

thereunder,<sup>2</sup> to withdraw its common stock, \$1.00 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX").

The Board of Directors of the Issuer approved a resolution on May 5, 2004 to withdraw the Issuer's Security from listing on the PCX. The Issuer states that the reasons for its decision to withdraw its Security from the PCX are as follows: (i) The Issuer needs to reduce costs, as well as administrative time and expense, associated with having its Security listed on multiple exchanges; (ii) the common stock is also listed on the New York Stock Exchange, Inc. ("NYSE") which maintains the principal listing of the Issuer's common stock; (iii) since the Issuer is listed on more than one exchange, the Issuer has been paying listing and other fees and expenses associated with maintaining its listing on both exchanges; (iv) the Issuer's management has been required to focus on the listing and maintenance rules, as well as ongoing amendments to the rules and regulations of both exchanges; this, combined with the changing regulatory landscape that all public companies face as the result of the Sarbanes-Oxley Act of 2002, incrementally increased the amount of administrative time and expense that management has spent in connection with maintaining the listing of the Issuer's Security; and (v) by withdrawing the Security from the PCX, the Issuer will be able to lessen the administrative burden currently faced by the Issuer's management and reduce the related expenses.

The Issuer stated in its application that it has complied with applicable rules of the PCX Rule 5.4(b), by complying with all applicable laws in effect in the State of Nevada and by providing the PCX with the required documents governing the removal of securities from listing and registration on the PCX. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall not affect its continued listing on the NYSE or its obligation to be registered under Section 12(b) of the Act.<sup>3</sup>

Any interested person may, on or before December 14, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the PCX, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

#### *Electronic Comments*

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include the File Number 1-07850 or;

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File Number 1-07850. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/delists.htm>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E4-3331 Filed 11-23-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27911]

### Filing Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 18, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 13, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 13, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### **Allegheny Energy, Inc., et al. (70-7888)**

Allegheny Energy, Inc. ("Allegheny"), a registered holding company; Allegheny Energy Supply Company, LLC ("AE Supply"), a registered holding company and public utility company subsidiary of Allegheny; <sup>1</sup> Allegheny's wholly-owned public-utility company subsidiaries, Monongahela Power Company ("Monongahela Power"), Mountaineer Gas Company ("Mountaineer"), The Potomac Edison Company ("Potomac Edison"), West Penn Power Company ("West Penn"), and Allegheny Generating Company ("AGC"); and the Allegheny system service company, Allegheny Energy Service Corporation ("AESC," and collectively, "Applicants"), 800 Cabin Hill Drive Greensburg, PA 15601, have filed an application-declaration ("Application") under sections 6, 7, 9(a), 12(b), and 13 of the Act and rules 43, 45, 54, 86, 87, 90, 91, and 100 under the Act.

The Applicants request authority to continue the current Allegheny system money pool ("Money Pool") through April 30, 2005. The Commission has previously authorized the operation of the Money Pool through December 31, 2004.

The Allegheny system has three regulated electric utility companies, West Penn, Monongahela Power, and Potomac Edison Company (collectively, "Operating Companies"), and a regulated gas utility company, Mountaineer, which is a wholly-owned subsidiary of Monongahela Power (all collectively d/b/a "Allegheny Power").<sup>2</sup>

<sup>1</sup>AE Supply is a public utility company within the meaning of the Act, but it is not subject to state regulation.

<sup>2</sup>On August 4, 2004, Allegheny announced it had entered into an agreement to sell Mountaineer and

<sup>2</sup>17 CFR 240.12d2-2(d).

<sup>3</sup> 15 U.S.C. 78j(b).

<sup>4</sup> 17 CFR 200.30-3(a)(1).

P=68425' Allegheny Power delivers electric energy to approximately 1.6 million customers in parts of Maryland, Ohio, Pennsylvania, Virginia, and West Virginia and natural gas to approximately 230,000 customers in West Virginia. AGC is jointly owned by Monongahela Power and AE Supply. Its sole asset is a 40 percent undivided interest in a pumped-storage hydroelectric station located in Bath County, Virginia. All of AGC's revenues are derived from sales from its share of this facility's generating capacity to AE Supply and Monongahela Power. AE Supply is the principal electric generating company for the Allegheny system. AE Supply provides power to West Penn, Potomac Edison, and Monongahela Power to serve their customers in Pennsylvania, Maryland, Virginia, and Ohio and to serve the retail load of Potomac Edison in West Virginia. AESC is the Allegheny system service company. Among other things, it administers the Money Pool.

In a series of orders<sup>3</sup> (collectively, "Prior Money Pool Orders"), the Applicants were authorized, among other things, to establish and participate in the Money Pool through December 31, 2004. The Applicants request authority to continue the Money Pool through April 30, 2005, subject to substantially the same terms and conditions set forth in the Prior Money Pool Orders.<sup>4</sup> The applicants request that the Commission authorize (i) Monongahela Power, Mountaineer, Potomac Edison, and West Penn to continue participation in the Money Pool as both lenders and borrowers to the extent not exempt under rule 52; (ii) AGC to continue participation in the Money Pool as a borrower only, to the extent not exempt under rule 52; and (iii) Allegheny and AE Supply to continue participation in the Money Pool as lenders only.

