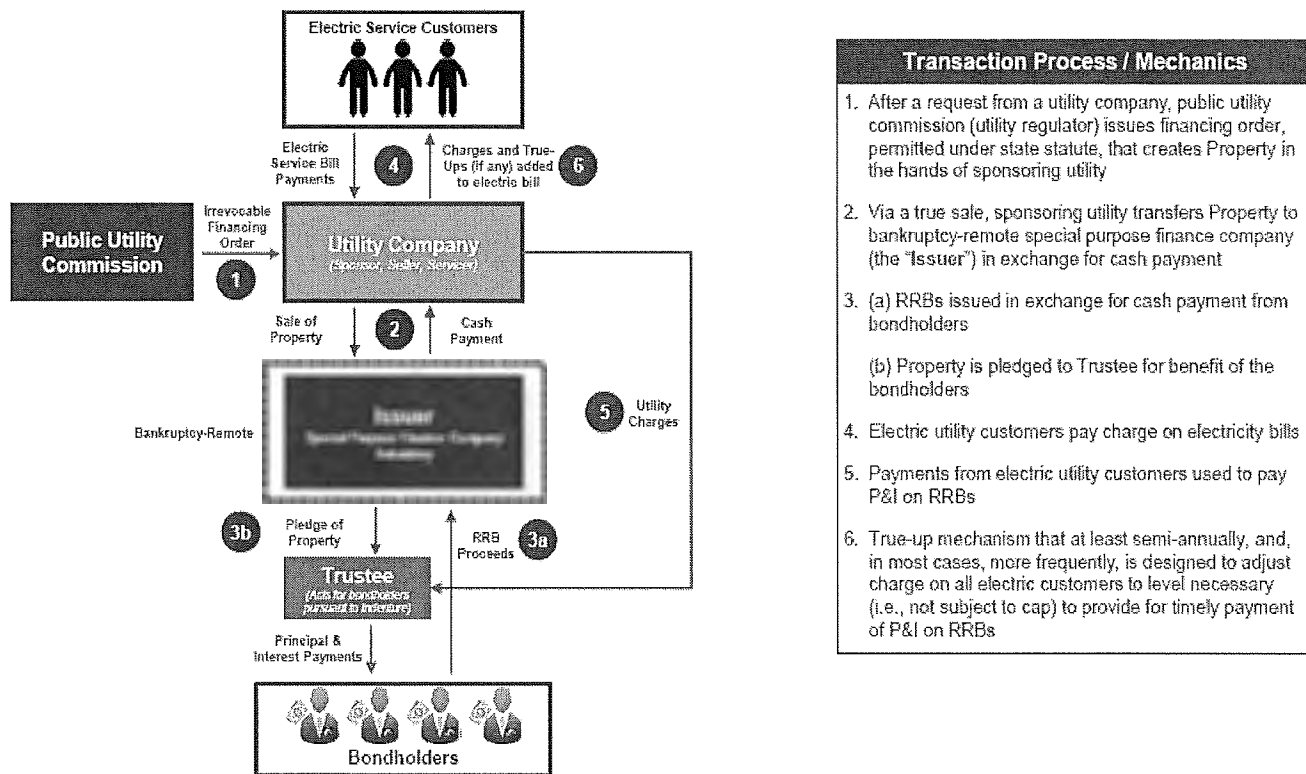
13 **Q. PLEASE DESCRIBE THE ONGOING BILLING, COLLECTING, AND**  
14 **REMITTING OF THE ENERGY TRANSITION CHARGES OVER THE**  
15 **LIFE OF THE TRANSACTION.**

16 **A.** The Company, as Servicer, will be responsible for billing and collecting Energy  
17 Transition Charges from customers. The procedures for remitting Energy  
18 Transition Charges to the Trustee will be established through a Servicing  
19 Agreement, a draft form of which is attached to PNM Witness Eden's testimony.  
20 Energy Transition Charges will be remitted by the Company to the Trustee each  
21 business day (based on estimated amounts collected), with cash held no more than  
22 two business days prior to remittance. The Trustee will then hold the amounts

