

# PNM RESOURCES INC

## FORM U-1

(Application for Public Utility Holding Company)

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM U-1**  
APPLICATION/DECLARATION  
UNDER THE  
PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

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**PNM RESOURCES, INC.**

Alvarado Square  
Albuquerque, New Mexico 87158

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

Alvarado Square  
Albuquerque, New Mexico 87158

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(Name of companies filing this statement and  
address of principal executive offices)

**PNM RESOURCES, INC.**

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(Name of top registered holding company  
parent of each applicant or declarant)

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PNM Resources, Inc. ("PNM Resources") and Public Service Company of New Mexico ("PNM"; together with PNM Resources, the "Applicants") hereby submit an Application/Declaration (this "Application") under Sections 9(a)(2) and 10 of the Public Utility Holding Company Act of 1935, as amended (the "Act" or the "1935 Act"), to acquire an interest in a public-utility company as described in this Application.

## **ITEM 1. DESCRIPTION OF PROPOSED TRANSACTION**

### **INTRODUCTION**

PNM is party to a leveraged lease transaction under which it leases a 60% undivided interest in certain electric transmission facilities as described herein. An institutional equity investor is the sole beneficiary of the grantor trust which holds legal title to the 60% interest and leases such interest to PNM. Both the grantor trust and the trust company that serves as trustee of the grantor trust are excluded from status as a public-utility company under Sections 2(a)(3) and 2(a)(5) of the Act by virtue of having complied with Rule 7(d) promulgated under the Act (17 C.F.R. Section 250.7(d) (2001)). The institutional investor is similarly exempt.

The institutional investor in question (the "Investor") maintains its investment in the leased assets through a wholly-owned, single-purpose Delaware corporation (the "OP Company"). The OP Company has claimed and maintains the exclusion under Rule 7(d) promulgated under the Act ("Rule 7(d)") because all of the equity interest in the OP Company is owned by a company, namely the Investor, that is otherwise primarily engaged in one or more businesses other than the business of a public-utility company (17 C.F.R. Section 250.7(d)(1)(ii) (2001)).

The Investor has determined to dispose of its investment in the leased assets and the Applicants have agreed to acquire such investment. The acquisition is to occur VIA the sale by the Investor to the Applicants of the Investor's entire equity interest (in the form of voting securities) in the OP Company. Upon the acquisition by the Applicants of the OP Company, the OP Company will no longer meet the requirements of Rule 7(d)(1)(ii) and will, therefore, have become a public-utility company under the Act. Accordingly, the Applicants must seek authority under Section 9(a)(2) of the Act in order to acquire the equity interest in the OP Company.

The proposed transaction is, in essence, a partial unwinding of a financing transaction to which PNM is party as lessee. Upon acquisition by the Applicants of the OP Company, only the lease debt component of the original financing will remain in the hands of unaffiliated parties (namely, the debt holders). PNM expects to effect a transaction to prepay the remaining lease debt and complete the unwind of the financing (as to the 60% interest only; a parallel transaction with a different equity investor as to the remaining 40% interest would remain in effect), although completion of the unwind will not occur necessarily in conjunction with the acquisition of the OP Company. Prior to the completion of the unwind, PNM, AS LESSEE, will continue to have complete operational control over the leased assets to the exclusion of Applicants as owners of the equity interest in the OP Company, which will remain a passive investor only.

## TIMING

The availability for purchase by the Applicants of the equity interest in the OP Company is a significant and unique opportunity for PNM to begin to unwind an older, complex financing of an asset which has a significant place in the overall transmission network for the desert Southwest. THE OPPORTUNITY WILL LIKELY DISAPPEAR IF THE APPLICANTS ARE NOT IN A POSITION TO CONSUMMATE THE PURCHASE BY MARCH 20, 2002, THE DATE AFTER WHICH THE EQUITY INVESTOR HAS THE UNILATERAL AND UNFETTERED OPTION TO TERMINATE THE APPLICANTS' RIGHT TO ACQUIRE THE OP COMPANY ON THE AGREED TERMS.