The Money Pool will continue to be administered on behalf of the Money Pool Applicants by AESC and under the direction of an officer of AESC. AESC will not be a participant in the Money Pool. The Money Pool will consist

principally of surplus funds received from the Money Pool Applicants.

The Applicants do not propose any material changes to the operation of the Money Pool as currently authorized. Participants will be parties to the Allegheny Energy System Money Pool Agreement. Transactions under the Money Pool will be designed to match, on a daily basis, the surplus funds of the pool participants with the short-term borrowing requirements of the pool participants (other than the pool participants who are lenders only). The Applicants believe that the cost of the proposed borrowings through the Money Pool generally will be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Money Pool generally will be higher than the typical yield on short-term investments.

The funds available through the Money Pool will be loaned on a short-term basis to those eligible pool participants that have short-term debt requirements. If no short-term requirements match the amount of funds that are available for the Money Pool for the period the funds are available, AESC will invest the funds, directly or indirectly, as described below and will allocate the interest earned on these investments among the pool participants providing these funds on a pro rata basis according to the amount of funds each provided:

- (1) Direct or indirect obligations of the United States Government;
- (2) Certificates of Deposit of commercial banks with assets exceeding \$2.5 billion;
- (3) Bankers acceptances of commercial banks with assets exceeding \$2.5 billion;
- (4) Commercial paper of companies having a minimum net worth of \$150 million having a "1" commercial paper rating by at least two of the three recognized rating services (Moody's, Standard & Poor's, and Fitch);
- (5) Taxable or tax exempt institutional money market funds with assets of at least \$500 million which restrict investments to high quality money market instruments; and
- (6) Such other investments as are permitted by section 9(c) of the Act and rule 40 under the Act.

All borrowings from and contributions to the Money Pool will be documented and will be evidenced on the books of each pool participant that is borrowing from or contributing surplus funds to the Money Pool. Any pool participant contributing funds to the Money Pool may withdraw those

funds at any time without notice to satisfy its daily need for funds. All short-term debt through the Money Pool will be payable on demand, may be prepaid by any borrowing pool participant at any time without penalty, and will bear interest for both the borrower and lender. Interest income and expense will be calculated using the previous day's Fed Funds Effective Interest Rate ("Fed Funds Rate") as quoted by the Federal Reserve Bank of New York, as long as this rate is at least four basis points lower than the previous day's seven-day commercial paper rate as quoted by the same source. Whenever the Fed Funds Rate is not at least four basis points lower than the seven-day commercial paper rate minus four basis points should be used. Interest income and expense will be calculated daily and settled on a cash basis on the first business day of the following month.

Each of the Utility Applicants may use the proceeds it borrows from the Money Pool (i) for the interim financing of its construction and capital expenditure programs; (ii) for its working capital needs; (iii) for the repayment, redemption, or refinancing of its debt and preferred stock; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) to otherwise finance its own business and for other lawful general corporate purposes. Each of the following companies requests authority to borrow up to an amount at any one time outstanding from the Money Pool as set forth below: AGC, \$100 million; Monongahela Power, \$125 million; Mountaineer, \$100 million; Potomac Edison, \$150 million; West Penn, \$200 million.

#### **PNM Resources, Inc. (70-10248)**

PNM Resources, Inc. ("PNM Resources"), Alvarado Square, Albuquerque, NM 87158, an electric and gas public utility holding company has filed an application-declaration ("Application") under sections 6(a), 7, 9(a), 10, 12(b), and 13 of the Act and rules 42-46, 90-91 and 54 under the Act.<sup>5</sup>

#### **I. Introduction**

##### **A. PNM Resources and Its Subsidiaries**

PNM Resources is a holding company that currently claims exemption from registration under section 3(a)(1) of the Act by rule 2 under the Act. PNM

all of Allegheny's West Virginia gas assets to a partnership composed of IGS Utilities LLC, IGS Holdings LLC, and affiliates of ArcLight Capital Partners, LLC.

<sup>3</sup>Holding Co. Act Release Nos. 25462 (Jan. 29, 1992), 25481 (Feb. 28, 1992), 25581 (July 14, 1992), 25919 (Nov. 5, 1993), 26418 (Nov. 28, 1995), 26506 (April 18, 1996), 26804 (Dec. 23, 1997), 27030 (May 19, 1999), 27084 (Oct. 8, 1999), 27475 (Dec. 17, 2001), 27585 (Oct. 24, 2002), and 27199 (July 14, 2000).

<sup>4</sup>The Commission has authorized Mountaineer to participate in the Money Pool through December 31, 2005.

<sup>5</sup>PNM Resources states that on or before the official date of the order in this matter ("Order Date") it will file a notice of registration complying with rule 1(a) under the Act.