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1           remitted to it by the Company until the next payment date. These payment dates  
2           will generally occur twice a year, as is customary in utility securitizations. An  
3           illustrative diagram for utility securitizations rate reduction bonds is included  
4           below:

5



6           It is also important to discuss briefly the requirement in the proposed Financing  
7           Order that third party energy providers collect the Energy Transition Charges  
8           under certain circumstances. While I understand that New Mexico law does not  
9           currently authorize third party energy providers to provide public utility services,  
10          it is important that the Financing Order ensure that such third parties, in the event  
11          there is any change in utility regulation, bill and collect the Energy Transition

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1 Charges in a manner that will not cause any of the then-current credit ratings of  
2 the Energy Transition Bonds to be suspended, withdrawn, or downgraded.

3  
4 **V. DISCUSSION OF THE EXECUTION PROCESS**

5 ***A. Rating Agency Process***

6 **Q. PLEASE DESCRIBE THE RATING AGENCY PROCESS.**

7 **A.** An important element of preparing for the marketing and pricing of the Energy  
8 Transition Bonds is obtaining the highest ratings on the Bonds from the rating  
9 agencies. The Company and its lead underwriter will prepare written  
10 presentations and may meet with rating agency personnel to discuss the credit  
11 framework and credit strengths of the proposed Energy Transition Bonds with  
12 each hired rating agency, in compliance with SEC Rule 17g-5. It is important to  
13 note that rating agencies are completely independent institutions, and each rating  
14 agency has its own method of reviewing a utility securitization, and will request  
15 certain data and information that will facilitate such a review process. Rating  
16 agencies may update or amend their rating criteria at any time. The Company's  
17 lead underwriter will work with the Company to draft presentations that contain  
18 the required data and information. Additionally, the rating agencies may require a  
19 diligence review of the Servicer's billing and collecting processes. Whether this  
20 review is done on-site or via the telephone depends on a number of factors and is  
21 ultimately up to each rating agency. Each rating agency will follow-up with  
22 additional questions.

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1           The ratings process also entails a review of the cash flows of the proposed  
2           structure. As part of this phase, each rating agency will ask for various cash flow  
3           stress scenarios based on its requirements and the details of the particular  
4           transaction to ensure that the Bonds will be repaid under extremely stressful cash  
5           flow projections.

6

7           Important rating elements include:

- 8           • Legal and regulatory framework;
- 9           • Political and regulatory environment;
- 10          • Transaction structure;
- 11          • Servicing review and capabilities;
- 12          • Service area analysis;
- 13          • Cash flow stress analysis; and
- 14          • Size of the Energy Transition Charge as a percentage of the average  
15          residential customer bill.

16

17   **Q.    IN YOUR PREVIOUS ANSWER, YOU MENTIONED SEC RULE 17G-5.**  
18   **PLEASE EXPLAIN WHAT IT IS AND HOW IT WILL PERTAIN TO**  
19   **THIS EXECUTION PROCESS.**

20   **A.**    In December 2009, the U.S. Securities and Exchange Commission (the “SEC”)   
21           amended, as part of its mandate under the Dodd-Frank reform legislation, its rules   
22           regulating ratings on structured finance securities where the issuer, sponsor, or   
23           underwriter pays for the ratings on the securities. In short, the amended



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1 regulation, which I refer to here as “Rule 17g-5” is intended to provide access to  
2 ratings-related information to non-hired rating agencies so that they, if desired,  
3 could issue unsolicited ratings. In practice, however, actual unsolicited ratings are  
4 very rare.

5  
6 The rule has been in effect since June 2010. Although SEC Rule 17g-5 only  
7 directly applies to a hired rating agency, the rule requires the agency to obtain  
8 commitments from the issuer to facilitate this process, effectively passing on the  
9 requirements to issuers. Those requirements generally include the maintenance of  
10 a password-protected website containing rating-related information used to  
11 providing a rating on the securities. Each hired rating agency is then required to  
12 maintain its own password-protected website listing each structured finance  
13 security for which it is in the process of determining a rating. If a non-hired  
14 rating agency desires to gain access to the ratings-related information, it can  
15 request it of the issuer. Please note, an issuer will be aware of such a request  
16 because it will be the one to grant access to the non-hired rating agency.

