

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF ITS 2021)
ELECTRIC ENERGY EFFICIENCY PROGRAM)
PLAN, PROFIT INCENTIVE AND REVISED) Case No. 20-00087-UT
RIDER NO. 16 PURSUANT TO THE NEW)
MEXICO PUBLIC UTILITY ACT, EFFICIENT)
USE OF ENERGY ACT AND ENERGY)
EFFICIENCY RULE)**

RECOMMENDED DECISION

September 17, 2020

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Carolyn R. Glick, Hearing Examiner for the New Mexico Public Regulation Commission (Commission), submits this Recommended Decision to the Commission pursuant to 1.2.2.37(B) NMAC. The Hearing Examiner recommends that the Commission adopt this Recommended Decision in its Final Order.

I. STATEMENT OF THE CASE

On April 15, 2020, Public Service Company of New Mexico (PNM) filed its Application for Approval of 2021 Electric Energy Efficiency and Load Management Program Plan, Profit Incentive and Revisions to Tariff Rider No. 16. PNM's Application requests that the Commission issue an order approving:

- PNM's 2021 Plan;
- A sliding scale profit incentive mechanism for calendar years 2021, 2022 and 2023;
- Recovery of PNM's program costs and profit incentive in 2021, 2022 and 2023 through PNM's 25th Revised Rate Rider No. 16, filed under Advice Notice No. 567;
- A variance from the data filing requirements of 17.9.530 NMAC;
- Variances from the provisions of the Energy Efficiency Rule that are no longer applicable under the 2019 amendments to the Efficient Use of Energy Act; and
- All other approvals that may be required to implement PNM's 2021 Plan, its proposed profit incentive and Revised Rate Rider No. 16.

On April 30, 2020, the Commission issued its Order Designating Hearing Examiner, which appointed the undersigned to preside over this case.

On May 6, 2020, the Commission issued an Order Suspending Advice Notice 567, which suspended the effectiveness of Advice Notice No. 567 pending Commission review of PNM's Application.

The following persons filed motions for leave to intervene:

- Western Resource Advocates;
- The Coalition for Clean Affordable Energy (CCAЕ);
- The New Mexico Attorney General;
- The New Mexico Affordable Reliable Energy Alliance;
- The Albuquerque Bernalillo County Water Utility Authority;
- Bernalillo County; and
- New Mexicans for Utility Safety.

PNM filed Affidavits of Publication, attesting that the Notice of this proceeding was published in the *Albuquerque Journal*, the *Alamogordo Daily News*, the *Las Cruces Sun News* and the *Union County Leader*. PNM also filed the Affidavit of Steven Schwebke, who attested that the Notice of this proceeding was either mailed or emailed to customers.

The public hearing occurred on August 31, 2020. Several persons made public comment.

The following witnesses testified:

For PNM:

- Zachary Johnson, Manager, Energy Efficiency Design, for PNM
- Nicholas Phillips, Director of Integrated Resource Planning for PNM
- Michael Settlege, Pricing Analyst for PNM

For CCAE:

- Howard Geller, Executive Director, Southwest Energy Efficiency Project

For Staff:

- John Reynolds, Utility Division Director

- Dhiraj “Raj” Solomon, Bureau Chief, Engineering Bureau
- Marc Tupler, Economist

The Hearing Examiner admitted the following exhibits into evidence:

For PNM:

- 1 Application with all Appendices
- 2 Advice Notice No. 567
- 3 Affidavit of Publication
- 4 Notice of Errata Regarding 2019 Annual Report
- 5 Direct Testimony of Zachary Johnson
- 6 June 3, 2020 Supplemental Testimony of Zachary Johnson
- 7 Rebuttal Testimony of Zachary Johnson
- 8 August 25, 2020 Supplemental Testimony of Zachary Johnson
- 9 Direct Testimony of Nicholas Phillips
- 10 Rebuttal Testimony of Nicholas Phillips
- 11 Direct Testimony of Michael Settlege
- 12 Rebuttal Testimony of Michael Settlege

For CCAE:

- 1 Direct Testimony of Howard Geller
- 2 Rebuttal Testimony of Howard Geller

For Staff:

- 1 Direct Testimony of John Reynolds
- 2 Direct Testimony of Dhiraj “Raj” Solomon
- 3 Direct Testimony of Marc Tupler

II. SUMMARY OF PNM’S 2021 PLAN AND PARTIES’ AND HEARING EXAMINER’S RECOMMENDATIONS

PNM seeks approval of its 2021 Energy Efficiency and Load Management Plan (2021 Plan), to be in effect for 2021, 2022 and 2023. PNM proposes to continue all of its existing programs with some enhancements and budget changes and add two behavioral-based energy efficiency programs. PNM proposes an Advanced Metering Infrastructure (AMI) Pilot Program, as it was ordered to do in a previous case, but PNM does not recommend approval of this Pilot Program. The 2021 Plan differs from PNM’s existing plan in the following principal respects:

- Two behavioral programs (one residential and one commercial) are being proposed. The residential behavioral program — called the Home Energy Reports Program — would provide customers with reports comparing their energy use to that of similar homes or to their previous 12 months of energy use. The commercial behavioral program — called the Commercial Strategic Energy Management Program — emphasizes energy reduction through behavioral and operational changes.
- The AMI Pilot Program is being proposed (but not recommended). This program would install 5,000 smart meters which would allow customers access to real-time energy use data to monitor and control their energy use. It would cost about \$2.9 million. PNM does not recommend approval of the program because its estimated UCT in 2021 is 0.003. A program's UCT must be greater than 1.0 for the program to be cost effective.
- Because of a change in the Efficient Use of Energy Act, the portfolio budget is no longer limited to 3% of customer bills.
- The budget for existing programs increases by 22% in 2021, 21% in 2022 and 15% in 2023 over the 2020 spending level.
- The Residential Lighting and Residential Cooling budgets increase due to additional offerings.
- The 2021 Home Works and Energy Innovation program budget increases to reach more schools in PNM's service area.
- Wi-Fi thermostats are added options in several programs.

Many of the programs in PNM's 2021 Plan provide rebates for purchasing energy efficient products. Such rebates are designed to provide between 25% and 50% of the incremental cost of purchasing the energy efficiency product over the standard non-energy efficient product, which is typical across the industry. Exceptions are for programs that target low-income customers and small business customers, which are hard-to-reach customer

segments. Low-income programs are offered at no cost to income-qualified participants, and the small business component of the Commercial Comprehensive Program provides higher rebates to encourage greater participation.

Under PNM's 2021 Plan, the portfolio UCTs are 1.13 in 2021 (not including the AMI Pilot Program), 1.32 in 2022 and 1.38 in 2023. PNM's proposed budgets for the 2021 Plan, not including the cost of the AMI Pilot Program in 2021, are: (i) \$31,790,650 in 2021 (which includes a 2019 overcollection); (ii) \$31,018,623 in 2022; and (iii) \$29,591,783 in 2023. PNM recovers its budget costs through its Energy Efficiency Rider. If the AMI Pilot Program is not approved, PNM's proposed Energy Efficiency Rider rate would be 3.640% of customer bills in 2021, 3.581% in 2022 and 3.396% in 2023. Between 2020 and 2021, for an average-use PNM residential customer using about 600 kWh per month, the EE Rider charge would increase from \$2.43 to \$2.68 per month, a \$0.25 or 10.3% increase. Between 2020 and 2022, the EE Rider charge for such a customer would increase from \$2.42 to \$2.63 per month, a \$0.21 or 8.7% increase. Between 2020 and 2023, the EE Rider charge for such a customer would increase from \$2.42 to \$2.49 per month, a \$0.07 or 2.9% increase.

To meet the Efficient Use of Energy Act's (EUEA's) minimum savings requirement of 5% of 2020 retail kWh sales in 2025, PNM needs to show cumulative savings of 403 GWh in 2025. To stay on a linear path toward meeting its EUEA required energy savings in 2025, PNM needs to achieve 80 GWh savings annually in 2021 through 2025. Under its 2021 Plan, PNM expects to achieve approximately 116 GWh of savings in each of 2021, 2022 and 2023. PNM's proposed incentive mechanism, as revised in its Rebuttal Testimony, would allow PNM to earn a base incentive of 7.1% of its program budget for achieving 80 GWh of energy savings annually, increasing by 0.125% per additional GWh of savings achieved starting at 95 GWh.

Besides PNM, the Coalition for Clean Affordable Energy (CCAIE) and Staff filed testimony. CCAIE and Staff support continuing all of PNM's existing programs and approving

the two proposed behavioral programs. CCAE and Staff, like PNM, do not recommend approval of the AMI Pilot Program. CCAE recommends many changes within the programs (such as adding Energy Star-certified smart thermostats to the products for which PNM intends to offer discounts). PNM generally agrees with CCAE's recommendations but says that it cannot commit to implementing them until it has determined that they are cost effective and consistent with market demands for the programs. Therefore, PNM agrees to study the recommendations and to implement them if they do not reduce the overall cost effectiveness of the programs and are consistent with market demands. PNM plans to complete that study by the end of 2020 and implement desirable recommendations in early 2021. CCAE is satisfied with PNM's response, but asks the Commission to require PNM to report the results of its study and state what recommendations it will and will not implement.

