

# SUBSTATION EQUIPMENT PURCHASE AND SALE AGREEMENT

BETWEEN

PUBLIC SERVICE COMPANY OF NEW MEXICO

AND

THE REGENTS OF THE UNIVERSITY OF NEW MEXICO

**THIS SUBSTATION EQUIPMENT PURCHASE AND SALE AGREEMENT** (“Agreement”), entered into as of the 30<sup>th</sup> day of July, 1999, is between **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation (“PNM”) and **THE REGENTS OF THE UNIVERSITY OF NEW MEXICO**, a body corporate of the State of New Mexico (“UNM”), hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties.”

## RECITALS

This Agreement is made with reference to the following facts, among others:

1. PNM is a public utility providing retail electric service within portions of the State of New Mexico, subject to regulation by the New Mexico Public Regulation Commission (the “Commission”).
2. UNM is presently a retail customer of PNM taking electric service from PNM under PNM’s Rate Schedule 5B.
3. PNM provides service to UNM from several electrical substations. One of these substations is the “University Substation” (which, with its associated equipment and facilities, is hereinafter referred to as the “Substation Equipment”), located adjacent to Lomas Boulevard NE, in Albuquerque, New Mexico. The Substation Equipment is used exclusively for the distribution of electricity to UNM and not to serve any other PNM retail customers. A description of the existing Substation Equipment and the original in-service dates of components thereof are contained in **Exhibit A**, attached hereto and incorporated herein.
4. The Parties desire to enter into an agreement under which UNM will have the right to purchase from PNM, and thereafter to own, operate and maintain, the Substation Equipment.
5. PNM’s sale of the Substation Equipment to UNM hereunder will not affect adversely PNM’s provision of adequate, efficient and reasonable electric service to other customers at fair, just and reasonable rates and will not affect adversely the present or future

public convenience and necessity. A sale of the Substation Equipment to UNM is in the usual and ordinary course of PNM's business and will not result in the discontinuance of service to any customer; and the Substation Equipment sold to UNM will, after the sale to UNM, continue to be used for a purpose similar to its present purpose, *i.e.*, the transformation of electrical power and energy from transmission to distribution voltage.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions of this Agreement, the Parties agree as follows:

1. Purchase and Sale of Substation Equipment. UNM shall purchase the Substation Equipment in accordance with the provisions of Section 4 and the other terms and conditions of this Agreement. On or before the date of Closing (as such term is defined in Section 4(a)), the Parties shall appoint an escrow agent (the "Escrow Agent") and execute and deliver an Escrow Agreement in substantially the form and content of **Exhibit B** attached hereto. UNM shall pay all fees, costs and expenses arising under or associated with the Escrow Agreement. The purchase of the Substation Equipment shall be subject to the terms of the executed Escrow Agreement.

2. Purchase Price. The purchase price (the "Purchase Price") for the Substation Equipment shall be based upon the trended depreciated original cost of the Substation Equipment at the time of the Closing, using the Handy-Whitman Index, as illustrated in **Exhibit C**, attached hereto and incorporated herein. In applying the Handy-Whitman Index, any adjustments attributable to any additions, repairs or modifications to the Substation Equipment shall be made in accordance with Generally Accepted Accounting Principles.

3. Inspection and Condition of Substation Equipment and Site. UNM has inspected and made its own independent evaluation of the Substation Equipment and Site and has examined PNM's operation and maintenance reports concerning the Substation Equipment prior to execution of this Agreement. Except as herein otherwise specifically provided, PNM has made no representations or warranties of any nature to UNM concerning the condition of the Substation Equipment or Site or their suitability for UNM's intended use. UNM agrees to purchase the Substation Equipment "as is." **EXCEPT AS EXPRESSLY PROVIDED IN SECTION 11 OF THIS AGREEMENT, PNM DISCLAIMS ALL WARRANTIES ON ANY PART OF THE SUBSTATION EQUIPMENT AND THE SUBSTATION EQUIPMENT SITE, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE RELATING TO THE SUBSTATION EQUIPMENT.** The foregoing notwithstanding, PNM will assign to UNM at the time of the Closing assignable manufacturers' warranties, if any, which may cover the Substation Equipment.