### A. DESCRIPTION OF THE PARTIES AND FACILITIES

#### 1. PNM RESOURCES, INC.

PNM Resources is a public-utility holding company claiming exemption from all provisions of the Act except Section 9(a)(2) under Section 3 (a)(1) pursuant to Rule 2 of the Act. PNM Resources' principal offices are located in Albuquerque, New Mexico.

PNM Resources, a New Mexico corporation, filed its initial statement on Form U-3A-2 claiming exemption on December 31, 2001 (SEC File No. 069-00517) (the "Exemption Statement").

At the annual meeting of the shareholders of PNM held on June 6, 2000, shareholders of PNM approved management's plan to create a new holding company pursuant to the Agreement and Plan of Share Exchange dated as of April 17, 2000 (as amended, the "PLAN OF EXCHANGE"), by and between PNM and PNM Resources, the New Mexico corporation formerly named "Manzano Corporation." Effective December 31, 2001, pursuant to the Plan of Exchange, the outstanding shares of common stock (\$5.00 par value) of PNM were automatically exchanged on a share-for-share basis (the "Share Exchange") for common stock (without par value) of PNM Resources. This restructuring transaction resulted in PNM becoming a direct, wholly-owned subsidiary of PNM Resources. The restructuring was authorized by the Federal Energy Regulatory Commission ("FERC"), Public Service Company of New Mexico, 95 FERC P. 62,296 (2001), by the Nuclear Regulatory Commission (the "NRC"), Public Service Company of New Mexico, 66 Fed. Reg. 34,960 (July 2, 2001) and by the New Mexico Public Regulation Commission (the "NMPRC").

PNM Resources owns all of the issued and outstanding voting securities of its operating subsidiaries, PNM, and Avistar Inc. ("Avistar"). PNM Resources directly owns all of the issued and outstanding voting securities of the following inactive New Mexico subsidiaries: PNM Electric & Gas Services, Inc.; Sunbelt Mining Company, Inc.; Paragon Resources, Inc.; Sunterra Gas Gathering Company; and Sunterra Gas Processing Company. There are also a number of indirectly owned inactive subsidiaries. PNM Resources does not own directly any utility properties or perform any utility operations.

#### 2. PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM is a New Mexico corporation formed in 1917 with its principal offices in Albuquerque, New Mexico. PNM is a public-utility company within the meaning of Section

2(a)(5) of the Act. PNM is an integrated public-utility primarily engaged in the generation, transmission, distribution and sale of electricity and in the transmission, distribution and sale of natural gas within the State of New Mexico.

PNM is currently subject to the jurisdiction of the 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. FERC has jurisdiction over rates and other matters related to transmission service and wholesale electric rates. As a co-licensee with respect to three nuclear generating units, PNM is also subject to the authority of the NRC.

In 2000, PNM began operating as three distinct business units: (1) Utility Operations, (2) Generation and Trading Operations and (3) Unregulated Operations. The Utility Operations business unit includes the electric service offering segment ("Electric") and the natural gas product offering segment ("Gas"). Electric consists of the sale and distribution of electricity, as well as all activities related to PNM's electric transmission operations. Gas includes the transportation, distribution and sale of natural gas. Both Electric and Gas include related activities such as marketing and customer service. The Generation and Trading Operations business unit includes production and purchase of electricity, the sale of electricity to Utility Operations (at an internally developed transfer price) and wholesale sales of electricity and electricity trading activities with third parties. PNM also owns certain inactive subsidiaries.

PNM provides retail electric service to a large area of north central New Mexico, including the cities of Albuquerque, Santa Fe, Rio Rancho, Las Vegas, Belen and Bernalillo. PNM also provides retail electric service to Deming in southwestern New Mexico and to Clayton in northeastern New Mexico. As of December 31, 2000, PNM served approximately 369,000 retail electric customers, the largest of which accounted for approximately 4.1% of PNM's total electric revenues for the year ended December 31, 2000.