The primary contested issue is CCAE's recommendation that the budget for the Commercial Comprehensive Program be increased by about \$209,000 in 2022 and \$388,000 in 2023, which would place participation levels and budgets in 2022 and 2023 at the same levels as in 2021. CCAE recommends using the additional funding to increase marketing and incentive levels in the Quick Saver portion of the program because small businesses in particular need help in cutting costs. PNM objects to increasing the 2022 and 2023 budgets for the Commercial Comprehensive Program because, after consultation with its third-party implementers, there are concerns that PNM would be able to effectively spend the increased budgets in 2022 and 2023 on just the Commercial Comprehensive Program.

PNM's proposed 2021 Plan should be approved, except, as all parties recommend, the AMI Pilot Program should not be approved because of its projected low UCT and its failure to offer potential benefits of advanced metering. PNM's proposed profit incentive mechanism, as revised in its Rebuttal Testimony, should be approved. CCAE's recommendation to increase the 2022 and 2023 budgets for the Commercial Comprehensive Program should be rejected based

on PNM's testimony that it might not be able to spend the increased budgets on just that program. PNM should be required to study CCAE's recommendations and to implement them if they do not reduce the overall cost effectiveness of the programs and are consistent with market demands. PNM should be required to report in this docket by February 1, 2021, the results of its study and state what recommendations it will and will not implement.

III. PNM'S REQUESTS FOR VARIANCES

A. PNM'S REQUEST FOR VARIANCES FROM THE ENERGY EFFICIENCY RULE

The EUEA was enacted by the New Mexico Legislature in 2005 and was last amended in 2019. The Commission's Energy Efficiency Rule (EE Rule) is 17.7.2 NMAC. The EE Rule has not been amended to conform to the 2019 amendments to the EUEA, which became effective on June 14, 2019. Case No. 19-00168-UT has been opened to update the EE Rule. Reynolds Direct at 11. To the extent required, PNM requests variances from the EE Rule that are inconsistent with the EUEA. Johnson Direct at 6-7. Staff recommends that the Commission grant the requested variances to the extent the requests apply to plan funding and overall cost recovery. Reynolds Direct at 35.

To the extent necessary, PNM's requests for variances from the EE Rule should be granted. See *Tri-State Generation & Transmission Ass'n v. New Mexico Pub. Regulation Comm'n*, 2015-NMSC-013, ¶ 24 ("If there is a conflict or inconsistency between statutes and regulations promulgated by an agency, the language of the statutes shall prevail. An agency by regulation cannot overrule a specific statute.") (quoting *Jones v. Emp't Servs. Div. of Human Servs. Dep't*, 1980-NMSC-120, ¶ 3, 95 N.M. 97).

B. PNM'S REQUEST FOR A VARIANCE FROM 17.9.530 NMAC

PNM requests a variance from the data filing requirements of 17.9.530 NMAC to the extent that it is required. Rule 530 specifies the data that a utility must file in support of new rate schedules. PNM states that because it does not seek a change in base rates, but only a change in its Energy Efficiency Rider rate, the detailed filing requirements of Rule 530 would serve no useful purpose. Johnson Direct at 6. Staff recommends granting the variance. Reynolds Direct at 34. PNM's request for a variance is reasonable and should be granted.

IV. LEGAL STANDARDS FOR APPROVAL OF ANNUAL ENERGY EFFICIENCY FILINGS UNDER THE EUEA AND EE RULE

The following provisions of the EUEA and the Commission's EE Rule (to the extent it is consistent with the EUEA) apply to this matter:

Minimum Energy Savings Requirements. The EUEA requires public utilities providing electric and natural gas service to New Mexico customers to "acquire the cost-effective and achievable energy efficiency and load management resources available in their service territories" to reduce energy demand and consumption. NMSA 1978, § 62-17-5(B) & (G) (2019). "Achievable" means "those energy efficiency or load management resources available to the utility using its best efforts[.]" *Id.*, § 62-17-4(A) (2019). The EUEA establishes a 2025 savings requirement, which, for public utilities providing electric service, shall not be less than savings of 5% of 2020 total retail kilowatt hour (kWh) sales to New Mexico customer classes that have the opportunity to participate in calendar year 2025 as a result of energy efficiency and load management programs implemented in years 2021 through 2025. *Id.*, § 62-17-5(G). The

Commission can find with sufficient evidence however that a lower goal is appropriate. *Id.*, § 62-17-5(H) (2019).

Cost Effectiveness of Proposed Energy Efficiency (EE) and Load

Management (LM) programs. Before approving an EE or LM program, the Commission must find that the utility's portfolio of programs is cost-effective and designed to provide every affected customer class the opportunity to participate and benefit economically. NMSA 1978, § 62-17-5(C). The overall design of a utility's portfolio offerings must achieve widespread program access and availability within each affected customer class. At least 5% of the amount received by a public utility for program costs shall be directed to energy efficiency programs for low-income customers. 17.7.2.9(B) NMAC. Staff witness Reynolds testified that, based on PNM's testimonies and application, he found no limit to the opportunity to participate in PNM's 2021 Plan other than access to necessary capital. Relying on PNM witness Johnson's testimony, Mr. Reynolds also testified that, under PNM's 2021 Plan, at least 5% of PNM's funding for program costs will be directed to programs for low-income customers. Reynolds Direct at 15-16.

The Commission evaluates the cost-effectiveness of a utility's EE and LM programs by applying the Utility Cost Test, which is described below in Section VI(D).

Public Participation Requirements. The EUEA and the EE Rule require public utilities to solicit nonbinding recommendations on the design, implementation and use of third-party energy service contractors through competitive bidding of the programs from Staff, the New Mexico Attorney General, the Energy, Minerals and Natural Resources Department and other interested persons before seeking Commission approval. NMSA 1978, § 62-17-5(E); 17.7.2.8(B) NMAC. PNM held three public advisory meetings related to its 2021 Plan. PNM witness Johnson said that PNM carefully considered the recommendations it received and incorporated many of them into the 2021 Plan. Johnson Direct at 5, 17. Staff testified that PNM

complied with the pre-filing requirements of the EUEA and the EE Rule. Reynolds Direct at 12-13.

Cost Recovery under the EUEA and EE Rule. The EUEA allows a public utility to recover its prudent and reasonable costs associated with cost-effective EE and LM programs along with Commission-approved incentives either through an approved tariff rider or in base rates, or by a combination of the two. NMSA 1978, § 62-17-6(A) (2019). For investor-owned electric utilities, program funding is established at no less than 3% and no more than 5% of customer bills, excluding gross receipts taxes and franchise and right-of-way access fees, or \$75,000 per customer per calendar year, whichever is less, for customer classes with the opportunity to participate. *Id.* Provided that the public utility's total portfolio of programs remains cost-effective, no less than 5% of the amount received by the public utility for program costs shall be directed to EE programs for low-income customers. *Id.*, § 62-17-6(B).

The EUEA requires that cost recovery under a tariff rider be applied on a monthly basis. *Id.*, § 62-17-6(C). Customer bills must contain language explaining the benefits of EE and LM programs. *Id.* PNM proposes to include the same language it has used in previous PNM plan filings on all customer bills to address this requirement as follows:

The energy efficiency line on your bill pays for programs that save energy and avoid the cost of new electricity generation.

Johnson Direct at 45.

EE/LM Plan Filing Requirements. The Commission's EE Rule carries out the EUEA, specifying requirements regarding annual applications and reports. 17.7.2.8 NMAC. In addition to establishing timing and pre-filing requirements for plan filings, the EE Rule also requires filings to include detailed information regarding each proposed measure or program, including previously approved measures and programs submitted for reauthorization. *Id.* Staff

witness Reynolds testified that PNM's application addresses each filing requirement in 17.7.2.8 NMAC. Reynolds Direct at 13.

V. PNM'S MINIMUM SAVINGS REQUIREMENT

To meet the EUEA's minimum savings requirement of 5% of 2020 retail kWh sales in 2025, PNM needs to show cumulative savings of 403 GWh in 2025. To stay on a linear path toward meeting its EUEA required energy savings in 2025, PNM needs to achieve 80 GWh savings annually in 2021 through 2025. Johnson Direct, Exh. ZRG-2 at 9.

VI. PNM'S 2021 PLAN

A. EXISTING PROGRAMS TO BE CONTINUED IN 2021 PLAN

1. RESIDENTIAL COMPREHENSIVE PROGRAM

The Residential Comprehensive Program, which is the primary incentive program for residential customers, has three sub-programs or measures:

1. Home Energy Checkup: an energy specialist performs an assessment of a home's lighting, heating and cooling systems and insulation and appliances, and the homeowner receives, for a fee, a choice of one of two packages of energy-saving items. The specialist installs energy efficiency products from the direct installation package. Each package contains a mix of the following products: a low-flow showerhead; a faucet aerator; light emitting diodes (LEDs); and advanced power strips. The fee is waived for low-income customers. Also, rebates are provided for purchasing Energy Star appliances and heat pump water heaters, replacing existing HVAC units with more efficient units and adding insulation to homes with refrigerated air conditioning.