17  
18 Utility securitizations have been subject to SEC Rule 17g-5 since its  
19 implementation, and issuers and their underwriters have managed the process by  
20 maintaining most communication via email and/or recorded or transcribed phone  
21 communication. In summary, the SEC Rule 17g-5 changes the technical nature of  
22 how communication takes place during the ratings process, but it has not changed

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1 the fundamental nature of that process (*i.e.*, utility securitizations and all other  
2 transactions subject to the rule are still rated).

3  
4 ***B. Marketing Process***

5 **Q. PLEASE DESCRIBE THE ENERGY TRANSITION BOND MARKETING**  
6 **PROCESS.**

7 **A.** The marketing process entails a number of different phases, each uniquely  
8 tailored to the asset class, market conditions and the specifics of this contemplated  
9 transaction. The underwriter(s) will work with and make recommendations to the  
10 Company throughout the process. Described below are the general steps in a  
11 typical marketing process, but the actual process for the Energy Transition Bonds  
12 could vary based on the market environment at the time of marketing. Each step  
13 below should be conducted consistent with SEC rules and regulations regarding  
14 publicly registered securities offerings, including an investor suitability analysis:

15  
16 **1. Pre-marketing.** Once a preliminary prospectus for the transaction is on file  
17 with the SEC, the underwriter(s) will work together to bring the bond  
18 transaction to the attention of investors, to inform them of its structure and  
19 term, and to answer directly any questions they may have. This process is  
20 generally referred to as pre-marketing. It may include an electronic  
21 roadshow, one-on-one conference calls with significant potential investors,  
22 and open conference calls, which several investors may join. The purpose

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1 of this process is to stimulate broad investor demand for the issue, so that  
2 the pricing process will result in the lowest possible interest rates reasonably  
3 consistent with market conditions at the time of pricing.

4  
5 The timing of this process and the specifics of the new issue process are also  
6 important factors. Typically, new transactions in this sector are announced  
7 to the market on Monday mornings. As one could expect, the new issue  
8 calendar may be busy at that time, so in order to get the attention of  
9 investors as they may be considering several competing new issues, certain  
10 transactions are pre-marketed, starting approximately on a Thursday or  
11 Friday. Most transactions that announce on Monday morning will target a  
12 pricing by Wednesday or Thursday (as issuers do not want to take the risk of  
13 an intervening event over a weekend); thus, a pre-marketing start date on a  
14 Thursday or Friday is designed to gain the attention of investors when they  
15 may not be busy reviewing other active new issue pricings.

16  
17 **2. Announcement.** Following pre-marketing, the transaction is officially  
18 announced to the market, which is typically done toward the start of the  
19 week (again, as mentioned above, the timing of the announcement is to  
20 ensure that a transaction prices during the same week in which it is officially  
21 announced; otherwise, issuers may be subject to unforeseen risk over a  
22 weekend). During this phase of marketing, the Energy Transition Bonds  
23 will be offered for sale to investors through the underwriter(s). The

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1 underwriter(s), in conjunction with the issuer, will begin to discuss  
2 informally with investors the price(s) at which the Energy Transition Bonds  
3 will be offered at initial issuance, stated as a credit spread relative to the  
4 benchmark rates for each tranche. In response, investors will provide initial  
5 indications of interest, generally specifying how much of the tranche for  
6 which they intend to submit an order at a given pricing level. The  
7 underwriter(s) will be charged with keeping the master record (known as  
8 “the book”) in which all indications of interest received by the  
9 underwriter(s) from potential investors are recorded. The next phase of the  
10 transaction – price guidance – will be based on the aggregated amount of  
11 indications of interest received from investors.