Resources became a public utility holding company on December 31, 2001. PNM Resources' only public utility company subsidiary is Public Service Company of New Mexico ("PNM"), a New Mexico corporation. PNM is an electric and gas public utility company. It is engaged in the generation, transmission, and distribution of electric energy at retail in the State of New Mexico and makes sales for resale ("wholesale" sales) of electricity in interstate commerce. PNM is also engaged in the distribution of natural gas in the State of New Mexico, which includes some off-system wholesale sales of natural gas. PNM had electric revenues for 2003 of \$543,850,000, \$51,952,000 and \$550,382,000 for its retail, transmission, and wholesale electricity segments, respectively. Its natural gas operating revenues for 2003 were \$358,267,000.

PNM Resources' current nonutility activities are conducted through Avistar, Inc. ("Avistar"), a company engaged in the developing and marketing of technologies for energy production and supply. PNM also factors its receivables through a financing subsidiary, PNM Receivables Corporation, but does not offer the service to non-affiliates. PNM Resources accordingly requests authority pursuant to sections 9 and 10 of the Act to continue to retain its interest in and fund the operation of PNM Receivables Corporation using the proceeds of the authorized financings.

Furthermore, PNM Resources has the following direct inactive nonutility subsidiaries: EIP Refunding Corporation, Paragon Resources, Inc., PNM Electric & Gas Services, Inc., Sunbelt Mining Co. Inc., Sunterra Gas Gathering Company and Sunterra Gas Processing Company. PNM Resources also has the following indirect inactive nonutility subsidiaries: AMDAX.com (25% interest directly owned by Avistar), Gas Company of New Mexico (directly owned by Sunbelt Mining Co. Inc.), Meadows Resources, Inc. (directly owned by PNM) and its subsidiaries, Bellamah Associates, Ltd., Bellamah Community Development, Bellamah Holding Company, Bellamah Investors Ltd., and Republic Holding Company. PNM Resources states that these subsidiaries conduct no on-going business activities other than winding up existing obligations and that Commission authorization will be secured prior to any of these companies reinstating active business operations.

PNM is subject to the jurisdiction of the New Mexico Public Regulation Commission ("NMPRC"), with respect to its retail electric and gas rates,

service, accounting, issuance of securities, construction of major new generation and transmission facilities and other matters regarding retail utility services provided in New Mexico.

PNM's principal business segments are wholesale operations ("Wholesale") and utility operations. Utility operations include electric services, transmission services ("Transmission") and gas services ("Gas"). In addition, PNM owns "Merchant Plant" (authorized generation facilities that are not included in rate base) that is subject to a Global Electric Settlement Agreement that was entered into on October 10, 2002 ("Global Electric Settlement") and approved by the NMPRC.

Wholesale consists of the generation and sale of excess electricity into the wholesale market based on three product lines that include long-term contracts, forward sales and short-term sales. The "regulated generation" (generation in rate base), "unregulated generation" (certain generation excluded from rate base) and "Merchant Plant" (including certain generation excluded from rate base) are jointly dispatched in order to improve reliability, provide the most economic power to retail customers, and maximize profits on any wholesale transactions. From time to time, Wholesale also makes purchases of energy.

PNM provides retail electric service to a large area of north central New Mexico, including the cities of Albuquerque and Santa Fe, and certain other areas of New Mexico. Customers' rates for retail electric service are set by the NMPRC based on the provisions of the Global Electric Settlement through 2007. PNM's power generation facilities are jointly dispatched under common control in order to serve PNM's electric utility customers economically and reliably. PNM owns or leases generation located in the States of Arizona and New Mexico within the Western Electricity Coordinating Council ("WECC")<sup>6</sup> region, a National Electric Reliability Council region including much of the Western United States and portions of Canada and Mexico. PNM is interconnected with the Southwest Power Pool ("SPP"). Generation included within the SPP is eligible for inclusion as Merchant Plant. PNM experienced a peak electrical demand

<sup>6</sup>The WECC was formed on April 18, 2002, by the merger of the Western Systems Coordinating Council, the Southwest Regional Transmission Council and the Western Regional Transmission Association. It coordinates and supports electric system reliability and open power transmission access throughout its service area, encompassing 1.8 million square miles.

on its system of 1661 MW in 2003. PNM owns or leases 1742 MW of generating capacity. Additional capacity is purchased from third parties under certain power purchase agreements that may be accounted for as leases, for a total of 2074 MW available capacity.

Transmission consists of the transmission of electricity over transmission lines owned or leased by PNM, interconnected with other utilities in New Mexico and south and east into Texas, west into Arizona and north into Colorado and Utah. PNM owns or leases approximately 3000 circuit miles of transmission lines. PNM owns and operates in excess of 8000 miles of distribution lines excluding street lighting in New Mexico.

The Gas segment includes the transportation and distribution of natural gas to end users, including end users in most of the major communities in New Mexico, including Albuquerque and Santa Fe. Gas's customer base includes both sales-service customers and transportation-service customers. PNM Resources states that Gas derives its supplies from common sources of supply within New Mexico and the region and operates as an integrated system. From time to time, the Gas segment makes off-system sales of natural gas incidental to its natural gas operations.