4. Closing. (a) The closing of the purchase of the Substation Equipment (the "Closing") shall take place in Albuquerque, New Mexico, on the first business day of any month mutually agreed by the Parties, no later than December 31, 1999, and at a location to be agreed

upon by the Parties. At the Closing, UNM shall deposit in escrow with the Escrow Agent the Purchase Price, payable in cash or by bank or certified check, and PNM shall deliver the following to the Escrow Agent: (a) a duly executed bill of sale (the "Bill of Sale"), warranting that PNM has the authority to sell the Substation Equipment and holds good and marketable title to the Substation Equipment, free and clear of all liens and encumbrances, and will forever defend the title to the Substation Equipment against the lawful claims of all persons, the form of which bill of sale is attached to this Agreement and incorporated herein as **Exhibit D**; (b) an assignment of assignable manufacturers' warranties (the "Assignment of Warranties"), if any, which may cover the Substation Equipment. PNM is not aware of any such existing manufacturers' warranties. Additionally, at the Closing, (a) PNM will deliver to UNM possession of the Substation Equipment, and (b) the Parties will deliver to the Escrow Agent any right-of-way documents, instruments, easements, modifications or waivers of existing easement rights and warranties, as provided in paragraph 5 below (collectively, the "Rights-of-Way Instruments"). Taxes and assessments with respect to the Substation Equipment, if any, shall be prorated as of the Closing date and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price.

5. Rescission of Closing.

(a) Subject to the other terms and conditions of this Agreement, UNM shall have the right to rescind the Closing if the New Mexico Public Regulation Commission ("PRC") issues a final, non-appealable order in PRC Case No. 2761 which modifies the settlement Stipulation filed in that case on May 21, 1999 such that the effective rate applicable to electric service to UNM received at the site of the Substation Equipment and based on ownership thereof is at least one percent (1%) greater than the stipulated rate that would otherwise apply had no modification to the settlement occurred. UNM's right to rescind hereunder shall be exercised by providing notice to the Escrow Agent as described in Section 5(b), with a copy to PNM, within ten (10) days after the PRC's order becomes non-appealable. If UNM fails to provide such notice in writing to the Escrow Agent within such ten (10) day period, PNM shall have the right to instruct the Escrow Agent to disburse funds and documents as provided in Section 6. Notwithstanding anything to the contrary in this Agreement, UNM's right to rescind hereunder shall automatically expire if the right has not been exercised by the earlier to occur of: (i) the tenth (10<sup>th</sup>) day after such a PRC order becomes non-appealable and (ii) December 21, 1999.

(b) UNM shall exercise its right to rescind the Closing by delivery of a notice to the Escrow Agent, with a copy to PNM, certifying that UNM is entitled to rescission under Section 5(a), and specifying the date on which the rescission shall be effective (the "Rescission Date"), which date shall be at least ten (10) days after the date of the notice and no later than December 31, 1999.

(c) On the Rescission Date: (1) UNM shall deliver possession of the Substation Equipment to PNM in substantially the same condition as on the date such equipment was delivered to UNM at the Closing; and (2) the Escrow Agent shall deliver the Purchase Price to UNM, any remaining monies to PNM, and the escrowed documents to the Parties as set forth in the Escrow Agreement.

6. Disbursement of Escrow Funds. Unless the Closing is sooner rescinded pursuant to the terms of Section 5, the Parties agree that on (a) December 31, 1999 or (b) if PNM delivers to the Escrow Agent instructions to disburse funds and documents pursuant to Section 5(a), on the date specified in such instructions, the Escrow Agent shall (a) disburse the Purchase Price and any additional monies then held by the Escrow Agent to PNM, (b) deliver to UNM the Bill of Sale, Assignment of Warranties, if any, and Rights-of-Way Instruments for the benefit of UNM, and (c) deliver to PNM Rights-of-Way Instruments for the benefit of PNM.

7. Rights-of-Way. The Parties acknowledge that the Substation Equipment, while constructed, owned and operated by PNM, was constructed upon real property owned by UNM and that UNM granted an easement to PNM for the purpose of the construction, operation and maintenance of the Substation Equipment on UNM real property. At the time of the Closing, PNM and UNM shall each execute any waivers or modifications of easement rights, or shall grant such new or amended easements as may be necessary in connection with the sale of the Substation Equipment. Representatives of the Parties shall confer in a timely manner prior to the Closing in regard to right-of-way matters.