12  
13 **3. Price guidance.** At this stage, the underwriter(s) will send out a notice to  
14 investors with price guidance, again typically stated as a range of credit  
15 spreads stated against the given benchmark. Thereafter, investors will be  
16 invited to place firm indications through the underwriter(s) for the amount  
17 and specific tranches of Energy Transition Bonds they are willing to  
18 purchase, at certain prices and bond coupon rates. At a certain point in time,  
19 when the book has sufficient interest from investors, the underwriter(s) will  
20 stop taking orders (generally referred to as going “subject” to pricing and  
21 confirmation). The timing of this step will depend on the specifics of each  
22 transaction; however, it will obviously occur only when the book has at least  
23 an equal amount of orders for the Bonds as the anticipated aggregate

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1 principal amount of each proposed tranche (generally referred to as “fully  
2 subscribed”). There is no specific threshold beyond that, and it will depend  
3 on market conditions, the speed at which orders came in from investors and  
4 the composition of investor types in the book, to name a few factors. The  
5 underwriter(s) will exercise professional judgment in making a  
6 recommendation to take the book subject to final order confirmations, based  
7 on all relevant factors. Conversely, if the tranche is undersubscribed, the  
8 underwriter(s) may need to increase the coupon or restructure the tranching  
9 to attract sufficient investor orders to sell the entire tranche.

10  
11 **4. Determining pricing levels.** Having exercised professional judgment and  
12 taken the transaction subject to pricing and final confirmation of orders, the  
13 underwriter(s) will then work to refine the pricing levels. Based on the  
14 strength of the book, the underwriter(s) may adjust the pricing levels lower  
15 (or tighter). This process is generally referred to as testing the pricing  
16 levels. It is done to ensure maximum distribution of the Bonds at the lowest  
17 bond yields reasonably consistent with a market conditions. If a tranche is  
18 oversubscribed, the underwriter(s) may continue to lower the pricing level  
19 (thus improving execution for the issuer), provided that this adjustment does  
20 not decrease the aggregate investor interest below the size of the tranche. If  
21 a tranche is undersubscribed, the pricing level may be adjusted higher until  
22 the tranche is fully subscribed. The underwriter(s) will use professional

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1 judgment with respect to the recommendation for the amount of tightening  
2 and number of testing attempts.

3  
4 **5. Launch.** Once the pricing levels have been determined for each tranche in  
5 the transaction, and the registration statement for the transaction has been  
6 declared effective by the SEC, the transaction will be launched at a specific  
7 pricing level. The intention of this stage is to declare to investors at which  
8 pricing levels, or credit spreads, the transaction will be issued. This will be  
9 the market-clearing pricing level, subject only to movements in the  
10 underlying benchmark rates.

11  
12 **6. Allocations.** At this stage, the market-clearing pricing level has been  
13 determined by the marketing process, but the final book – how much each  
14 investor will purchase – has yet to be determined. Here, the underwriter(s)  
15 will work to recommend a specific amount of Energy Transition Bonds to  
16 be sold to each investor. Each allocation depends on a number of factors;  
17 *e.g.*, the size of each investor’s indication of preliminary orders, when the  
18 investor submitted its indication, its experience in the sector, its flexibility  
19 for the pricing process, the investor type, etc. Ultimately, each investor will  
20 purchase its final allocations for the transaction.

21  
22 **7. Pricing.** Once the market-clearing pricing level and the book has been  
23 finalized, the transaction can be priced. At this stage, the underwriter(s) will

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1 price the transaction by spotting the underlying benchmark rates and adding  
2 the credit spread to determine the coupons for each tranche. Soon after the  
3 pricing, the investor orders will be confirmed and the final prospectus will  
4 be provided to investors.

5  
6 **8. Closing.** At the conclusion of the pricing, the Company, with its  
7 underwriter(s) and legal team, will work toward finalizing the transaction  
8 documents and close the transaction, typically approximately five days after  
9 pricing.