The Merchant Plant owned by PNM constitutes utility assets within the meaning of the Act,<sup>7</sup> and will be available through joint dispatch to support service to the retail customers of PNM. PNM's Merchant Plant activities are governed by the Global Electric Settlement.

## II. Current Request

PNM Resources seeks the following authority beginning with the Order Date through December 31, 2007 ("Authorization Period") for:

(A) PNM Resources to increase its capitalization in the aggregate amount of \$1.5 billion ("Financing Limit") over and above its capitalization as of December 31, 2003, other than for exchanging, refunding or replacing securities, where capitalization is not increased, through the issuance and/or sale of common stock, preferred stock, preferred securities, equity-linked securities, long-term debt and short-term debt, or securities which are convertible into any such securities, whether directly or through one or more financing conduits;<sup>8</sup>

<sup>7</sup>PNM Resources to date has no aggregate investment in any Exempt Wholesale Generators ("EWGs"), as defined in section 32 of the Act.

<sup>8</sup>For the purpose of calculating the amount of the \$1.5 billion authorization used at any one time,

(B) PNM Resources to provide performance and financial guarantees, and other credit support for all of its subsidiaries, as described below, in an aggregate amount not to exceed \$300 million at any time outstanding;

(C) PNM Resources to issue and sell common stock pursuant to direct stock purchase and dividend reinvestment plans, incentive compensation plans and other employee benefit plans (included under the issuances and sales of common stock authorized in Paragraph (A) above);

(D) PNM Resources to engage in certain cash management activities as described below;

(E) PNM Resources to use financing conduits or subsidiaries to issue or sell debt or equity securities or securities which are convertible into any such securities on PNM Resources' behalf either by PNM Resources owning such conduits or subsidiaries or guaranteeing the obligations of such conduits or subsidiaries as described below;

(F) PNM Resources to enter into transactions to manage interest rate and equity price risk with regard to the issuance of securities as described below;

(G) PNM Resources to invest up to \$300 million in certain natural gas gathering, storage, transmission, other fuel resources, processing storage and transportation assets ("Energy Assets");

(H) PNM Resources to change the capital stock of subsidiaries as described below;

(I) PNM Resources to exchange, refund or replace existing securities where capitalization is not increased as a result over that in place at December 31, 2003; and

(J) PNM Resources to provide services to its subsidiaries pursuant to section 13(a) of the Act as described below.

### III. Parameters for Financing Authorization

The following general terms will be applicable where appropriate to the financing transactions requested:

(A) Common Equity Ratio. PNM Resources states that at all times during the Authorization Period each of PNM Resources and PNM will maintain common equity (as reflected in the most recent Form 10-K or Form 10-Q filed with the Commission) of at least 30% of its consolidated capitalization (common equity, preferred stock and long-term

and short-term debt); provided that PNM Resources will in any event be authorized to issue common stock to the extent otherwise authorized in this Application.<sup>9</sup>

(B) Investment Grade Ratings. PNM Resources will not issue any securities, other than common stock, commercial paper, member interest, short-term bank debt (with a maturity of one year or less) or securities issued for the purpose of funding intra-system financings, pursuant to the authority conferred pursuant to this Application, unless upon original issuance (1) the security to be issued, if rated, is rated at least investment grade; and (2) all outstanding securities of PNM Resources that are rated are rated investment grade (the "Investment Grade Condition"). For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934. PNM Resources further requests that the Commission reserve jurisdiction over the issuance of any securities that do not satisfy the Investment Grade Condition.

(C) Effective Cost of Money on Financings. The effective cost of capital for long-term debt, short-term debt, preferred stock, preferred securities and equity-linked securities will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital on (i) any such long-term debt securities exceed 500 basis points over comparable term U.S. Treasury securities ("Treasury Security"); or (ii) any such short-term debt securities exceed 300 basis points over London Interbank Offered Rate. The dividend and distribution rate on any series of preferred stock, preferred securities or equity-linked securities will not exceed at the time of issuance 700 basis points over a Treasury Security.

(D) Maturity. The final maturity of any long-term debt securities will not exceed 50 years. Preferred securities will be redeemed no later than 50 years after issuance, unless such preferred security is perpetual in duration. Short-term debt will have a maturity of no more than 1 year.

<sup>9</sup>As of June 30, 2004, consolidated common equity as a percentage of total capitalization for PNM Resources and PNM was 52.3% and 50.7%, respectively.

(E) Issuance Expenses. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Application will not exceed the greater of (1) 500 basis points of the principal or face amount of the securities being issued or gross proceeds of the financing or (2) the competitive market rates which are consistent with similar securities of comparable credit quality and maturities issued by other companies.