As of December 31, 2000, the aggregate net generating capacity of PNM's system was 1,521 megawatts ("MW"). During 2000, the seasonal peak electric demand experienced by PNM was 1,368 MW during the summer and 1,211 MW during the winter. PNM served this demand with a combination of the following: (i) 390 MW of nuclear generated power obtained through PNM's 10.2% interest in the Palo Verde Nuclear Generating Station ("Palo Verde"), located in Wintersburg, Arizona; (ii) 765 MW of power from the coal burning units at the San Juan Generating Station ("SJGS"), located in Waterflow, New Mexico, obtained through PNM's 50% ownership of SJGS Units 1, 2 and 3 and 38.457% ownership of SJGS Unit 4; (iii) 192 MW of power obtained through PNM's 13% ownership of coal burning Units 4 and 5 at the Four Corners Power Plant, located in Fruitland, New Mexico; (iv) 154 MW generated by gas/oil burning units at the Reeves Generating Station, located in Albuquerque, New Mexico; and (v) 20 MW generated by the gas/oil burning unit at the Las Vegas Generating Station, located in Las Vegas, New Mexico. For the year ended December 31, 2000, PNM's electric generation mix was 68.0% coal, 29.8% nuclear, and 2.2% gas/oil.

Beginning in July 2000, PNM had approximately 132 MW of additional unit contingent peaking capacity as a result of its agreement with the Delta-Person Limited Partnership ("PLP"), owner of a gas turbine generating unit located near Albuquerque, New Mexico. PNM entered into a 20 year power purchase agreement with PLP to purchase approximately 132 MW of unit

contingent peaking capacity, with an option to renew for an additional five years. This brings PNM's total net generation capacity, consisting of both internal capacity and external, contracted capacity, to 1,653 MW.

Currently, PNM is constructing a new power plant, known as the Afton Generating Station, that is located in southern New Mexico. The Afton Generating Station will be constructed adjacent to the Afton Compression Station of El Paso Natural Gas Company, about 12.5 miles southwest of Las Cruces, New Mexico. The plant is scheduled to be in commercial operation by the end of October 2002. It will produce 135 MW of electricity in its initial, simple cycle phase. By the last quarter of 2003, PNM is expected to expand the plant to a combined-cycle facility, with an output of approximately 225 MW.

In addition to generation capacity, PNM purchases power in the market. PNM has two power purchase agreements with Southwestern Public Service Company: a long-term agreement (which expires May 2011) under which PNM receives 150 MW of interruptible power and an intermediate-term agreement (through December 2005) under which PNM receives 72 MW of firm power. PNM also has a long-term power purchase agreement (through 2010) with Tri-State Generation and Transmission Association, Inc., under which PNM receives 50 MW of firm power. Additionally, PNM has 70 MW of contingent capacity it obtains from El Paso Electric Company under a transmission capacity for generation capacity trade arrangement that runs through May 2004.

As of December 31, 2000, PNM's electric transmission facilities (including jointly owned and leased facilities) consisted of approximately 2,552 circuit miles of electric transmission lines, 4,205 miles of overhead distribution lines, 3,389 miles of underground distribution lines, and a total of 210 switching stations and substations, all located in New Mexico. On February 28, 2001, PNM completed the purchase of several additional transmission lines and switching stations from Tri-State Generation and Transmission Association, Inc. The purchase included approximately 335 miles of 115 kV transmission lines and two complete additional switching stations, and portions of three switching stations (immediately adjacent to existing PNM-owned switching stations), all of which are located in New Mexico. PNM's jointly owned transmission facilities (mentioned above) include approximately 165 miles of 500 kV transmission lines located in Arizona. They are associated with PNM's interest in Palo Verde.