10  
11 In summary, it is through this marketing and pricing discovery process that the  
12 actual investor market-clearing interest rates for the Energy Transition Bonds are  
13 determined. It should be noted again that this determination will be specific to the  
14 Energy Transition Bonds in question, based on the actual investor orders on the  
15 actual day of pricing.

16  
17 **VI. DISCUSSION OF THE FINANCING ORDER**

18 **Q. ARE THE TERMS OF THE FINANCING ORDER CRITICAL TO**  
19 **ACHIEVING A SUCCESSFUL ENERGY TRANSITION TRANSACTION?**

20 **A.** Yes. The Financing Order, when taken together with applicable provisions of the  
21 Energy Transition Act, establishes in strong and definitive terms the legal right of  
22 investors to receive, in the form of Energy Transition Charges, those amounts  
23 necessary to pay the interest and principal on the Bonds and other ongoing

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1 expenses in full and on a timely basis. A proposed draft of the Financing Order is  
2 provided as Exhibit-3 to the Consolidated Application.

3  
4 As mentioned earlier, the Financing Order specifies the mechanisms and  
5 structures for payments of bond interest, principal, and ongoing expenses in a  
6 manner that minimizes the amount of additional credit enhancements required by  
7 the rating agencies to achieve the highest possible ratings. Only the highest  
8 possible ratings will allow the financing to achieve the desired results. In  
9 addition, the Financing Order, when taken together with applicable provisions of  
10 the Energy Transition Act, will enable the Company to structure the financing in a  
11 manner reasonably consistent with investor preferences and rating agency  
12 considerations at the time of pricing, which is also necessary for the financing to  
13 achieve the desired results.

14  
15 **Q. WHAT ARE THE KEY ELEMENTS OF THE FINANCING ORDER**  
16 **THAT ARE ESSENTIAL TO ACHIEVING THE DESIRED RESULT FOR**  
17 **THE TRANSACTION?**

18 **A.** The Energy Transition Act sets out a number of key elements for the Financing  
19 Order. Once the Energy Transition Property is created, one of the most important  
20 elements is insulating the transaction from the risk of any potential bankruptcy  
21 risk of the Company, which is accomplished via a legal “true sale” of the Energy  
22 Transaction Property to the SPE. The structure utilized with this transaction,  
23 along with other securitizations, relies on techniques that allow the rating agencies



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1 and investors to conclude that the issuer of the securitization, the SPE, is highly  
2 unlikely to become the subject of a bankruptcy proceeding in the unlikely event of  
3 a bankruptcy of the Company. Under the Federal bankruptcy code, payments on  
4 the debt obligations of an issuer in a bankruptcy proceeding become subject to an  
5 automatic stay – *i.e.*, the payments are suspended until the courts decide which  
6 creditors of the issuer are to be paid, when they will be paid, and whether they are  
7 to be paid in whole or in part. Unless the risk of an automatic stay in the unlikely  
8 event of a bankruptcy of the Company is essentially removed from the rating  
9 agencies’ credit analysis, the financing cannot achieve the highest possible  
10 ratings, since the Company’s secured debt obligations are rated below “AAA.”

11  
12 In addition, the creation of the bankruptcy-remote SPE, which is legally distinct  
13 from the Company, is designed to limit the ability of the SPE to be included with  
14 the Company in the unlikely event of a Company bankruptcy. Therefore, even if  
15 the Company were to declare bankruptcy, the SPE would not become the subject  
16 of the Company’s bankruptcy proceeding, and the SPE’s debt service payments to  
17 investors would not be subject to the Company automatic stay. The transaction,  
18 as structured and reflected in the Financing Order, is intended to achieve this  
19 important element. This legal structure is supported by true sale and non-  
20 consolidation legal opinions from experienced legal counsel.

