

RAB  
KDM  
2<sup>nd</sup> August

**ESCROW AGREEMENT**

This Escrow Agreement is entered into as of the 2<sup>nd</sup> day of ~~July~~ August, 1999 between Public Service Company of New Mexico ("PNM"), the Regents of the University of New Mexico ("UNM") and Albuquerque Title Co. Inc., whose address is 625 Silver, S.W., Albuquerque, New Mexico 87102 (the "Escrow Agent"):

WHEREAS, pursuant to a certain Substation Purchase and Sale Agreement (the "Sales Agreement") dated July 30, 1999 between PNM and UNM, UNM will purchase certain electric substation equipment, all on the terms and conditions set forth in the Sales Agreement; and

WHEREAS, a copy of the Sales Agreement is attached hereto as **Exhibit A**; and

WHEREAS, PNM and UNM desire to establish an escrow for the deposit of the purchase price and certain instruments described in the Sales Agreement, all in accordance with the terms and conditions hereinafter set forth:

WITNESSETH:

1.0 Albuquerque Title Co. Inc. is hereby appointed as escrow agent (the "Escrow Agent") on the terms and conditions herein and subject to the provisions hereof.

2.0 (a) The Escrow Agent acknowledges receipt in escrow from UNM of the sum of Three Hundred Eighty Seven Thousand Two Hundred Sixteen Dollars (\$387,216.00) representing the purchase price (the "Purchase Price") as defined in the Sales Agreement; and (b) the Escrow Agent acknowledges receipt in escrow of the documents listed on **Exhibit B** hereto from PNM and UNM, respectively.

3.0 The Escrow Agent is hereby authorized and instructed to:

(a) If a Notice of Rescission of Closing in the form of **Exhibit C** hereto that has been duly executed by UNM's authorized representative is delivered to the Escrow Agent,

then, on the effective date stated therein, the Escrow Agent shall: (1) pay the Purchase Price to UNM; (2) pay any remaining Funds (as defined in Section 5.0) to PNM; (2) return to UNM the Easement listed as item 2a under Exhibit B; and (3) return to PNM the Bill of Sale and Waiver and Release of Easement listed as items 1a and b under Exhibit B.

(b) Unless a Notice of Rescission of Closing has been sooner delivered to the Escrow Agent as provided in paragraph 3.0(a), then, on the earlier of (i) December 31, 1999 or (ii) the effective date specified in any Instruction to Disburse delivered to the Escrow Agent in the form of **Exhibit D** hereto that has been duly executed by PNM's authorized representative, the Escrow Agent shall: (1) pay the Purchase Price and all remaining Funds to PNM; (2) deliver to PNM the Easement listed as item 2a under Exhibit B; and (4) deliver to UNM the Bill of Sale and Waiver and Release of Easement listed as items 1a and b under Exhibit B.

(c) The Escrow Agent shall pay any amount required to be paid to PNM or UNM under this Escrow Agreement by hand delivery of a bank check for such amount to the party entitled to receive payment at the address set forth under the respective signature hereunder, or at such other address as the party may designate. The check shall be made payable to the order of "Public Service Company of New Mexico" or "The University of New Mexico," as the case may be.

(d) For purposes of this Section 3.0(a), PNM's authorized representative shall be Richard A. Braziel or such other person as PNM may designate from time to time, and UNM's authorized representative shall be Julie Weeks, Interim Vice-President for Business and Finance, or such other person as UNM may designate from time to time.

4.0 Upon the Escrow Agent's performance of the instructions set forth in Section 3.0, the Escrow Agreement shall automatically terminate.

5.0 All monies deposited in escrow and all collected funds thereafter deposited with the Escrow Agent (collectively, the “Funds”) and credited to the Escrow Account shall be invested in short-term government securities, government repurchase agreements, money market funds or other similar short-term highly liquid investments as shall be directed in writing by PNM, with the interest thereon to be accumulated and reinvested until disbursed. For purposes of this Section 5.0, the funds shall be deemed to be collected two (2) business days after such funds are deposited with the Escrow Agent in accordance herewith. The Escrow Agent is not obligated to render any statements or notices of non-performance pursuant to this paragraph to any party hereto, but may in its discretion inform any party hereto or his authorized representative of any matters pertaining to this Escrow Agreement.

6.0 The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, or other paper or document which the Escrow Agent believes to be genuine and what it purports to be.

7.0 The Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection with this Escrow Agreement, except its own gross negligence or willful misconduct.

8.0 The Escrow Agent may confer with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof, or its duties hereunder, and it shall incur no liability and be fully protected in acting in accordance with the opinions and instructions of such counsel.