2. Residential Cooling: provides rebates for purchasing energy efficient evaporative coolers, refrigerated air conditioning units, heat pumps and variable speed pool pumps.
3. Refrigerator Recycling: provides a \$50 rebate to recycle a second refrigerator or freezer.

Johnson Direct, Exh. ZRJ-2 at 32-35.

CCAEC recommends that the Commission direct PNM to consult with stakeholders periodically on ways to maximize participation by low-income households in the Residential Comprehensive Program and report on steps it has taken to maximize such participation in its annual Energy Efficiency Program reports. Geller Direct at 8. PNM is willing to have such consultations. Tr. at 39-41 (Johnson).

2. RESIDENTIAL LIGHTING PROGRAM

The Residential Lighting Program provides rebates for replacing incandescent and halogen light bulbs with primarily LED bulbs through discounts and coupons at participating retailers. Johnson Direct at 20. Beginning in 2021, PNM intends to offer discounts for additional products such as advanced power strips, evaporative cooling equipment and room air conditioners. *Id.*, Exh. ZRJ-2 at 36-37.

Staff is concerned that the projected energy savings assumed by PNM per LED bulb are inflated. This concern arises in part from PNM's use of an equivalent standard halogen bulb as the baseline for measuring savings. In other words, PNM assumes that each rebated bulb, once installed, substitutes for a standard halogen bulb that would have otherwise been installed. The difference in energy use between the standard halogen bulb and the rebated bulb is the basis for determining projected savings. For the most common 60 watt equivalent bulb, the actual energy used by a standard halogen bulb is 43 watts while the actual energy used by an LED bulb is about nine watts. Reynolds Direct at 18-19. Mr. Reynolds questions whether PNM should be using a standard halogen bulb as the baseline given the ongoing high saturation rate for CFL and LED bulbs in PNM's service territory. Mr. Reynolds says, "PNM's assumption that all of the 975,110

LEDs it is projecting to rebate in 2021 will substitute for standard halogen bulbs which consume 43 watts appears to overlook the impact of the 998,960 CFLs that are expected to fail at the same time.” *Id.* at 20. In fact, the independent evaluator is reviewing the baseline used by all electric utilities to estimate savings in residential lighting programs and said that “the programs will need to prepare for a significant drop in savings[.]” *Id.*, Att. JJR-6. Mr. Reynolds also questions whether PNM should be using a standard halogen bulb as a baseline because, taking into consideration rebates for LED bulbs, the difference in pricing between halogen and LED bulbs is small and possibly immaterial. He says, “When the rebates result in pricing for efficient bulbs that is essentially equivalent to the pricing of the baseline bulbs, the baseline is rendered irrelevant.” *Id.* at 21.

To avoid any disruption to the longstanding Residential Lighting Program, Staff recommends that the Commission approve continuing the Program in the 2021 Plan. However, Staff recommends that the Commission order PNM to provide the following information with its next annual Energy Efficiency report due on April 15, 2021:

1. A lighting saturation survey that PNM says it plans to perform in 2020;
2. A description of any updated guidance by the statewide independent evaluator about lighting savings; and
3. An analysis by PNM about the impact of the lighting saturation survey and any updated guidance by the statewide independent evaluator about lighting savings on the prospective cost effectiveness and sustainability of the Residential Lighting Program in the 2021 Plan.

Id. at 21-22.

CCAIE does not agree with Staff that the small difference in price between standard halogen and LED bulbs, taking into account rebates, is a concern. CCAIE says the Residential Lighting Program is “highly cost effective” and would very likely remain cost effective even using revised assumptions of energy savings per bulb. Nevertheless, CCAIE does not object to Staff’s

recommendation. Geller Rebuttal at 3-4. PNM agrees to provide the 2020 lighting saturation survey in its next annual Energy Efficiency Report and says that it will use the independent evaluator's recommendations of future lighting savings assumptions to update future program designs. Johnson Direct at 13.

3. PNM HOME WORKS AND ENERGY INNOVATION PROGRAM

The PNM Home Works and Energy Innovation Program provides an energy efficiency curriculum for teachers and kits for 5th grade and high school students with easy-to-install energy efficiency and water-saving devices. Demand is high for this program, and there is a waiting list of teachers and schools who wish to participate. Johnson Direct at 21.

4. NEW HOME CONSTRUCTION PROGRAM

The New Home Construction Program provides incentives to home builders to exceed the level of energy efficiency required by building codes. It offers rebates for building new, highly efficient single-family residential homes through either a prescriptive or a performance path. Under the prescriptive path, home builders receive rebates for specific energy efficient technologies. Under the performance path, home builders can choose to receive rebates for overall home performance upon verification by a credentialed home energy rater. The average savings per newly constructed home is approximately 1,050 kWh. Johnson Direct, Exh. ZRJ-2 at 38-39.

5. LOW INCOME EASY SAVINGS KIT PROGRAM

The Low Income Easy Savings Kit Program provides free LED bulbs, a showerhead and educational materials on saving energy to low-income customers. Johnson Direct, Exh. ZRJ-2 at 40.

6. ENERGY SMART PROGRAM/LOW INCOME HOME WEATHERIZATION ASSISTANCE PROGRAM

The Energy Smart Program provides money for the New Mexico EnergySmart low-income weatherization program, implemented by the New Mexico Mortgage Finance Authority. In recent years, the Program's focus was installing LED bulbs, weatherizing and replacing inefficient refrigerators with Energy Star-qualified models. In 2017 it was expanded to include measures for customers with electric space heating, electric water heating and refrigerated air conditioning. In 2021, door, window and heat pump replacement will be added to the weatherization measure offerings. Johnson Direct at 24; Exh. ZRJ-2 at 40.

7. COMMERCIAL COMPREHENSIVE PROGRAM

The Commercial Comprehensive Program is designed to be a "one-stop-shop" for commercial customers to improve the efficiency of existing or planned facilities. It has seven sub-programs or measures:

1. **Retrofit Rebates:** provides standard rebates for installing qualifying equipment in existing and new buildings and custom rebates for reducing energy use with a system improvement that is not qualifying equipment;
2. **New Construction:** provides rebates for installing qualifying equipment and lighting in new construction and for constructing buildings that exceed the minimum standards for energy efficient designs for buildings;
3. **Building Tune-Up:** offers incentives for building owners and operators to improve whole-system building efficiency through retro-commissioning, performing advanced tune-ups of air conditioning systems and supporting building operator certification training;

4. Distributor Discount/Midstream Rebates: a participating distributor sells high efficiency equipment from an approved product list to an eligible PNM customer; the customer receives an instant discount at the point of purchase and PNM pays the rebate directly to the distributor;
5. PNM Quicksaver: offers small business customers with an annual peak electric demand of 200 kW or less, incentives for installing qualifying lighting products and refrigeration in existing buildings;
6. Multifamily: provides rebates to owners of multifamily (apartment) buildings for installing energy efficient upgrades in common areas and residential housing units. Upgrades include lighting retrofits and appliance upgrades; and
7. Self-Direct Program: allows large customers to seek and receive approval for a credit for and equal to the expenditures that the customer has made at its facilities toward cost-effective energy efficiency and load management. Once approved, the credit may be used to offset up to 70% of the Energy Efficiency Rider until the credit is exhausted.

Johnson Direct at 26-27; Exh. ZRJ-2 at 27-31; Tr. at 46-47 (Johnson).

CCAЕ recommends increasing the budget for this Program by \$208,969 in 2022 and \$388,300 in 2023, which would place participation levels and budgets in 2022 and 2023 at the same levels as in 2021. CCAЕ recommends using the additional funding to increase marketing and incentive levels in the Quick Saver portion of the Program because small businesses in particular need help in cutting costs. Geller Direct at 14-15. Approval of this recommendation would increase PNM's proposed EE Rider rate in 2022 and 2023. Tr. at 104 (Geller).

PNM objects to increasing the 2022 and 2023 budgets for the Commercial Comprehensive Program because, after consultation with its third-party implementers, there are concerns that PNM would be able to effectively spend the increased budgets in 2022 and 2023 on just the Commercial Comprehensive Program. Tr. at 60 (Johnson). PNM says that it will use

plan funding to maximize participation, especially in the low-income and small business markets, and reallocate dollars among programs as appropriate as the market and program needs dictate. Johnson Rebuttal at 11.

CCAЕ's recommendation to increase the budgets for the Commercial Comprehensive Program in 2022 and 2023 should be denied based on PNM's testimony that it might not be able to effectively spend the increased budgets on this Program.

8. PEAK SAVER LOAD MANAGEMENT PROGRAM

The Peak Saver Program is PNM's load management program available to eligible large commercial and industrial customers with monthly peak loads of at least 50 kilowatts. It is a form of demand response, which is the voluntary reduction of electricity consumption during periods of peak electricity demand or high electricity prices. Its value lies in being able to reduce load quickly to balance the grid if needed. Johnson 6-3-20 Supp., Exh. ZRJ-1 Supp. at 15. Peak Saver program participants earn revenue for agreeing to curtail electricity use and earn additional revenue for the amount of electricity they actually curtail during the event.