PNM, distributing natural gas to most of the major communities in New Mexico, including Albuquerque and Santa Fe, served approximately 435,000 natural gas customers as of December 31, 2000. The Albuquerque metropolitan area accounts for approximately 51.7% of the total sales-service customers. PNM obtains its supply of natural gas primarily from sources within New Mexico pursuant to contracts with producers and marketers. These contracts are generally sufficient to meet PNM's peak-day demand. PNM serves certain cities that depend on El Paso Natural Gas Company or Transwestern Pipeline Company for transportation of gas supplies. Because these cities are not directly connected to PNM transmission facilities, gas transported by these companies is the sole supply source for those cities.

PNM's natural gas properties, as of December 31, 2000, consisted primarily of natural gas storage, transmission and distribution systems. Provisions for storage made by PNM include ownership and operation of an underground storage facility located near Albuquerque, New

Mexico. The transmission systems consisted of approximately 1,464 miles of pipe with appurtenant compression facilities. The distribution systems consisted of approximately 10,693 miles of pipe.

### 3. DANA COMMERCIAL CREDIT CORPORATION

Dana Commercial Credit Corporation's Annual Report for the year 2000 states that Dana Commercial Credit Corporation, a Delaware corporation ("DCCC"), is a subsidiary of Dana Corporation, one of the world's largest suppliers to vehicle manufacturers and their related aftermarkets. DCCC, either directly or through subsidiary companies, is primarily engaged in one or more businesses other than the business of a public-utility company.

DCC Project Finance Two, Inc., a Delaware corporation ("DCC Project Finance"), is a direct, wholly-owned subsidiary of DCCC. DCCC owns all of the issued and outstanding capital stock of DCC Project Finance.

#### B. DCC PROJECT FINANCE TWO, INC.

DCC Project Finance, a single-purpose entity, has a 60% beneficial ownership interest in the Eastern Interconnection Project (the "EIP"). The EIP consists of a 216 mile, 345 kV transmission line between PNM's bulk power switching station north of Bernalillo, New Mexico and a high voltage DC converter station, called the Blackwater Station, located in the Clovis-Portales area of eastern New Mexico, plus associated switching equipment and the Blackwater Station DC converter facilities. The EIP was constructed in 1984-1985 to interconnect PNM's transmission system to that of Southwestern Public Service Company ("SPS").(1)

Prior to commercial operation of the EIP in 1985, PNM entered into a leveraged lease financing of the EIP. PNM sold the EIP to certain institutional investors, Emerson Leasing Ventures, Inc. ("Emerson") and General Foods Credit Corporation ("GFCC", and together with Emerson, the "Owner Participants"),(2) each of which formed a trust with The First National Bank of Boston (the "Owner Trustee")(3) for the purpose of holding title to its respective undivided interest in the EIP. Following the sale and lease-back transaction, PNM had and currently has a 100% leasehold interest in the EIP. The Owner Trustee thereafter entered into two separate 30 year leases with PNM wherein PNM makes two semiannual payments that cover both (i) the debt service on the amount borrowed to finance the Owner Participants' purchase of the EIP

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(1) PNM and SPS entered into an agreement in November 1982 to provide for the transmission interconnection between utilities. SPS provides electricity to portions of Texas, New Mexico, Kansas and Oklahoma. Subject to certain conditions, the agreement provides for the purchase by PNM from SPS of up to 200 MW of interruptible power from 1995 through 2011.

(2) Emerson acquired a 60 percent interest in the EIP and GFCC acquired the remaining 40 percent interest. GATX Capital Corporation ("GATX") subsequently acquired Emerson's interest from an entity that had purchased the stock of the original Emerson equity investor (a single-asset subsidiary of Emerson). DCC Project Finance is the successor in the interest to GATX. GFCC was acquired indirectly by the Philip Morris Companies Inc. ("Philip Morris") in the late 1980's.