(F) Use of Proceeds. The proceeds from the sale of securities issued by PNM Resources pursuant to this Application will be used for general corporate purposes including (1) the financing of the capital expenditures of the PNM Resources system, (2) the financing of working capital requirements of the PNM Resources system, (3) direct or indirect investment in companies or assets the acquisition of which are either exempt under the Act or by Commission rule or have been authorized by the Commission, (4) cash management activities and (v) other lawful purposes.

### IV. Description of Requested Financing

As more fully described below, PNM Resources requests authorization to obtain funds externally through sales of equity, equity linked, preferred and/or debt securities in accordance with the authority granted by the Commission.<sup>10</sup> PNM Resources also requests authority to issue common stock to third parties in consideration for the acquisition by PNM Resources of equity or debt securities of a company being acquired pursuant to an exemption under the Act, or pursuant to a Commission rule or specific authorization by another Commission order. In addition, PNM Resources seeks, to the extent authorization is required, the flexibility to enter into certain hedging transactions to manage interest rate and equity price risk.

#### A. Equity Securities

##### 1. Common Stock (Including Stock Purchase Contracts/Units)

From time to time during the Authorization Period, subject to the limits and conditions specified in this Application, PNM Resources seeks authority to issue and sell up to 60 million additional shares of its common stock or securities convertible into

<sup>10</sup>Although not limited to the securities described in PNM Resources' Universal Shelf S-3 incorporated by reference in this Application, the authorization sought includes all of the securities described in the shelf registration.

PNM Resources will calculate capitalization on a non-consolidated basis and will exclude retained earnings and accumulated other comprehensive income, as well as the amount of securities issued for purposes of refunding or replacing other outstanding securities where PNM Resources' capitalization is not increased as a result.

common stock (1) through solicitations of proposals from underwriters or dealers, (2) through negotiated transactions with underwriters or dealers, (3) directly to a limited number of purchasers or to a single purchaser, and/or (4) through agents. The price applicable to additional shares sold in any such transaction will be based on several factors, including the current market price of the common stock and prevailing capital market conditions.

PNM Resources also seeks authority to issue and sell from time to time stock purchase contracts ("Stock Purchase Contracts"), including contracts obligating holders to purchase from PNM Resources and/or PNM Resources to sell to the holders, a specified number of shares at an aggregate offering price of PNM Resources' common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units ("Stock Purchase Units") consisting of a stock purchase contract and debt and/or preferred securities of PNM Resources and/or debt obligations of non-affiliates, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of PNM Resources under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations under the contracts in a specified manner.

PNM Resources may also issue common stock, securities convertible into common stock, warrants and other stock purchase rights exercisable for common stock as consideration, in whole or in part, for acquisitions by PNM Resources of securities of businesses or the assets of such businesses, the acquisition of which (1) is exempt under the Act or by Commission rule or (2) has been authorized by prior Commission order issued to PNM Resources, subject in either case to applicable limitations on total investments in any such businesses.

PNM Resources requests authority, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method, which complies with applicable law and Commission interpretations then in effect, shares of PNM Resources common stock for its Omnibus Performance Equity Plan and other stock plans, pension trusts or other PNM Resources direct stock purchase and dividend reinvestment

plans or similar plans adopted in the future without additional prior Commission order. PNM Resources further requests authority to issue and sell common stock to PNM customers consistent with existing charter authority and the requirements of applicable state and federal securities laws pursuant to a plan to be adopted during the Authorization Period without additional prior Commission order. Stock transactions of the variety described above would be treated the same as other stock transactions permitted under this Application.

## 2. Preferred Securities

Subject to the limits and conditions specified in this Application, PNM Resources also seeks authority to issue and sell preferred securities in one or more series. Preferred securities or securities convertible into preferred securities of any series (1) will have a specified par or stated value or liquidation value per security, (2) will carry a right to periodic cash dividends and/or other distributions, subject among other things, to funds being legally available, (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated liquidation value of the securities, (4) may be convertible or exchangeable into common stock of PNM Resources, preferred securities or unsecured debt that PNM Resources is otherwise authorized to issue by Commission order directly, or indirectly through financing conduits on behalf of PNM Resources, (5) and may bear such further rights, including voting, preemptive or other rights, and other terms and conditions, as set forth in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of such series of preferred securities.

## B. Debt Securities

### 1. Short-Term Notes

Subject to the limits and conditions in this Application, PNM Resources seeks authority to make unsecured short-term borrowings from banks or other financial institutions. Such borrowings will be evidenced by (1) "transactional" promissory notes to be dated the date of such borrowings and to mature not more than one year after or (2) "grid" promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing evidenced by the note, with each such borrowing maturing not more than one year after.

Any such note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment. PNM Resources notes that, at any given time, some or all of its outstanding short-term notes will be issuable in connection with the establishment of back-up credit facilities to support PNM Resources' commercial paper program but that such credit facilities will not be drawn upon and no borrowings will occur under those programs except in certain limited circumstances at which time obligations under the related commercial paper will be paid. PNM Resources states that short-term notes issued in connection with the establishment of commercial paper back-up facilities backstop and duplicate commercial paper issuances and should not be counted against its Financing Limit unless and until an actual borrowing occurs under the related credit facility. Additionally, Applicants request that with respect to any "grid" notes issued by PNM Resources, only the amount actually outstanding under the notes at any given time shall be considered a borrowing.