<https://www.pnm.com/peaksaver>; frequently asked questions. The Peak Saver Program allows for curtailment of demand during the hours of 1:00 p.m. to 8:00 p.m., Monday through Friday, in the months of June through September. Events last no longer than four hours, and PNM is limited to 100 demand response event hours per year. *Id.*; Johnson Direct, Exh. ZRJ-2 at 43.

PNM has a contract with a third-party contractor to administer the Peak Saver Program, which expires in 2022. PNM proposes to extend the contract term to 2023. Staff supports the requested extension, Reynolds Direct at 9, and it should be granted.

9. POWER SAVER LOAD MANAGEMENT PROGRAM

The Power Saver Program is PNM's load management program available to residential and business customers with annual peak demand of 50 kW or less and a refrigerated air conditioning unit or heat pump. Participants agree to allow PNM to cycle their refrigerated air conditioning units or heat pumps off and on during times of high overall electricity demand. Activation periods are most likely to be experienced on weekdays during June through September, from 1:00 p.m. to 8:00 p.m., for no more than four hours. After a participant enrolls in the program, PNM installs either a Wi-Fi enabled thermostat or an outdoor switch to the refrigerated air conditioning unit or heat pump, which receives a signal from PNM during an activation period to reduce "on" time. A participant receives a one-time \$25 bonus check after the device has been installed. If a participant's device has been active during the cooling season, the participant receives an annual thank-you check of \$25. <https://www.pnmpowersaver.com/overview/frequently-asked-questions>; <https://www.pnmpowersaver.com/overview/program-rules>.

PNM has a contract with a third-party contractor to administer the Power Saver Program, which expires in 2022. PNM proposes to extend the contract term to 2023. Staff supports the requested extension, Reynolds Direct at 9, and it should be granted.

B. PROPOSED BEHAVIORAL PROGRAMS

1. BACKGROUND

A term of the stipulation approved in Case No. 17-00076-UT is that PNM would issue a request for proposals (RFP) for a behavioral energy efficiency program such as home energy reports. PNM agreed to meet with the energy efficiency public advisory group to discuss the responses to the RFP and feasibility of implementing a behavioral program. If PNM determined that implementing a behavioral program is likely to be cost effective and in the public interest, it agreed to propose a behavioral energy efficiency program in its next application for approval of

EE/LM programs in 2020. Case No. 17-00076-UT, Certification of Stipulation, Stipulation, ¶ 10(g).

PNM issued an RFP and received eight bids. PNM selected two contractors to implement two behavior-based programs. PNM witness Johnson said that these programs were well-received by the Public Advisory Group members. Johnson Direct at 30.

2. RESIDENTIAL HOME ENERGY REPORTS PROGRAM

PNM proposes a residential Home Energy Reports (HER) program. This program would be delivered through a (i) customizable and personalized HER (both paper and digital); (ii) a customer web portal; (iii) personalized insights and cross-promotion; and (iv) an online marketplace offering discounts on energy efficient measures. Johnson Direct, Exh. ZRJ-2 at 42. Approximately 70% of PNM residential customers would participate in the Program. *Id.* at 42; Tr. at 62 (Johnson).

The projected UCTs of the HER program in 2021 through 2023 are 0.524, 0.67 and 0.69, respectively. Johnson Direct, Exh. ZEJ-2 at 22-24.

The Commission previously approved a behavioral EE program as part of PNM's EE/LM portfolio. The program, called Home Energy Reports, was implemented in mid-year 2014. The purpose of the Home Energy Reports Program was to educate and motivate a pilot group of customers to reduce energy consumption. The Program provided periodic energy use reports to about 50,000 residential participants. The key approach used in the reports was to compare participants' energy use to that of neighbors with similar home characteristics. OPOWER Inc., the third-party implementer, used PNM customer use data along with publicly available data, such as home size and heating type, to create the comparisons. The premise of the program was that customers may feel persuaded to change behavior to become more efficient if neighbors or other similar customers were seen to do so. Case No. 14-00310-UT, Certification of Stipulation

at 34 (4-10-15), adopted by Final Order Adopting the Certification of Stipulation and the Stipulation (4-29-15).

The Commission's Final Order in Case No. 14-00310-UT terminated the Home Energy Reports Program at PNM's request. PNM requested termination of the program after receiving feedback from customers who questioned the accuracy of the neighbor comparison, resulting in a less than favorable opinion of the program. PNM said in that case that one reason for the comments may have been that OPOWER had not been able to collect the same level of publicly available data, such as home square footage or cooling type, on New Mexico households as it had collected for similar programs in other states, which may have resulted in less accurate neighbor comparisons. *Id.* at 34-35. PNM said, "The contractor is unable to provide customers with comparisons that reflect their own usage characteristics." *Id.* at 45. PNM was concerned that the unfavorable reaction could have an effect on the general efficiency message that it was trying to provide to customers and that continuing the program could harm the performance of other programs. *Id.* at 35. CCAE opposed termination of the program, arguing that a small number of participants actually complained and pointing out that PNM expected the program to be cost-effective. *Id.* at 41. The Commission found that CCAE's position was rebutted by PNM's testimony that called into question whether the program's assumed cost-effectiveness could be verified. *Id.* at 73. The Commission took administrative notice of PNM's 2014 annual report, which reported a UCT of less than 1.0 for the Home Energy Reports Program. *Id.* at 46.

In this case, PNM witness Johnson said that another reason that contributed to PNM requesting termination of the Home Energy Reports Program is that home energy reports offered by OPOWER were primarily in paper format, which lacked adequate personalization and customization of energy efficiency recommendations and cross-promotion of other available energy efficiency offerings. Johnson 6-3-20 Supp. at 5-6.

PNM's proposed HER Program in this case will use digital reports, unlike the terminated Home Energy Reports Program. PNM says that digital reports are more advantageous than paper reports because they can be provided more frequently to customers (typically at least twice per month) and are more easily tailored to individual customers. Additionally, PNM's proposed HER Program in this case will use two options to compare customer use. One option uses comparisons to similar homes based on home type, home size and the presence of key appliances. The criteria applied for the similar home comparison will be described on each HER Report. If customers do not prefer the similar home comparison, they may choose to compare their current energy use to their own previous 12 months of energy use. This latter option was not available in the terminated Home Energy Reports Program. Because of these differences, PNM expects to avoid the customer dissatisfaction that led it to request termination of the previous Home Energy Reports Program. *Id.* at 6-7.

Staff and CCAE recommend approving the HER Program. Mr. Reynolds testified that the program was well received at PNM's public participation meetings, and it appears that technology developments since 2014 improve the chance that the program will be cost effective. Reynolds Direct at 27; Geller Direct at 16-17.

The proposed HER Program should be approved.

3. COMMERCIAL STRATEGIC ENERGY MANAGEMENT PROGRAM

PNM proposes a commercial strategic energy management program (SEM) available to commercial and industrial customers. Johnson Direct at 31-32. SEM is a process focusing on continuous improvement of energy efficiency at commercial or industrial facilities. SEM is carried out through a process of employee engagement and identification and implementation of operations improvements. The core of SEM is low- or no-cost operational measures and practices that lead to energy and cost savings over time. Although the measures themselves are

intended to be low- or no-cost, SEM often requires a significant amount of time to be invested by a company's employees. Jay Luboff, Rebecca Legett, Vijeta Jangra & Robert Firme, *Commercial Strategic Energy Management: Approaches and Best Practices at 2* (2016), available at <https://escholarship.org/uc/item/7jz9z1zg>. The SEM approach emphasizes energy reduction through behavioral and operational changes and structured planning of facility upgrades and process improvements. Johnson Direct, Exh. ZRJ-2 at 42. A behavioral change might be turning off the lights when leaving a room. An operational change might be changing the time of day or season of an activity. Tr. at 55 (Johnson).

Under PNM's proposed program, up to 45 customer sites would be grouped into cohorts. Johnson Direct, Exh. ZRJ-2 at 42. Under the cohort model, utilities deliver the program to groups of companies called cohorts. A cohort consists of approximately 10 to 15 companies that all implement the same or similar program practices on a similar timeline. Luboff, Legett, Jangra & Firme, *supra*, at 4. The use of cohorts encourages the identification of energy savings through webinars, workshops, technical support, presentations and toolkits. Johnson Direct, Exh. ZRJ-2 at 42.

The projected UCTs of the SEM program in 2021 through 2023 are 0.853, 2.05 and 2.13, respectively. *Id.* at 22-24.

Staff and CCAE recommend approving the SEM Program. Mr. Reynolds testified that the program was well received at PNM's public participation meetings. Reynolds Direct at 27; Geller Direct at 16-17.

The proposed SEM Program should be approved.