21

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1 **Q. ARE THERE ANY OTHER COMPONENTS OF THE FINANCING**  
2 **ORDER THAT ARE ESSENTIAL TO ESTABLISHING THE LEGAL**  
3 **FOUNDATION FOR THE TRANSACTION?**

4 **A.** There are several provisions in the Financing Order that ensure that the SPE will  
5 be deemed to be bankruptcy remote in addition to the elements mentioned above,  
6 including that the SPE will have at least one independent manager whose  
7 approval will be required for certain organizational changes or major actions of  
8 the SPE, such as a voluntarily filing for bankruptcy by the SPE. The Financing  
9 Order will also enable the transfer of the Energy Transition Property from the  
10 Company to the SPE to be a “true sale.” As discussed above, a true sale is a sale  
11 that a bankruptcy court should not overturn in the case of any Company  
12 bankruptcy. The Financing Order will allow the SPE to issue the Energy  
13 Transition Bonds, pledging the Energy Transition Property as security for  
14 payment on the Bonds.

15

16 **Q. DOES THE FINANCING ORDER PROVIDE FOR ANY CREDIT**  
17 **ENHANCEMENT TO THE TRANSACTION?**

18 **A.** Yes, in a number of forms. The primary form of credit enhancement is the true-  
19 up adjustment mechanism. The Financing Order, together with Energy Transition  
20 Act, ensures that the collection of Energy Transition Charges arising from the  
21 Energy Transition Property is expected to be sufficient to pay all amounts owed  
22 on the Energy Transition Bonds on a timely basis and in full, even in the face of  
23 dramatic reductions in electricity usage by the Company customers or dramatic

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1 increases of delinquencies and losses on payments from the Company customers.  
2 The true-up mechanism represents the most fundamental component of credit  
3 enhancement to investors and is a cornerstone of utility securitizations. True-ups  
4 are to be incorporated so that Energy Transition Charges may be adjusted on a  
5 periodic basis to correct for any over- or under-collection of non-bypassable  
6 Energy Transition Charges for any reason and to ensure that the expected  
7 collection of future Energy Transition Charges is in accordance with the payment  
8 terms of the Energy Transition Bonds. True-up adjustments will be made on a  
9 periodic basis, at least semi-annually, throughout the life of the Energy Transition  
10 Bonds in accordance with the objective of achieving the highest credit ratings per  
11 rating agency requirements and investor expectations, except that during the two  
12 years prior to the scheduled final maturity, the true-up adjustments must be  
13 conducted at least quarterly. In addition, optional adjustments are likely to be  
14 authorized to be conducted at any time. The frequency of true-up adjustments  
15 throughout the life of the Energy Transition Bonds will be described in the final  
16 offering document for the transaction and will be consistent with rating agency  
17 considerations for achieving the highest credit ratings. It is also important to note  
18 that pursuant to the Energy Transition Act, both the Energy Transition Charge  
19 customer allocation and charge assessment methodologies are subject to  
20 adjustment through the true-up adjustment process, and that the adjustment  
21 mechanism provides for cross-collateralization across customer groups. This  
22 means that the Charge methodologies may change over the life of the transaction  
23 if necessary, and that revenue declines in one customer group can be made up by

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1 energy transition charge adjustments within that customer group, as well as the  
2 other customer groups.

3  
4 It is critical for rating agency purposes that, insofar as Commission action is  
5 required, true-up adjustments are automatic and implemented on an immediate  
6 basis subject only to mathematical and clerical error review. True-up adjustments  
7 will consider other ongoing financing costs as well as anticipated debt service  
8 requirements, updated electricity usage and customer count forecasts, in addition  
9 to forecasted projections of customer uncollectibles and delinquencies. Pursuant  
10 to the Energy Transition Act, the true-up adjustment mechanism shall remain in  
11 effect until the Energy Transition Bonds and all associated financing costs have  
12 been fully paid and any under-collection is recovered from customers and any  
13 over-collection is returned to customers.

14  
15 The capital subaccount funded with an amount equal to 0.50% of the initial  
16 capitalization of the Energy Transition Bond transaction, will also serve as credit  
17 enhancement of the transaction. Also, it is important that the Financing Order  
18 provide for flexibility to include other forms of credit enhancement and other  
19 mechanisms (*e.g.*, letters of credit, additional amounts of overcollateralization or  
20 reserve accounts, or surety bonds) to improve the marketability of the Energy  
21 Transition Bonds. None are anticipated but it is important to have such built-in  
22 flexibility.