## 2. Commercial Paper

Subject to the limits and conditions in this Application, PNM Resources also seeks authority to issue and sell commercial paper through one or more dealers or agents or directly to a limited number of purchasers. PNM Resources proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 365 days. The commercial paper will be in the form of book-entry unsecured promissory notes (and/or pursuant to an underlying master note with a trust company which may not state a maturity) with varying denominations of not less than \$1,000 each. In commercial paper sales effected on a discount basis, no commission or fee will be payable; however, the purchasing dealer will re-offer the commercial paper at a rate less than the rate offered to PNM Resources. The discount rate to dealers will not exceed the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer will re-offer the commercial paper in such a manner as not to constitute a public offering within the meaning of the Securities Act of 1933, as amended (the "Securities Act") or otherwise so as to be exempt from registration under the Securities Act.

### 3. Long-Term Notes

Subject to the limits and conditions in this Application, PNM Resources also seeks authority to issue and sell long-term unsecured debt securities ("Notes") in one or more series. Notes of any series may be either senior or subordinated obligations of PNM Resources. Notes of any series (1) will have maturities of at least 12 months, (2) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (3) may be entitled to mandatory or optional sinking fund provisions, and (4) may be convertible or exchangeable into common stock of PNM Resources. Interest accruing on Notes of any series may be fixed or floating or "multi-modal" (where the interest is periodically reset, alternating between fixed and floating interest rates for each reset period, with all accrued and unpaid interest together with interest becoming due and payable at the end of each such reset period, or at maturity). Notes may be issued under one or more indentures to be entered into between PNM Resources and financial institutions acting as trustee(s); supplemental indentures may be executed in respect of separate offerings of one or more series of Notes.

Notes may be issued in private or public transactions. With respect to the former, Notes of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the Notes without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time, PNM Resources may also issue and sell Notes of one or more series to the public either (1) through underwriters selected by negotiation or competitive bidding or (2) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers. Furthermore, Notes may be issued to public agencies or authorities, political subdivisions or instrumentalities that provide industrial revenue bond or pollution control revenue bond or similar financing to PNM Resources or its financing conduits or intermediate subsidiaries (as defined below).

The maturity dates, interest rates, redemption and sinking fund provisions, if any, with respect to the Notes of a particular series, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, will

be established by negotiation or competitive bidding and reflected in the applicable purchase agreement or underwriting agreement setting forth such terms.<sup>11</sup>

### C. Financing Conduits

In addition to issuing any of the debt or equity securities directly, PNM Resources requests approval (to the extent such approval may be required under the Act) to form one or more entities for the primary purpose of issuing and selling any of the foregoing securities, lending, transferring the proceeds to PNM Resources or an entity designated by PNM Resources, and engaging in incidental transactions, subject to the limits and conditions of this Application.

The proposed entities will comprise one or more financing entities (each, a "Financing Entity") and one or more special-purpose entities (each, a "Special-Purpose Entity," and together with Financing Entities, "Financing Conduits"). In either case the entities' businesses may include issuing and selling securities on behalf of PNM Resources or a PNM Resources' affiliate. Any securities issued by the Financing Conduits may be guaranteed by PNM Resources or such affiliate, either directly or indirectly. Such Financing Conduits may be constituted as corporations, partnerships, limited liability companies, trusts or other entities.

PNM Resources would acquire a portion of the outstanding shares of common stock or other equity interests of the Financing Conduit for an amount not less than the minimum required by applicable law. A primary function of the Financing Conduit will be effecting financing transactions with third parties for the benefit of PNM Resources or its affiliates. As an alternative in a particular instance to PNM Resources directly issuing debt or equity securities, or through a Special-Purpose Entity, PNM Resources may determine to use a Financing Entity as the nominal issuer of the particular debt or equity security. In that circumstance, PNM Resources or its affiliate may provide a full guarantee or other credit support with respect to the securities issued by the Financing Entity, the proceeds of which would be lent, dividended or otherwise transferred to PNM Resources or an entity designated by PNM Resources.

<sup>11</sup> As of June 30, 2004, PNM Resources has no outstanding long- or short-term debt securities.

### D. Interest Rate and Equity Price Risk Management

To the extent authorization is required under the Act, PNM Resources requests authority to manage equity price and interest rate risk through the performance, entering into, purchasing and selling of various risk management instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, options, forwards, treasury locks, forward starting interest rate swaps, futures, forward issuance agreements, call spread options, the sale and/or purchase of various call or put options or warrants and similar products designed to manage market, price, rate or credit risks (collectively "Hedging Instruments").