(3) State Street Bank and Trust Company subsequently has replaced The First National Bank of Boston as the Owner Trustee.

from PNM and (ii) cash flow to equity investors which, with tax benefits, provides equity investors with return of and on their investments. A copy of the lease of the 60% interest is Exhibit B-2 hereto. PNM holds easements over part of the land underlying the EIP and is the fee owner of the remaining land underlying the EIP. Pursuant to two separate easements dated as of February 5, 1985, PNM granted to the Owner Trustee certain easements to the land underlying the EIP.

As part of the lease transaction, PNM retained an option to renew the lease at 50 percent of the original rent as well as an option to purchase the EIP at its fair market value at the end of the original lease or any renewal period. In addition, the lease permits PNM to exercise an early purchase option after thirty semiannual payments have been made under the lease.(4)

Since 1985, PNM has operated the EIP and treated the EIP as part of its integrated transmission system. Under the leases, PNM is responsible for paying all taxes, insurance premiums, operating and maintenance costs and all other similar costs associated with the EIP. Also, PNM is responsible for any additional costs from time to time in connection with alterations of or improvements to the EIP.

In connection with the initial closing of the leveraged lease financings, a filing on Form U-7D was made as contemplated by Rule 7(d) on February 5, 1985 for the benefit of Emerson and the trustee of its grantor trust. The presently effective filing is an Amendment, Restatement and Consolidation of Forms U-7D (File Nos. 32-480 and \_\_\_(5)) filed on or about September 14, 1993. Exhibit B-3 hereto. Upon acquisition of DCC Project Finance by the Applicants, the presently effective filing will be amended to delete DCC Project Finance therefrom (leaving the trustee of the grantor trust as the only company benefited by such filing).

Upon acquisition by the Applicants of DCC Project Finance, PNM Resources will not derive, directly or indirectly, any material part of its income from DCC Project Finance. Upon such acquisition, PNM Resources will, in addition, continue to claim an exemption under Section 3 (a)(1) of the Act from all provisions of the 1935 Act, other than Section 9(a)(2), in accordance with Rule 2 under the 1935 Act.

### C. DESCRIPTION OF APPLICANTS' REQUESTS

The Applicants retained Schrickel Capital Corp. to make an inquiry on behalf of the Applicants. The Applicants are seeking authority to purchase 100% of the issued and outstanding stock of DCC Project Finance.

Pursuant to a purchase agreement between DCCC and PNM dated as of January 15, 2002 (the "Purchase Agreement"), the Applicants will purchase 100% of the issued and outstanding stock of DCC Project Finance (the "Subject Stock"), to be renamed PNM Project Finance Two,

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(4) FERC determined that the lease between PNM and the Owner Trustee was not jurisdictional because neither the Owner Participants nor the Owner Trustee were public utilities. PUBLIC SERVICE COMPANY OF NEW MEXICO, 29 FERC Paragraph 61,387 (1984).

(5) This file number is presently unknown.

Inc. immediately upon consummation of the transaction. The Applicants will purchase the Subject Stock from DCCC for \$5,672,000 (subject to possible upward adjustment as provided in the Purchase Agreement).(6)

Acquiring the voting securities of DCC Project Finance requires prior Commission authorization under Sections 9(a)(2) and 10 of the Act because the Applicants will be acquiring the voting securities of a public-utility company and PNM Resources would thereby become an affiliate of a public-utility company in addition to PNM.

**ITEM 2. FEES, COMMISSIONS AND EXPENSES**

The fees, commissions and expenses to be paid or incurred, directly or indirectly, in connection with the transactions contemplated herein are estimated as follows:

Purchase Price.....	\$5,672,000 (7)
Legal Fees.....	300,000
Advisory Fee.....	225,000
Miscellaneous.....	125,000
Total.....	6,322,000

**ITEM 3. APPLICABLE STATUTORY PROVISIONS**

It is believed that Sections 9(a)(2) and 10 of the Act are directly or indirectly applicable to the authority requested in this Application. To the extent that the proposed transactions are considered by the Commission to require authorization, approval or exemption under any section of the Act or provisions of the rules or regulations thereunder other than those specifically referred to herein, request for such authorization, approval or exemption is hereby made.