8. Damage or Loss.

(a) The risk of loss or damage to the Substation Equipment prior to the Closing is assumed by PNM. In the event of loss or damage prior to the Closing, PNM shall, in its sole discretion, after consultation with UNM, either (i) repair or correct the loss or damage in accordance with generally accepted industry standards or (ii) negotiate a modification acceptable to UNM to the Purchase Price that reasonably and fairly reflects the loss or damage based on a Handy-Whitman Index adjustment as described in Section 2, if applicable.

(b) The risk of loss or damage to the Substation Equipment after the Closing is assumed by UNM, except that the risk of loss or damage shall revert to PNM for occurrences on and after the Rescission Date in the event of rescission of the Closing pursuant to Section 5. In the event of loss or damage after the Closing (but prior to the Rescission Date in the event of rescission of the Closing), UNM shall be responsible for all costs associated with any damage or loss to the Substation Equipment.

9. Revenue Metering. Installation, ownership, operation and maintenance of PNM revenue meters shall be in accordance with applicable Commission metering rules and regulations. UNM may request PNM to install a revenue meter at 115 kV voltage at the University Substation site at UNM's sole cost and expense; provided, however, that PNM exclusively will perform the work associated with the installation, operation and maintenance of any PNM revenue meters.

10. Indemnification and Liability.

(a) PNM shall indemnify and hold harmless UNM and UNM's successors and assigns from and against any and all claims, costs, damages or injuries against, incurred or

suffered by UNM or its successors and assigns relating to the Substation Equipment, including but not limited to claims, costs, damages or injuries concerning or resulting from pollution or other environmental damage to real property or water quality at, beneath, or adjacent to the Substation Equipment site, and reasonable attorneys' fees and court costs, arising or resulting from any actions, omissions or conduct by PNM, its employees, agents or contractors in connection with any breach of the environmental representations contained in Section 11, below, and arising from PNM's ownership, operation and maintenance of the Substation Equipment prior to the Closing.

(b) UNM shall indemnify and hold harmless PNM and PNM's successors and assigns from and against any and all claims, costs, damages or injuries against, incurred or suffered by PNM or its successors and assigns relating to the Substation Equipment, including but not limited to claims, costs, damages or injuries concerning or resulting from pollution or other environmental damage to real property or water quality at, beneath, or adjacent to the Substation Equipment site, and reasonable attorneys' fees and court costs, arising or resulting from any actions, omissions or conduct by UNM, its employees, agents or contractors in connection with or arising from UNM's ownership, operation and maintenance of the Substation Equipment after the Closing; provided, however, UNM's liability hereunder shall be subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, § 41-4-1, et seq., as amended, as applicable to UNM.

(c) For purposes of this Section 10 and the other terms of this Agreement, the Parties agree that UNM shall be deemed to own the Substation Equipment upon and after the Closing, whether or not UNM later exercises its right to rescind the Closing under Section 5. In the event of rescission of the Closing, PNM shall be deemed to own the Substation Equipment on and after the Rescission Date.

11. Environmental Representations and Compliance with Laws. At the Closing, PNM shall warrant and represent to UNM that, as of the date of the Closing:

(a) PNM has no knowledge of, **AND DISCLAIMS ANY AND ALL LIABILITY OR RESPONSIBILITY FOR**, any hazardous waste, substance or material, including but not limited to any hazardous substance, pollutant or contaminant regulated under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the federal Toxic Substance Control Act ("TSCA"), or the Resource Conservation and Recovery Act ("RCRA"), at, beneath or adjacent to the Substation Equipment site, except as identified and defined in the Phase I Audit and Phase II Audit described in Section 12(a);

(b) The Substation Equipment and Substation Equipment site have been operated by PNM in compliance with all applicable federal, state, regional, county, municipal and other local environmental and other laws, regulations and ordinances in existence as of the date of the environmental property transaction audit referred to in Section 12(a), except as listed in **Schedule 1**;

(c) To PNM's knowledge, the Substation Equipment and Substation Equipment site are not included in or part of an area designated by any local, state or federal agency or body as a site requiring management, clean-up or removal of any hazardous materials as of the date of the environmental property transaction audit referred to in Section 12(a); and

(d) To PNM's knowledge, PNM has provided UNM copies of all documents in its possession relating to the environmental condition of the Substation Equipment and the Substation Equipment site, such documents being listed on **Exhibit E** hereto;

(e) As used in this Agreement, "knowledge" refers to the actual knowledge of the individual executing this Agreement on behalf of PNM after making reasonable inquiry, which individual has authority to make such reasonable inquiry on behalf of PNM.