PNM Resources would enter into Hedging Instruments only with approved counterparties who at the date of execution of the agreement with PNM Resources are rated (or have a parent company providing a guarantee that is rated) at least investment grade, *i.e.*, "BBB" by Standard & Poors, Inc. or Fitch IBCA, Inc or "Baa2" by Moody's Investors Service ("Authorized Counterparties"). The derivative transactions will be for fixed periods and in no case will the notional principal amount exceed the principal amount of the underlying security. PNM Resources will not engage in "leveraged" or "speculative" derivative hedging transactions.

In addition, PNM Resources requests authorization to manage, maintain, remove and enter into hedging transactions with respect to anticipated securities offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions. Such Anticipatory Hedges would only be entered into with Authorized Counterparties, and would be utilized to fix and/or limit the interest rate or equity price risk associated with any new issuance through (1) a forward sale of exchange-traded Hedge Instruments (a "Forward Sale"), (2) the purchase of put options on Hedge Instruments (a "Put Options Purchase"), (3) a Put Options Purchase in combination with the sale of call options Hedge Instruments (a "Zero Cost Collar"), (4) transactions involving the purchase or sale, including short sales, of Hedge Instruments, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers

through the opening of futures and/or options positions traded on the Chicago Board of Trade or New York Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. PNM Resources will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. In this regard, PNM Resources may decide to lock in interest rates and/or limit its exposure to interest rate increases.

Fees and commissions charged or required in connection with any interest rate or equity price risk management agreements will not exceed the then current market price. PNM Resources represents that each Hedging Instrument and Anticipatory Hedge will be treated for accounting purposes under generally accepted U.S. accounting principles. In particular, PNM Resources will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivative Instruments and Hedging Activities"), SFAS 138 ("Accounting for Certain Derivative Instruments and Hedging Activities") or other accounting standards related to Hedging Instruments or Anticipatory Hedges as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). PNM Resources states that Hedging Instruments and Anticipatory Hedges will qualify for hedge accounting under the current FASB standards in effect and as determined at the date on which Hedging Instruments or Anticipatory Hedges are entered.

#### *E. Financial and Performance Guarantees*

From time to time through the Authorization Period, PNM Resources requests authority to guarantee, obtain letters of credit, enter into financing arrangements and otherwise provide or maintain credit support (each, a "Guarantee") in respect of the debt or other securities or obligations, whether for payment and/or performance, of any or all of PNM Resources' subsidiary or associate companies (including any subsidiary or associate company formed or acquired at any time during the Authorization Period), and otherwise to further the business of PNM Resources, provided that the total amount of Guarantees at any time outstanding does not exceed \$300 million (the "PNM Resources Guarantee Limit"), and provided further, that (1) any Guarantees of EWGs and foreign utility companies ("FUCOs") shall also be subject to PNM Resources' limitation on investment in EWGs and FUCOs; and (2) any Guarantees of energy-related

companies within the meaning of rule 58 ("Rule 58 Companies") shall also be subject to the aggregate investment limit of rule 58; and (3) any security guaranteed by PNM Resources shall itself be in compliance with the financing parameters authorized in this Application or otherwise exempt. The terms and conditions of any Guarantees, and the underlying liabilities, would be established at arm's-length based upon market conditions.

PNM Resources may charge a fee for each Guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the Guarantee remains outstanding.

In the event that PNM Resources issues any debt or equity securities authorized as part of this Application by means of any financing conduits or subsidiaries, PNM Resources may provide a full Guarantee in respect of the payment and other obligations of the financing conduit or subsidiary under the securities issued by it. Given that any securities nominally issued by any such financing conduit or subsidiary are in substance securities issued by PNM Resources itself, any securities issued by a financing conduit or subsidiary would count dollar-for-dollar against PNM Resources' financing authority. However, PNM Resources submits that any Guarantees of securities of financing conduits or subsidiaries will not count against the PNM Resources Guarantee Limit.

As stated above, PNM Resources requests the authority to extend its credit through entry into performance guarantees that will be a part of the definition of "Guarantee" provided in this Application. Such performance Guarantees may be in support of the obligations of affiliates undertaking the development or operation of projects authorized under the Act. However, performance Guarantees and certain other Guarantees may be in support of obligations that are not capable of exact quantification. In such cases, PNM Resources states that it will determine the exposure under such Guarantees for purposes of measuring compliance with the PNM Resources Guarantee Limit by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts.

#### **V. Cash Management Activities**

PNM Resources requests authorization to continue its existing cash management activities with surplus funds. Surplus funds would ordinarily be invested in one or more short-term investments including: (1) Obligations issued or guaranteed by the

U.S. government and/or its agencies and instrumentalities; (2) commercial paper; (3) certificates of deposit; (4) bankers' acceptances; (5) repurchase agreements; (6) tax exempt notes; and (7) other investments that are permitted by section 9(c)(3) of the Act and rule 40 under the Act. PNM Resources maintains a program of investing up to \$15 million in non-voting interests in certain funds designed to hedge capital market risks.