C. AMI PILOT PROGRAM

1. BACKGROUND

In Case No. 15-00312-UT, PNM filed an application asking the Commission to approve an Advanced Metering Infrastructure Project (the AMI Project). PNM proposed to retire its existing meters and replace them with AMI meters and equipment capable of communicating data to and from a central PNM data center. Case No. 15-00312-UT, Recommended Decision at 1 (3-19-18), adopted by Final Order (4-11-18). The primary operational benefit of PNM's proposed AMI Project was the ability of AMI meters to automatically communicate customer use data to a central location, eliminating the need to send meter readers into the field to manually read meters. *Id.* at 14. PNM at that time had no plans to incorporate the energy efficiency capabilities of the AMI infrastructure into PNM's Project. *Id.* at 16-17, 53, 71. The primary purpose of PNM's Project was cost savings achieved by eliminating meter reading jobs, more quickly disconnecting late- and non-paying customers and increasing revenues by preventing tampering. *Id.* at 71.

The Hearing Examiner recommended disapproving PNM's application, finding that PNM's proposed project did not provide a net public benefit and did not promote the public interest. *Id.* at 120-21. The Hearing Examiner recommended disapproving the application for many reasons, one of which was that PNM did not have plans to pursue AMI-related energy efficiency programs. The Hearing Examiner found that the role of advanced metering in developing future energy efficiency programs and a smart grid should be addressed in any future proposal. *Id.* at 100. In its Final Order, the Commission adopted the Hearing Examiner's Recommended Decision and added the following decretal paragraph:

Consistent with PNM's statement in its Statement on Exceptions that it will continue to evaluate implementation and AMI technology, PNM should include in its next Energy Efficiency Plan application a proposal on the inclusion of an AMI pilot project.

Final Order at 2, ¶ C.

This case is PNM's first application filed under the EUEA since the Commission issued its Final Order in Case No. 15-00312-UT, and, as directed, PNM includes a proposal for an AMI Pilot Program. Johnson Direct at 45-46.

2. THE AMI PILOT PROGRAM

The 12-month AMI Pilot Program would install 5,000 smart meters and a back office data management system. The program would allow customers access to real-time energy use data to monitor and control their energy use through behavioral changes. Johnson Direct at 47. PNM proposes to use the program only to determine energy efficiency savings associated with AMI metering. PNM believes that other operational and customer benefits exist, such as time of day, remote connect/disconnect, pick your payment date, operational monitoring and manpower savings with regard to meter readers. However, PNM says that such benefits are outside the scope of a pilot program in this energy efficiency framework. *Id.* at 51. Therefore, the proposed program does not offer many potential benefits of advanced metering, which was a universal criticism of PNM's proposed AMI Project in Case No. 15-00312-UT. Case No. 15-00312-UT, Recommended Decision at 43-45, 53-56, 99.

PNM would select participants in an area or areas to be determined to best allow behavioral energy use comparisons between similar non-AMI and AMI Pilot Program participants. Upon notification of selection to participate, customers could opt out of participating in the Pilot Program. Johnson Direct at 47.

The estimated cost of the Pilot Program is \$2,897,609. PNM would work to design and implement the program within 12 months of approval. *Id.* at 48-49.

The projected UCT of the Pilot Program is 0.003 in 2021. Johnson Direct at 50; Tr. at 49 (Johnson). Based on research and discussions with industry experts, PNM anticipates minimal savings from the Pilot Program, if any, above the non-AMI participants. *Id.*

PNM has proposed the AMI Pilot Program because it was ordered to do in Case No. 15-00132-UT, but PNM does not recommend approval of the program because of its low projected UCT. Tr. at 52 (Johnson).

Staff recommends that the Commission not approve PNM's AMI Pilot Program. Staff states that the benefits of the program would be minimal, resulting in a projected UCT of only 0.003, and that PNM is considering recently passed grid modernization legislation as a more suitable framework to advance utility wide metering infrastructure improvements. Reynolds Direct at 32.

CCAIE also recommends that the Commission not approve PNM's AMI Pilot Program because of the very low projected UCT of the program. Geller Direct at 17-18.

The AMI Pilot Program should not be approved because of its projected low UCT and its failure to offer potential benefits of advanced metering.

D. COST-EFFECTIVENESS OF EE/LM PROGRAMS

1. THE UTILITY COST TEST

The Commission evaluates the cost-effectiveness of a utility's EE/LM programs by applying the Utility Cost Test (UCT), which the EUEA defines as:

A standard that is met if the monetary costs that are borne by the public utility and that are incurred to develop, acquire and operate energy efficiency or load management resources on a life-cycle basis are less than the avoided monetary costs associated with developing, acquiring and operating the associated supply-side resources.

NMSA 1978, § 62-17-4(K).

The UCT measures the cost effectiveness of a utility's program in terms of avoided revenue requirements realized when customers use energy more efficiently in comparison to utility costs for delivery of EE and LM projects. The UCT is expressed as a ratio, which is calculated by dividing the net present value (NPV) of the supply-side benefits or avoided costs

(also known as “system benefits” or “cost to serve”) [numerator] by the NPV of the program costs (all EE/LM program-related expenses) [denominator]. In essence, the UCT is a cost-benefit analysis expressed in this simplified form: $UCT = \text{Benefits/Costs}$. The higher the ratio is over 1.0, the higher the net benefits are in the form of avoided supply-side resource costs that inure to all customers over the lifetime of the programs. Case No. 15-00119-UT, Certification of Stipulation at 11 (12-18-15), adopted by Order Adopting Certification of Stipulation (12-23-15).

Staff objects to PNM’s calculation of both avoided costs (the numerator of the UCT test) and program costs (the denominator of the UCT test).

2. PNM’S CALCULATION OF COST SAVINGS/AVOIDED COSTS

Avoided costs or cost savings are the costs that PNM would not incur as a result of lower energy consumption and demand resulting from implementation of EE and LM measures. Johnson Direct, Exh. ZRJ-2 at 47. There are two categories of avoided costs: avoided energy costs and avoided capacity costs. Avoided energy costs are variable costs that include fuel and variable operations and maintenance expenses. Avoided capacity costs are costs of adding generation. Avoided capacity costs include avoided generation capacity costs and avoided transmission and distribution (T&D) capacity costs, which PNM identified separately. Solomon Direct at 5-6.

To calculate avoided generation costs, PNM conducted simulations with its capacity expansion planning software, EnCompass, and calculated the cost of its proposed Scenario 1 replacement portfolio in Case No. 19-00195-UT, with and without the incremental impact of its EE and LM programs. The difference at system coincident peak is the avoided generation cost. To calculate avoided energy costs, PNM conducted simulations of the variable costs of its Scenario 1 replacement portfolio, with and without the incremental impact of its EE and LM programs. The difference at system coincident peak is the avoided energy costs. *Id.* at 7-9. The

avoided T&D capacity costs are not calculated costs; rather, they are proxy values based on PNM's review of other western utilities. PNM says that it will perform a study to more accurately determine the values relative to PNM's system before filing its next application for approval of its EE and LM programs in 2023. Phillips Direct at 7.

In Case No. 19-00195-UT, the Commission considered what new generation resources to approve to replace the retired 497 MW of capacity and energy produced by PNM's share of the San Juan Generating Station. PNM asked the Commission to approve a replacement portfolio labeled "Scenario 1," consisting of renewable energy and energy storage facilities supported by natural gas-fired peaking units. Case No. 19-00195-UT, Recommended Decision on Replacement Resources, Part II, at 42 (6-24-20). The Commission issued its Final Order in Case No. 19-00195-UT on July 29, 2020, after PNM filed its Application and Direct Testimonies in this case. In its Final Order, the Commission did not approve PNM's Scenario 1 replacement portfolio, but approved a proposal by CCAE labeled "CCA Scenario 1." Case No. 19-00195-UT, Final Order at 15, ¶ A. CCA Scenario 1 consists of renewable energy and energy storage facilities and demand response resources with no natural gas-fired peaking units. Case No. 19-00195-UT, Recommended Decision on Replacement Resources, Part II, at 47-48.

Staff witness Solomon recommended in his Direct Testimony in this case that the Commission direct PNM to recalculate its avoided generation capacity costs and energy costs using the avoided costs of the approved CCA Scenario 1 replacement portfolio. Solomon Direct at 11-12. Mr. Solomon also recommended that the Commission order PNM to complete a T&D avoided cost study before it files its next application for approval of its EE and LM programs in 2023. *Id.* Similarly, while CCAE witness Geller said that the proxy values for the T&D avoided costs are reasonable at this time, they should be refined based on an analysis of potential T&D investments and costs with and without implementation of EE and LM programs, analogous to the analysis that PNM used to determine avoided generation capacity costs. Geller Direct at 4.

In Rebuttal Testimony, PNM agreed that its avoided costs should be recalculated to reflect using the avoided costs of the approved CCAE Scenario 1 replacement portfolio, and PNM provided those revised avoided costs. Phillips Rebuttal at 3-7; Johnson Rebuttal at 5-6. PNM agrees to provide a T&D avoided cost study with its next application for approval of its EE and LM programs. Tr. at 85 (Phillips).

3. PNM'S CALCULATION OF PROGRAM COSTS

PNM, in calculating program costs, discounted the upfront cost of programs by one year using a 7.2% discount rate. Staff questioned whether it is reasonable to discount upfront program costs “which will necessarily precede the realization of savings resulting from the implementation of measures funded by utility programs.” Staff believes that PNM’s discounting of upfront program costs understates the cost of the programs (the UCT denominator), therefore overstating the UCT. Reynolds Direct at 31.