23

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1 **Q. PLEASE EXPAND ON YOUR USE OF THE TERM “NON-**  
2 **BYPASSABLE” IN YOUR PREVIOUS ANSWER.**

3 **A.** The Energy Transition Act and Financing Order provide that all retail customers  
4 in the Company’s service territory receiving electric delivery service from the  
5 Company or a successor must pay the Energy Transition Charges allocated to  
6 their customer class, regardless of the customers’ degree of self-generation or  
7 electric generation supplier, and whether or not the distribution system is operated  
8 by the Company or a successor. This is another important element of the  
9 Financing Order, both for the rating agency process and for investor  
10 considerations.

11

12 **Q. IN THAT CONTEXT, HOW WOULD THE CHARGE BE AFFECTED IN**  
13 **THE CASE WHERE THE COMPANY IS NO LONGER THE UTILITY IN**  
14 **THE SERVICE AREA?**

15 **A.** The Financing Order creates a binding obligation for the Company, its successors  
16 or assignees to collect the Charges for a servicing fee and allows that obligation to  
17 be performed by a replacement servicer appointed by the Trustee, if the Servicer  
18 does not so perform. Thus, the binding obligation to collect and account for  
19 Energy Transition Charges will survive any adverse event to the Servicer. This  
20 obligation is binding upon any other entity that provides service in the service  
21 territory or any other entity responsible for billing and collecting the Energy  
22 Transition Charges on the Company’s behalf.

23

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1   **Q.   PLEASE DISCUSS THE IRREVOCABLE NATURE OF THE FINANCING**  
2   **ORDER.**

3   **A.**   The Financing Order is irrevocable, and the Energy Transition Charges are not  
4   subject to reduction, alteration or impairment by any further action of the  
5   Commission, except for the mathematical and clerical error review of the  
6   formulaic true-up adjustment process. Thus, so long as the Energy Transition  
7   Bonds are outstanding, rights and benefits arising from the Energy Transition  
8   Property created by the Financing Order may be definitively relied upon by  
9   investors and the rating agencies.

10  
11   Equally important, the Energy Transition Act affirms the pledge of the State not  
12   to take or permit any action that would impair the value of the Energy Transition  
13   Property authorized by the Financing Order. Investors generally perceive that one  
14   of the greatest risks to them is that there is a change in law that affects the Energy  
15   Transition Property, thereby adversely affecting their rights under Energy  
16   Transition Act or the Financing Order. The Commission's affirmation in the  
17   Financing Order of the State pledge will enhance investor understanding that the  
18   risk of an adverse change in law or regulation is remote and will permit counsel to  
19   deliver important legal opinions that such adverse changes would not be legally  
20   valid.

21

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1   **Q.   PLEASE DESCRIBE THE SECTIONS OF THE FINANCING ORDER**  
2       **ENTITLED, “FINDINGS OF FACT,” “CONCLUSIONS OF LAW,” AND**  
3       **“ORDERING PARAGRAPHS.”**

4   **A.**   The Findings of Fact, Conclusions of Law, and the Ordering Paragraphs of the  
5       Financing Order constitute the means by which the Commission definitively  
6       affirms the conformity of the financing with the applicable provisions of the  
7       Energy Transition Act. These provisions of the proposed Financing Order reflect  
8       the level of detail and scope that will be expected by investors and the rating  
9       agencies. With these findings and conclusions, counsel will have the basis that  
10      they need for the highly technical and specialized legal opinions they must issue  
11      in connection with the securitization financing, and upon which the rating  
12      agencies will rely in assigning the highest possible ratings for the Energy  
13      Transition Bonds. I emphasize that the provisions of the Financing Order have  
14      been drafted with a view toward providing the basis that counsel will need for  
15      these essential opinions. With the structure authorized thereby, the stability of the  
16      cash flows securing the Energy Transition Bonds will be maximized. The  
17      combination of maximized cash flow stability and highest possible ratings will  
18      allow the Energy Transition Bonds to be structured and priced so as to meet  
19      statutory requirements.