#### **VI. Investments in Nonutility Subsidiaries and Energy Assets**

PNM Resources requests authority to engage in certain activities described below relating to EWGs, FUCOs, exempt telecommunications companies, energy-related companies within the meaning of rule 58, and energy related companies approved by commission order and make additional investments in other nonutility subsidiaries approved by the Commission (collectively, "Nonutility Subsidiaries"). To the extent activities described in this Application constitute the providing of goods, services or construction from one associate company to another in the PNM Resources system which would be subject to section 13(b) of the Act, these goods, services or construction will be provided at cost as defined in rules 90 and 91 unless an exemption from the at cost requirement is available under the Act or otherwise approved in the Commission's order in this matter.

PNM Resources requests authority to make additional investments in Nonutility Subsidiaries in the form of purchases of common stock and other securities, capital contributions, loans or open account advances, guarantees, or any combination of the foregoing. It is also contemplated that Nonutility Subsidiaries may issue securities from time to time under the exemption provided in rule 52 to investors other than PNM Resources for the purpose of financing their operations. Direct or indirect investments by PNM Resources in Nonutility Subsidiaries would be subject to the limitations applicable to investments for such subsidiaries.

In connection with existing and future nonutility businesses, PNM Resources will engage directly or through subsidiaries in preliminary development activities ("Development Activities") and administrative and management activities ("Administrative Activities") associated with such investments. Development Activities will be limited to: due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, posting of bid bonds; application for

required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities as may be required in connection with the purchase, acquisition or construction of facilities or the securities of other companies. PNM Resources proposes to expend directly or through subsidiaries up to \$300 million in the aggregate outstanding at any time during the Authorization Period on all Development Activities and Administrative Activities. Amounts expended in the development of projects leading to an investment in a Nonutility Subsidiaries will not count against the limitation on expenditures for Development Activities. Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage Development Activities and investments in subsidiaries.

PNM Resources requests authority to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities (collectively, "Intermediate Subsidiaries"), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more Nonutility Subsidiaries, provided that Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. To the extent such transactions are not exempt from the Act or otherwise authorized or permitted by rule, regulation or order of the Commission, PNM Resources requests authority for Intermediate Subsidiaries to engage in the Activities described above. To the extent that PNM Resources provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any Nonutility Subsidiary, the amount of such funds will be included in PNM Resources' "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

PNM Resources specifically requests authority to expend up to \$300 million during the Authorization Period to acquire Energy Assets, within the United States and within Mexico, to the

extent incidental to those United States operations and authorized under applicable import/export law. These acquisitions may also take the form of the acquisition of the securities of companies that exclusively engage in activities pertaining to the development or operation of the Energy Assets.

#### **VII. Changes in Capital Stock of Subsidiaries**

The portion of an individual subsidiary's aggregate financing to be effected through the sale of stock to PNM Resources during the Authorization Period pursuant to rule 52 and/or pursuant to an order issued in this proceeding cannot be ascertained at this time. It may happen that the proposed sale of capital securities may in some cases exceed the then-authorized capital stock of the subsidiary. In addition, the subsidiary may choose to use capital stock with no par value or receive a capital contribution without issuing capital stock. Also, a wholly-owned subsidiary may wish to engage in a reverse stock split to reduce franchise taxes. As needed to accommodate such proposed transactions and to provide for future issues, PNM Resources requests authority to change the terms of any such wholly-owned subsidiary's authorized capital stock capitalization by an amount deemed appropriate by PNM Resources or other intermediate parent company in the instant case. A subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any such action by a utility subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission(s) in the state or states in which such utility subsidiary is incorporated and doing business. PNM Resources states that in the event that proxy solicitations are necessary with respect to internal corporate reorganizations, PNM Resources will seek approval pursuant to sections 6(a)(2) and 12(e) of the Act, through the filing of an appropriate declaration.

#### **VIII. Services Provided to Subsidiaries**

PNM Resources intends to file with the Commission, no later than ninety (90) days after the Commission issues an order with respect to this Application, an application-declaration seeking authority to create a service company pursuant to rule 88 of the Act. Until the service company application is made effective, PNM Resources requests authorization under section 13(a) of the Act and Commission rules for PNM Resources to continue to provide

support services on an interim basis to its subsidiaries through June 30, 2005. Currently, PNM Resources performs substantially all of the corporate activities of PNM. Charges for all services will be on an at-cost basis, as determined under rules 90 and 91 of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E4-3332 Filed 11-23-04; 8:45 am]

BILLING CODE 8010-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50689; File No. SR-MSRB-2004-05]

#### **Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change To Offer New Historical Data Product**

November 18, 2004.

On September 16, 2004, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to offer a new transparency product containing historical trade data obtained through the MSRB's Transaction Reporting System (the "Historical Data Product"). The proposed rule change was published for comment in the **Federal Register** on October 18, 2004.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB<sup>4</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.<sup>5</sup> Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 50491 (October 5, 2004), 69 FR 61422 (October 18, 2004) ("Notice").

<sup>4</sup> In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-4(b)(2)(C).