In Rebuttal Testimony, PNM said that it “can agree with Staff’s recommendation that the discounting of upfront program costs should be eliminated in this application.” PNM explained that eliminating the discounting of upfront program costs may more closely reflect the lag between program expenditures and incurrence of benefits from the programs. However, PNM said that while it accepts Staff’s recommendation in this case, it will continue to analyze this issue and make an alternative proposal, if appropriate, in its next application for approval of its EE and LM programs. Johnson Rebuttal at 8.

Staff also recommends that PNM include its profit incentive as a program cost in calculating the UCT. Reynolds Direct at 7, 31. PNM objects to this recommendation, arguing that it is contrary to the EUEA’s UCT definition, which defines monetary costs as costs “that are incurred to develop, acquire and operate energy efficiency or load management resources” PNM argues that the profit incentive is not a cost incurred to develop, acquire and operate EE or

LM resources. Additionally, PNM points out that the EUEA’s definition of “program costs” explicitly excludes charges for incentives. PNM also argues that whether a utility can earn an incentive for providing cost-effective programs does not change the underlying cost-effectiveness of the programs. Johnson Rebuttal at 18-19.

CCAIE also objects to including the profit incentive as a program cost in calculating the UCT. Mr. Geller, quoting from the *National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources*, says that the costs included in the denominator of the UCT ratio are “utility system costs,” and that the incentive is not a utility cost. He also, like PNM, argues that including the profit incentive as a program cost is inconsistent with the EUEA’s definition of the UCT. Geller Rebuttal at 6.

For the reasons stated by PNM and CCAIE, the profit incentive should not be included as a program cost in calculating the UCT.

4. RESULTING PROGRAM AND PORTFOLIO UCTs

The tables below show the 2021, 2022 and 2023 projected program and portfolio UCTs, excluding the UCT for the AMI Pilot Program, under PNM’s 2021 Plan (revised to reflect increasing the 2021 budget by \$424,452, using the avoided costs of the approved CCAIE Scenario 1 replacement portfolio and eliminating the discounting of up-front program costs).

Table 4-3 a CCAE-1 Avoided Costs and adding 424,452 to LI programs			
2021 Programs	NPV Benefits	NPV Costs	2021 UCT
Residential Comp.	\$ 4,317,415	\$6,033,526	0.716
Refrig. Recycl.	\$ 928,347	\$1,241,809	0.748
HEC - Mkt	\$ 326,820	\$1,056,963	0.309
HEC - LI	\$ 185,498	\$887,769	0.209
Cooling & Midstream	\$ 3,555,599	\$2,846,985	1.249
Residential Lighting/Retail Products	\$ 7,129,173	\$3,886,163	1.835
Commercial Comp.	\$ 11,841,188	\$9,725,706	1.218
Easy Savings	\$ 803,409	\$819,437	0.980
Energy Smart (MFA)	\$ 143,676	\$354,884	0.405
New Home Const.	\$ 469,040	\$721,999	0.650
Behavioral (SEM)	\$ 899,290	\$1,306,142	0.689
Behavioral (Residential)	\$ 164,706	\$534,042	0.308
Home Works	\$ 388,134	\$578,243	0.671
Power Saver (LM)	\$ 6,167,619	\$5,313,250	1.161
Peak Saver (LM)	\$ 2,965,201	\$2,517,258	1.178
Total	\$ 35,967,700	\$ 31,790,650	1.13

Johnson 8-25-20 Supp. at 2.

Table 4-4 CCAE-1 Avoided Costs and Elimination of Discounting Upfront Program Cost			
2022 Programs	NPV Benefits	NPV Costs	2022 UCT
Residential Comp.	\$ 5,716,130	\$6,480,692	0.88
Refrig. Recycl.	\$ 1,153,348	\$1,249,688	0.92
HEC - Mkt	\$ 368,801	\$1,081,734	0.34
HEC - LI	\$ 155,341	\$807,352	0.19
Cooling & Midstream	\$ 4,405,985	\$3,341,918	1.32
Residential Lighting/Retail Products	\$ 8,186,746	\$3,641,180	2.25
Commercial Comp.	\$ 12,976,090	\$9,525,633	1.36
Easy Savings	\$ 629,227	\$587,822	1.07
Energy Smart (MFA)	\$ 138,509	\$246,427	0.56
New Home Const.	\$ 455,435	\$682,841	0.67
Behavioral (SEM)	\$ 1,166,267	\$567,481	2.06
Behavioral (Residential)	\$ 311,470	\$515,652	0.60
Home Works	\$ 433,593	\$582,089	0.74
Power Saver (LM)	\$ 7,331,844	\$5,655,445	1.30
Peak Saver (LM)	\$ 3,332,656	\$2,533,360	1.32
Total	\$ 41,045,314	\$ 31,018,623	1.32

Table 4-5 CCAE-1 Avoided Costs and Elimination of Discounting Upfront Program Cost			
2023 Programs	NPV Benefits	NPV Costs	2023 UCT
Residential Comp.	\$ 5,509,883	\$6,396,043	0.86
Refrig. Recycl.	\$ 1,151,430	\$1,256,992	0.92
HEC - Mkt	\$ 324,034	\$1,111,383	0.29
HEC - LI	\$ 158,332	\$826,969	0.19
Cooling & Midstream	\$ 4,225,894	\$3,200,700	1.32
Residential Lighting/Retail Product	\$ 8,484,211	\$3,818,936	2.22
Commercial Comp.	\$ 12,729,361	\$9,346,302	1.36
Easy Savings	\$ 643,072	\$601,889	1.07
Energy Smart (MFA)	\$ 142,761	\$247,936	0.58
New Home Const.	\$ 455,895	\$697,833	0.65
Behavioral (SEM)	\$ 1,178,062	\$567,481	2.08
Behavioral (Residential)	\$ 334,385	\$515,652	0.65
Home Works	\$ 451,264	\$585,655	0.77
Power Saver (LM)	\$ 7,262,770	\$4,649,495	1.56
Peak Saver (LM)	\$ 3,301,259	\$2,164,561	1.53
Total	\$ 40,842,731	\$ 29,591,783	1.38

Johnson Rebuttal at 7.

The projected UCT for the AMI Pilot Program in 2021 is 0.003. Johnson Direct at 50. If the AMI Pilot Program is approved, the 2021 portfolio UCT would drop from 1.13 to 1.04.

Johnson 8-25-20 Supp. at 3.

While some of the individual programs do not pass the UCT in 2021 through 2023, the EUEA only requires that the “portfolio of programs” is cost-effective. NMSA 1978, § 62-17-5(C) (2019). However, the EE Rule does require a utility to justify why it is proposing to implement a program that is not projected to meet the UCT. 17.7.2.8(H)(16).

PNM recommends approval of programs not projected to meet the UCT to provide the greatest opportunity for each affected customer class to participate in EE and LM programs. Further, PNM points out that several of the programs that do not pass the UCT benefit low-income customers and provide environmental benefits by avoiding emissions that may be associated with supply-side resources. Johnson Direct at 41. Similarly, CCAE recommends approval of programs not projected to meet the UCT because they increase participation in PNM’s EE programs and help low-income families cut their electricity bills. Geller Direct at 5.

E. PROJECTED BUDGETS

PNM's proposed 2021 Plan budget is \$31,366,198. CCAE recommends that PNM increase the Plan budget for 2021 by \$424,452. Geller Direct at 5. PNM agrees to this increase because \$424,452 is the amount of a 2019 over-collection that PNM has collected but has not yet spent; therefore, increasing the budget by \$424,452 would not increase the amount that has to be collected from customers. Johnson Rebuttal at 9. Staff also agrees with the increase. Tr. at 121 (Reynolds).

If the Commission adopts CCAE's recommendation to increase the 2021 budget, PNM will attempt to spend the \$424,452 on low-income programs, but if it is unable to spend the entire \$424,452 on low-income programs, it will spend the remaining amount on other programs to maximize the portfolio cost effectiveness. Johnson Rebuttal at 9. If the Commission does not adopt the recommendation to increase the 2021 Plan budget, PNM would reduce the 2021 Energy Efficiency Rider rate to 3.590% to reflect that \$424,452 of the 2021 budget has already been collected, meaning that PNM would only have to collect \$30,941,746 through the Energy Efficiency Rider in 2021. Settlage Rebuttal at 3.

CCAЕ's recommendation to increase the 2021 budget by \$424,452 should be adopted. Adopting this recommendation, PNM's budgets for the 2021 Plan, not including the cost of the AMI Pilot Program in 2021, are: (i) \$31,790,650 in 2021; (ii) \$31,018,623 in 2022; and (iii) \$29,591,783 in 2023. Johnson Direct at 12-13. If the cost of the AMI Pilot Program is included in the 2021 budget, the budget would increase to \$34,688,259. *Id.* at 50.