12. Environmental Property Transaction Audit. The Parties acknowledge that an environmental property transaction audit of the Substation Equipment and real property at, beneath and adjacent to the site of the Substation Equipment as described in this Section (the "environmental audit") has been conducted as follows: (1) Dames & Moore, Inc. (the "Environmental Consultant") has conducted an environmental audit; (2) the environmental audit covers the "Purpose and Scope of Services," standards and requirements set forth in the May 12, 1999 response by the Environmental Consultant to UNM's Request for Proposal for a Phase I Environmental Site Assessment (the "Phase I Audit") and Limited Phase II Investigation (the "Phase II Audit") of the Substation Equipment attached as **item 1** to **Schedule 1** to this Agreement; UNM accepts the findings of the Environmental Consultant and agrees that the Substation Equipment and Substation Equipment site are acceptable.

13. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. PNM may assign this Agreement to any regulated public utility affiliate of PNM. In the event of any assignment by UNM, UNM shall remain responsible for all duties, obligations and liabilities hereunder.

14. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and the same shall be binding upon all that sign, even though not all Parties sign the same copy.

15. Further Assurances. From time to time hereafter, PNM and UNM shall execute such instruments and documents, upon the request of the other, as may be necessary or convenient to carry out the terms of this Agreement.

16. New Mexico Law. This Agreement shall be governed by and construed in accordance with New Mexico law.

17. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with regard to the subject matter hereof, and it supersedes and replaces all prior negotiations and discussions not incorporated herein.

18. Survival of Certain Provisions. Notwithstanding anything to the contrary in this Agreement, the following duties, liabilities and obligations shall survive this Agreement and a rescission of Closing under this Agreement: (a) UNM's obligations to pay or reimburse any amount owed to PNM hereunder, including expenses associated with the Escrow Agreement; (b) PNM's obligation to pay or reimburse UNM any amount owed to UNM hereunder; and (c) obligations pursuant to Sections 10 and 11.

19. Payment of Financial Obligations. Except as otherwise specifically provided in this Agreement, the obligation of a Party to pay or reimburse the other Party for an item specified herein shall be due and payable on the fifteenth (15th) day following receipt by the Party of an invoice from the other Party for the item.

20. Notices. All notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed to have been duly given (a) on the date of personal delivery, (b) on the date of delivery by a nationally recognized overnight delivery service, (c) on the date of delivery by certified or registered U.S. mail, return receipt requested, or (d) on the date of transmission by fax, in each case sent to the respective address or number set forth below, or to such other addresses or fax numbers as shall be designated from time-to-time by the Parties pursuant to this Section 20:

If to PNM:                    Richard A. Braziel, Manager  
                                      Large Business Customer Support  
                                      Public Service Company of New Mexico  
                                      Alvarado Square - MS 0510  
                                      Albuquerque, New Mexico 87158  
                                      Fax: (505)241-4369

If to UNM:                    Julie C. Weaks  
                                      Interim Vice President for Business & Finance  
                                      University of New Mexico  
                                      Scholes Hall, Room 109  
                                      Albuquerque, NM 87131  
                                      Fax: (505)277-7577

and


Larry Schuster  
Utilities Engineer  
801 University Blvd SE, Suite 207  
Albuquerque, NM 87106  
Fax: (505)272-7072

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**THE REGENTS OF THE  
UNIVERSITY OF NEW MEXICO**

By: Julie C. Weaks 7/30/99  
Name: Julie C. Weaks  
Title: Interim Vice President for Business and Finance *OK WR*

**PUBLIC SERVICE COMPANY  
OF NEW MEXICO**

By:   
Name: Roger Flynn  
Title: Executive Vice President  
Electric and Gas Services

77629



## **SCHEDULE 1**

1. Description of Environmental Audit:  
Letter from Dames & Moore to Larry Watson, dated May 12, 1999 (attached).
  
2. Exceptions to Environmental Representations and Compliance With Laws:  
All noncompliance with applicable laws, if any, identified in the final reports issued by Dames & Moore entitled (a) Phase I Environmental Site Assessment Report, dated July 20, 1999 and (b) Phase II Environmental Site Assessment Report, dated July 20, 1999.