9.0 In the event of any disagreement resulting in adverse claims or demands being made in connection with the subject matter of this Escrow Agreement, or in the event that the Escrow Agent is in doubt as to what action it should take hereunder, the Escrow Agent may at its

option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, as long as such disagreement continues or such doubt exists, and in any such event, the Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and the Escrow Agent shall be entitled to continue to so refrain from acting until (i) the rights of all parties have been fully and finally adjudicated in binding arbitration or by a court of competent jurisdiction, or (ii) all differences shall have been adjudged and all doubt resolved by agreement among all of the interested persons, and the Escrow Agent shall have been notified thereof in writing signed by all such persons. In addition to the foregoing remedies, should Escrow Agent become involved in litigation in any manner whatsoever on account of this Escrow Agreement or the escrow deposit made hereunder, the undersigned hereby bind and obligate themselves, their heirs and legal representatives, to pay Escrow Agent in addition to any charge made hereunder for acting as Escrow Agent, reasonable attorneys' fees incurred by Escrow Agent, and other disbursements, expenses, losses, costs, and damages in connection with and resulting from such litigation.

10.0 The Escrow Agent may resign for any reason, upon thirty (30) days' written notice to the parties of the Escrow Agreement. Upon the expiration of such thirty (30) days' notice, the Escrow Agent may deliver all cash or property in its possession under this Escrow Agreement to any successor escrow agent appointed by the other parties hereto, or if no successor escrow agent has been appointed to any court of competent jurisdiction in the State of New Mexico. Upon either such delivery, Escrow Agent shall be released from any and all liability under this Escrow Agreement. A termination under this paragraph shall in no way change the terms of this Agreement affecting reimbursement of expenses, indemnity and fees.

The Escrow Agent shall have the right to deduct from the escrow funds transferred to any successor agent any outstanding and unpaid expenses or fees.

11.0 The Escrow Agent agrees to charge for its services the amounts set forth on **Exhibit E - Fees**. The fee may be modified from time to time upon thirty (30) days' notice to PNM and UNM. The fees shall be paid in advance or at the Closing (as defined in the Sales Agreement) by UNM, who shall remain responsible for payment of any additional fees and expenses incurred in connection with this Escrow Agreement.

12.0 All notices and communications hereunder shall be in writing, and shall be deemed to be duly given if sent by registered or certified mail, return receipt requested, to the prospective address set forth at the end hereof. The Escrow Agent shall not be charged with knowledge of any fact, including but not limited to, performance or non-performance of any condition, unless it has actually received written notice thereof from one of the parties hereto or their authorized representative clearly referring to this Escrow Agreement.

13.0 The rights created by this Escrow Agreement shall inure to the benefit of, and the obligations created hereby shall be binding upon the successors and assigns of the Escrow Agent and the parties hereto. This Escrow Agreement is for the exclusive benefit of the parties hereto and their respective successors and shall not be deemed to give any legal or equitable right, remedy or claim to any other entity or person whatsoever. None of the parties shall assign or attempt to assign or transfer its interest hereunder or any part hereof. Any such assignment or attempted assignment by any party shall be in direct conflict with the Escrow Agreement set forth herein and the Escrow Agent shall not be bound thereby.

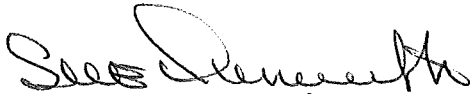
14.0 This Escrow Agreement shall be construed and enforced according to the laws of the State of New Mexico.

15.0 This Escrow Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the transactions described herein and supersedes all prior agreements of understandings, written or oral, between the parties with respect thereto.

16.0 If any provision of this Escrow Agreement is declared by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

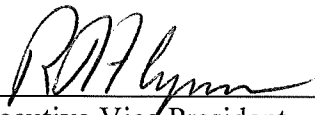
IN WITNESS WHEREOF, the Escrow Agent and the undersigned have executed this Escrow Agreement on the day and year first written above.

**ALBUQUERQUE TITLE CO. INC.**

By   
Its ESCROW OFFICER

Address:  
625 Silver SW #185  
Albuquerque, NM 87102  
Fax: (505)766-9768

**PUBLIC SERVICE COMPANY  
OF NEW MEXICO**

By   
Executive Vice President  
Electric and Gas Services

Address:  
Alvarado Square – MS 0510  
Albuquerque, NM 87158  
Fax: (505)241-4369

THE REGENTS OF THE UNIVERSITY  
OF NEW MEXICO

By Julie C. Weeks 7/30/99  
Interim Vice President for  
Business and Finance *OK*

Address:  
Scholes Hall, Room 109  
Albuquerque, NM 87131  
Fax: (505)277-7577

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**EXHIBIT A**

**SUBSTATION EQUIPMENT PURCHASE AND SALE AGREEMENT BETWEEN  
PUBLIC SERVICE COMPANY OF NEW MEXICO AND  
THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**

Dated July 30, 1999