20

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1 **Q. ARE THERE ANY OTHER KEY ELEMENTS OF THE FINANCING**  
2 **ORDER UPON WHICH YOU WISH TO ELABORATE?**

3 **A.** Yes. In addition, in the Ordering Paragraphs of the Financing Order, the  
4 Commission recognizes the need for, and affords the Company the flexibility to  
5 establish, the final terms and conditions of the Energy Transition Bonds. This  
6 flexibility will allow the Company to achieve the structure and pricing that will  
7 meet the statutory requirements, including the lowest cost objective commitment,  
8 reasonably consistent with market conditions on the day of pricing, rating agency  
9 considerations, and the terms of the Financing Order.

10

11 **VII. DISCUSSION OF THE SERVICING AGREEMENT**

12 **Q. PLEASE DESCRIBE THE CONTENTS AND PURPOSE OF THE**  
13 **SERVICING AGREEMENT.**

14 **A.** The Servicing Agreement is an agreement among the Company (in its capacity as  
15 the Servicer of the Energy Transition Bonds), the Trustee, and the SPE. The  
16 agreement sets forth the responsibilities and obligations of the servicer, including,  
17 among other things, billing and collecting of Energy Transition Charges,  
18 responding to customer inquiries, terminating electric service, filing for true-up  
19 adjustments and remitting collections to the Trustee for distribution to  
20 bondholders. The Servicing Agreement prohibits the initial Servicer's ability to  
21 resign as Servicer unless (i) it is unlawful for the initial Servicer to continue in  
22 such a capacity, or (ii) the Commission consents and the rating agencies confirm



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1 the resignation would not impact the ratings on the bonds. Its resignation would  
2 not be effective until a replacement Servicer has assumed its obligations in order  
3 to continue servicing the Energy Transition Bonds without interruption. The  
4 Servicer may also be terminated from its responsibilities in certain cases upon a  
5 majority vote of bondholders, such as the failure to remit collections within a  
6 specified period. Any merger or consolidation of the Servicer with another entity  
7 would require the merged entity to assume the Servicer's responsibility under the  
8 Servicing Agreement. The terms of the Servicing Agreement are critical to the  
9 rating agency analysis of the Energy Transition Bonds and the ability to achieve  
10 credit ratings in the highest categories.

11  
12 As compensation for its role as initial Servicer, the Servicer is entitled to earn a  
13 servicing fee payable out of Energy Transition Charge collections. It is important  
14 to the rating agencies and the bankruptcy analysis of the transaction that the  
15 Company receives an arm's-length fee as Servicer of the Energy Transition  
16 Property, and for its services as Administrator of the SPE. Utility securitizations  
17 to date have also required an increase in the servicing fee in the unlikely event the  
18 Company is no longer able to perform the servicing role, and a replacement  
19 servicer must be brought on board. Rating agencies expect that the Company will  
20 be the Servicer but assume that a replacement Servicer may require additional  
21 compensation to perform these services, without access to the Company's existing  
22 infrastructure and customer relationships. Illustrative draft forms of both the

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1           Servicing and Administration Agreements are included with the testimony of  
2           PNM Witness Eden as PNM Exhibits EAE-6 and EAE-7.

3

4

**VIII. CONCLUSION**

5   **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

6   **A.** I believe the Financing Order, as proposed, will enable the Company to structure  
7           a transaction that can achieve the highest possible ratings and is consistent with  
8           investor preferences that will enable the Company to price at the lowest market-  
9           clearing interest costs reasonably consistent with investor demand and market  
10          conditions at the time of pricing.

11

12 **Q. DOES THIS COMPLETE YOUR DIRECT TESTIMONY?**

13 **A.** Yes, it does. Thank you.

*GCG#525650*