PNM's proposed 2021 budget is approximately 30% higher than average plan expenditures in 2018 and 2019. This is because, when the Commission approved PNM's 2018 and 2019 budgets, the EUEA required that funding for EE/LM programs was 3% of eligible customer bills, excluding gross receipts taxes and franchise and right-of-way access fees, or \$75,000 per customer per year, whichever was less. Under a 2019 amendment, the EUEA now

requires funding for EE/LM programs to be no less than 3% and no more than 5% of eligible customer bills, excluding gross receipts taxes and franchise and right-of-way access fees, or \$75,000 per customer per year, whichever is less. NMSA 1978, § 62-17-6(A) (2019). The significant 2021 budget changes relative to 2019 are (i) the additional \$1.8 million budgeted for the Residential Lighting Program; (ii) the additional \$1.5 million budgeted for the Residential Comprehensive Program; and (iii) the \$1.8 million budgeted for the new behavioral programs. Reynolds Direct at 8 & n.2.

About 8% of total plan spending is for low-income programs in 2021, 2022 and 2023. Johnson Direct at 14. Five programs in the 2021 Plan are either exclusively for low-income customers or serve a significant number of low-income customers. *Id.*, Exh. ZRJ-2 at 40-41.

VII. PROPOSED PROFIT INCENTIVE MECHANISMS

Section 62-17-5(F) of the EUEA affords utilities the opportunity to earn a profit on cost-effective EE/LM resource development that, with satisfactory program performance, is financially more attractive than supply-side resources. The EE Rule provides guidance on the requirements for review and approval of incentives. The Rules states that applications that include a proposed annual incentive must:

1. be based on a utility's costs;
2. be based on satisfactory performance of measures and programs;
3. be supported by written testimony and exhibits; and
4. not exceed the product (expressed in dollars) of:
 - a. the utility's percentage weighted average cost of capital (WACC) and
 - b. its approved annual program costs.

17.7.2.8(L) NMAC. In Case No. 16-00096-UT, the Commission determined that the appropriate WACC for setting the cap is the pre-tax WACC. Case No. 16-00096-UT, Certification of Stipulation at 66 (12-21-16), adopted by Order Adopting and Approving Certification of Stipulation (1-11-17).

Incentives must be cost-based and utility-specific. *New Mexico Attorney General v. New Mexico Pub. Regulation Comm'n*, 2011-NMSC-034.

In its Direct Testimony, PNM proposed an incentive mechanism with two parts: a base incentive and a sliding scale mechanism for additional incentives. It provided a base incentive of 7.1% of PNM's program budget for achieving 80 GWh of energy savings annually, which would keep PNM on a path toward achieving its 2025 savings goal of 403 GWh: 80 GWh is approximately one-fifth of 403 GWh. Johnson Direct at 59. PNM's initially proposed sliding scale mechanism had three steps of additional incentives. The first step would provide an additional incentive of 0.125% of the program budget, or \$38,773, for each additional GWh of energy savings of 81 to 85 GWh. The second step would provide an additional incentive of 0.175% of the program budget, or \$54,283, for each additional GWh of energy savings of 86 to 90 GWh. The third step would provide an additional incentive of 0.225% of the program budget, or \$69,792, for each additional GWh above 90 GWh up to the maximum. The total incentive (base incentive plus sliding scale incentives) was capped at 10.73% of program costs, or \$3,365,593. This cap is equal to the maximum incentive allowed by 17.7.2.8(L) NMAC, which is PNM's pre-tax WACC multiplied by program costs. *Id.*

PNM's initially proposed incentive mechanism was similar to the currently approved incentive mechanism in that they both (1) authorize a base incentive of 7.1% of PNM's program budget if PNM remains on track toward meeting its statutory savings requirement; and (2) contain a sliding scale mechanism that provides an additional incentive for PNM to exceed the statutory requirement. However, PNM's initially proposed sliding scale mechanism was

different from the current mechanism in that PNM's proposed mechanism allowed PNM to earn a higher profit incentive percentage for each incremental GWh savings above 80 GWh; in contrast, the current mechanism requires PNM to achieve an incremental 10 GWh of savings beyond what is necessary for PNM to stay on track toward meeting the statutory savings requirement before PNM is allowed to earn higher incentive percentage. Reynolds Direct at 28-29; Case No. 17-00076-UT, Certification of Stipulation at 29-30 (11-8-17), adopted in relevant part by Order Partially Approving Certification of Stipulation (1-31-17). Staff witness Reynolds testified that the current mechanism "was the product of significant give and take in the last EE and LM program plan approval case[.]" Reynolds Direct at 29.

Both Staff and CCAE objected to PNM's proposed sliding scale mechanism as being too generous, and each proposed a different sliding scale mechanism. *Id.* at 29-31; Geller Direct at 19-21.

In Rebuttal Testimony, PNM agreed to a revised sliding scale mechanism that would allow PNM to earn a higher profit incentive percentage starting at 95 GWh (not 80 GWh, as PNM initially proposed) and increasing by 0.125% per additional GWh of savings achieved. The sliding scale would be capped at 10.73% of program costs, or \$3,365,593 in 2021, which PNM would earn for achieving annual savings of 124 GWh. Johnson Rebuttal at 20-21.

At the hearing, CCAE witness Geller and Staff witness Reynolds both testified that while they were not withdrawing their proposed sliding scale mechanisms, they did not oppose PNM's revised sliding scale mechanism. Tr. at 106-07 (Geller); 115 (Reynolds).

Staff and CCAE raised valid criticisms of PNM's initially proposed sliding scale mechanism, which made it "much too easy for the company to obtain the maximum incentive amount." Geller Direct at 19. Their criticisms led PNM to propose a revised sliding scale mechanism that awards the maximum incentive for superior performance rather than just modestly higher performance.

PNM's revised sliding scale mechanism should be approved. It is consistent with the Commission's statement that "nothing in the EUEA constrains the Commission from adopting performance mechanisms that award greater or enhanced profit incentives for program achievements that go beyond 'satisfactory' performance." Case No. 14-00310-UT, Certification of Stipulation at 20. Additionally, it satisfies the elements of the incentive rule. First, it is cost-based because the incentive is tied to a percentage of the costs of PNM's portfolio of programs for 2021, 2022 and 2023. Second, the incentive is evidence-based because the mechanism was developed using PNM-specific cost and performance data. Third, the incentive is premised on satisfactory performance of measures and programs; the minimum annual savings of 80 GWh is the target that PNM needs to reach to meet the mandated savings amount in 2025. Fourth, the stipulated incentive mechanism does not exceed the product of PNM's pre-tax WACC and approved annual program costs.

The M&V evaluator will not verify PNM's actual achieved savings for 2021 until 2022. Nevertheless, PNM's proposal allows PNM to recover during 2021, 2022 and 2023 an incentive for achieving a baseline level of savings before the M&V evaluator verifies whether PNM has actually achieved that level of savings. Settlage Direct at 5. The Commission approved such concurrent recovery of costs and incentives in Case No. 14-00310-UT. Case No. 14-00310-UT, Certification of Stipulation at 74-75. After the M&V evaluator verifies PNM's actual annual savings, PNM will compare actual amounts collected for an incentive under the EE Rider with its earned incentive based on verified savings. Any difference along with carrying charges shall be trued up through the reconciliation of the EE Rider rate in the following year. Settlage Direct at 8-9. Because the EE Rider only collects the base incentive, the change to the sliding scale mechanism does not change PNM's proposed EE Rider rate. Tr. at 92 (Settlage).

VIII. PNM'S PROPOSED ENERGY EFFICIENCY RIDER RATE

PNM recovers its costs of funding its EE/LM programs through its Energy Efficiency Rider (EE Rider). The current EE Rider rate, which took effect on May 28, 2020, is 3.298%.
Settlage Rebuttal at 1.

If the AMI Pilot Program is not approved, PNM proposes to revise its EE Rider rate to 3.640% in 2021, 3.581% in 2022 and 3.396% in 2023. Settlage Direct at 3, 5-7. If the AMI Pilot Program is not approved, for an average-use PNM residential customer using about 600 kWh per month, under PNM's proposed revisions and between 2020 and 2021, the EE Rider charge would increase from \$2.43 to \$2.68 per month, a \$0.25 or 10.3% increase. Between 2020 and 2022, the EE Rider charge for such a customer would increase from \$2.42 to \$2.63 per month, a \$0.21 or 8.7% increase. Between 2020 and 2023, the EE Rider charge for such a customer would increase from \$2.42 to \$2.49 per month, a \$0.07 or 2.9% increase. Settlage Rebuttal, Exh. MJS-4 Rebuttal at 1-3.

If the AMI Pilot Program is approved, PNM proposes to revise its EE Rider rate to 3.962% in 2021. *Id.*, Exh. MJS-4 Rebuttal at 4. Because all costs of the AMI Pilot Program would be recovered in 2021, PNM's proposed revisions to its EE Rider rate in 2022 and 2023 would not change if the AMI Pilot Program is approved. Settlage Direct at 10.

Staff recommends that PNM's Advice Notice No 567 be approved, subject to any Commission modifications. Tupler Direct at 20.

The 2021 EE Rider rate in PNM's proposed 25th Revised Rider No. 16, contained in Advice Notice No. 567, is just and reasonable and should be approved.

IX. INDEPENDENT EVALUATOR'S EVALUATION OF PNM'S LM PROGRAMS

In PNM's last EE/LM plan case, the Commission ordered:

In its next report of PNM's EE/LM Programs, the independent evaluator shall evaluate actions that might increase participation in PNM's EE/LM Programs while maintaining the cost effectiveness of the Programs and recommend actions, if advisable. In its next EE/LM plan filing, PNM shall report on the independent evaluator's evaluation and recommendations, if any, and state whether PNM proposes to implement any recommended actions.

Case No. 17-00076-UT, Certification of Stipulation at 57, ¶ J (11-8-17). This directive was in response to a recommendation made by the Albuquerque Bernalillo County Water Utility Authority to study the potential of increasing participation in the LM Programs. The Certification of Stipulation noted that in 2016, the LM Programs were capable of being deployed for 100 hours but were actually deployed for 29 hours. *Id.* at 52-54.

In its 2017 Measurement and Verification Report (M&V), Evergreen Economics (Evergreen), the independent evaluator, evaluated whether participation in PNM's LM programs could be increased, but did not make any recommendations for increasing participation in these programs. *See* Johnson 6-3-20 Supp., Exh. ZRJ-1 Supp. Evergreen explained in its M&V Report that "the value of the program [the LM Programs] is in its expected level of capacity rather than the number of times it is used. Therefore, the evaluation team does not have specific recommendations regarding increased participation and use of the LM programs." *Id.* at 14. More specifically, the M&V Report explains:

A critical thing to understand about dispatchable demand response resources is that they provide capacity benefits even if no events are called in a summer. How often demand response is dispatched and the units in the stack are displaced are energy questions which have almost no material impact on the cost effectiveness of the demand response programs.

Id. at 15-16. In other words, according to PNM, "[D]ispatching an LM program more times in a year may result in some amount of energy or fuel savings (as an energy efficiency program

would), but it does not increase the kW capacity of the program or avoid the need for additional generating capacity, which is the primary purpose of a load management program.” Johnson 6-3-20 Supp. at 4.

An obvious way to increase participation in the LM Programs is to enroll new customers, and PNM has contracted with a vendor to perform studies of PNM’s EE/LM programs and the potential for their continuation and expansion. *Id.* at 4-5.

X. CCAE’S RECOMMENDATION REGARDING UNDERSPENDING AND OVERSPENDING

CCAIE recommends that, starting in 2021:

1. Any difference between the approved plan year budget and plan year collections be reconciled through an adjustment to the EE Rider; and
2. Any difference between the approved plan year budget and plan year expenditures be either added or subtracted, as appropriate, to or from the approved plan year budget two years later.

Geller Direct at 6.

CCAIE’s recommendations should be rejected because they are inconsistent with the EE Rule. The EE Rule recognizes that, for reconciliation purposes, the relevant “difference” is the difference between plan year expenditures and plan year collections. The Rule defines “plan year overage” as “the public utility’s actual prior plan year expenditures that exceeded the same plan year’s actual collections” and defines “plan year underage” as “the public utility’s actual prior plan year collections that exceeded the same plan year’s actual expenditures.” 17.7.2.7(H), (I) NMAC. In each plan year, a utility is to calculate its estimated plan year funding, subtracting any prior plan year overage or adding any prior plan year underage. *Id.*, 17.7.2.8(E). For reconciliation purposes, the approved budget is irrelevant. This point was recognized by the

Commission when it amended the definitions “plan year overage” and “plan year underage” in a 2017 rulemaking. Previously, “plan year overage” and “plan year underage” were defined as differences between plan year expenditures and plan year authorized funding. The Commission changed those definitions to the current definitions, stating:

[T]he Commission finds that CCAE and WRA [Western Resource Advocates] indicated that the current definitions require a reconciliation between the Commission authorized budget amount and the actual spent amount, which creates confusion because the reconciliation that is more important for purposes of determining the next year’s program spending level is the difference between the amount actually collected and the amount actually spent on EE Rule programs.

Case No. 17-00136-UT, Final Order Adopting Rule at 5 (9-13-17).

XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. All findings and conclusions contained in all Sections of this Recommended Decision, whether or not separately stated, numbered, or designated as findings and conclusions, are incorporated by reference as findings of fact and conclusions of law of the Commission.

2. PNM is certified and authorized to conduct the business of providing public utility service within the State of New Mexico, provides electric utility services within the State of New Mexico, and as such, is a public utility subject to the jurisdiction of the Commission under the Public Utility Act.

3. The Commission has jurisdiction over the subject matter of the proceeding and the parties.

4. Reasonable, proper and adequate notice of this case has been given.

XII. DECRETAL PARAGRAPHS

A. All Sections of this Recommended Decision are approved and adopted as the rulings, determinations, findings and conclusions of the Commission.

B. PNM's 2021 Energy Efficiency and Load Management Plan is approved with the following changes:

1. The AMI Pilot Program is not approved; and

2. The 2021 budget is increased by \$424,452, which is the amount of a 2019 over-collection that PNM has collected but not yet spent.

C. PNM's proposed profit incentive mechanism, as revised in Zachary Johnson's Rebuttal Testimony, is approved.

D. PNM shall study the following CCAE recommendations and implement them if they do not reduce the overall cost effectiveness of the programs and are consistent with market demands:

1. Adopt additional modifications to the Residential Comprehensive Program to maintain program impacts and assist a greater number of low-income households in case the COVID pandemic persists during 2021 and beyond;

2. Add products eligible for midstream incentives in the Residential Comprehensive Program, such as heat pump water heaters and advanced whole house evaporative cooling systems;

3. Make Energy Star-certified smart thermostats eligible for point-of-sale discounts in the Residential Lighting Program;

4. Encourage PNM's retail partners to stock and sell additional energy efficient products as part of the Residential Lighting Program, and make such products eligible for point-of-sale discounts;

5. Modify the Home Works Program if necessary so that it continues in case the COVID pandemic persists during 2021 and beyond;
6. Strive for higher peak demand savings in the New Home Construction Program, for example by emphasizing air conditioning efficiency, smart thermostats and demand response participation;
7. Revise incentives and incentive qualification levels in the New Home Construction Program and the New Construction component of the Commercial Comprehensive Program in light of New Mexico's update of the International Energy Conservation Code (IECC);
8. Support efforts to educate and train builders, contractors and local code officials about the updated IECC;
9. Add rebates for Energy Star-certified ducted and ductless heat pumps to the New Home Construction Program;
10. Increase kit distribution through social service agencies in the Easy Savings Kit Program;
11. Provide additional funding to the Mortgage Finance Authority, cities and community groups in the Energy Smart Program;
12. Explore partnering with New Mexico Gas Company to implement the Multifamily component of the Commercial Comprehensive Program;
13. Consider increasing participation in the HER Program;
14. Track and report capital projects implemented by customers participating in the SEM Program; and
15. Use online SEM training materials, such as those developed by the Northwest Energy Efficiency Alliance.

E. PNM shall report in this docket by February 1, 2021, the results of its study of CCAE's recommendations and state what recommendations it will and will not implement.

F. PNM shall consult with stakeholders periodically on ways to maximize participation by lower income households in the Residential Comprehensive Program and report on steps it has taken to maximize such participation in its annual Energy Efficiency Program reports.

G. PNM shall provide the following information in its next annual Energy Efficiency Program report:

1. A lighting saturation survey;
2. A description of any updated guidance by the statewide independent evaluator about lighting savings; and
3. An analysis by PNM of the impact of the lighting saturation survey and any updated guidance from the independent evaluator about lighting savings on the prospective cost effectiveness and sustainability of the Residential Lighting Program in the 2021 Plan.

H. PNM's request to extend by one year, to 2023, the term of its contracts with third parties to administer the Peak Saver and Power Saver Programs, is granted.

I. PNM shall file a transmission and distribution avoided cost study with its next application for approval of its energy efficiency and load management programs.

J. To the extent necessary, PNM's requests for variances from the EE Rule are granted.

K. PNM's request for a variance from the data filing requirements of 17.9.530 NMAC is granted.

L. PNM's proposed 25th Revised Rider No. 16, contained in Advice Notice No. 567, as revised by Mr. Settlage at the hearing¹, is approved.

M. This Order is effective immediately.

¹ See Tr. at 88-89.

N. This Docket is closed.

ISSUED at Santa Fe, New Mexico, on September 17, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Carolyn R. Glick _____

**Carolyn R. Glick,
Hearing Examiner**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF ITS 2021)
ELECTRIC ENERGY EFFICIENCY) Case No. 20-00087-UT
PROGRAM PLAN, PROFIT INCENTIVE)
AND REVISED RIDER NO. 16 PURSUANT)
TO THE NEW MEXICO PUBLIC UTILITY)
ACT, EFFICIENT USE OF ENERGY ACT)
AND ENERGY EFFICIENCY RULE)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I sent to the parties listed here, via email only,
a true and correct copy of the **Recommended Decision**.

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DATED this September 17, 2020.

/s/ Carolyn R. Glick
Carolyn R. Glick, Hearing Examiner