**A. SECTION 10(b)**

Section 10(b) of the Act provides that, if the requirements of Section 10(f) are satisfied, the Commission shall approve an acquisition under Section 9(a) unless the Commission finds that:

(1) such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;

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(6) If the closing date shall occur after February 28, 2002, interest on the cash payment of \$5,672,000 will be computed at the lower of DCCC's 60-day funding cost or 5% per annum for the actual number of days elapsed from but excluding January 15, 2002 to and including the closing date. Such interest (if due) shall be an upward adjustment to such cash purchase price. No other pricing adjustment is applicable to the purchase or sale of the Subject Stock.

(7) The Purchase Price is subject to possible upward adjustment as provided in the Purchase Agreement. (See footnote 6 herein.)

(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest of consumers or the proper functioning of such holding-company system.

#### 1. SECTION 10(b)(1) - INTERLOCKING RELATIONS AND CONCENTRATION OF CONTROL

The transactions described herein will not tend towards "interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers." As stated in Item 1, PNM has operated the facilities concerned as part of its integrated transmission system since 1985 under the lease agreement, and thus there will be no effective change of control over the facilities concerned as a result of the contemplated transaction. The proposed change in the ownership of the EIP and associated equipment presents no concentration of control or other market power concerns. Because PNM already leases these facilities and exercises complete control over their operation, the acquisition of stock and related change in title of a portion of the EIP will not result in any change in market power. No generation market share is affected as a result of the transfer.

In addition, as a result of the transaction there will be no effect on potential transmission market power that PNM could exercise. The EIP will continue to be used in the same way both before and after the transaction, with the only changes being acquisition of stock and transfer of legal title to a portion of the facilities to a lessee that already operates and controls the facilities concerned and the termination of the lease with respect to the transferred portion. All of the facilities, before and after the transaction, will be subject to PNM's open access transmission tariff ("OATT") or the OATT of a regional transmission organization ("RTO") to which PNM in the future may transfer operational control.

No generating facilities of previously unaffiliated entities are being combined in a single entity as a result of the proposed transaction. Moreover, this transaction does not involve a single corporate entity obtaining control over one or more merging entities that provide inputs to electricity production. The present application does not raise horizontal or vertical market power issues.

The transaction will not involve any consolidation of separate companies and does not involve a merger of any new facilities with those already operated by PNM. The Applicants do not propose to merge with or acquire any other entity in the instant Application. This type of arrangement, therefore, is not harmful to the Act's protected interests.

Section 10(b)(1) of the Act requires the Commission, before blocking an acquisition, to find that control is "of a kind or to an extent detrimental to the public interest or the interest of investors or consumers." The stock acquisition does not involve a combination of previous separate utilities. Thus, rather than create prohibited corporate structures, PNM will continue to

serve its utility customers by providing reliable power through its control of the EIP in the same manner since 1985.

Accordingly, because PNM already maintains control of the EIP within the State of New Mexico, and because other regulatory agencies (FERC and the NMPRC) will concurrently be asked to evaluate and approve the proposed transactions, the Commission should find that the proposed transactions do not create the type of concentration of control prohibited by Section 10(b)(1).

## 2. SECTION 10(b)(2) - FAIRNESS OF CONSIDERATION AND FEES

Section 10(b)(2) of the 1935 Act requires the Commission to determine whether the consideration to be paid in connection with the proposed acquisition of securities, including all fees, commissions and other remuneration, is reasonable and whether it bears a fair relation to, investment in and earning capacity of the underlying utility assets.

PNM will purchase all of the issued and outstanding shares of capital stock of DCC Project Finance for \$5,672,000 (subject to possible upward adjustment as provided in the Purchase Agreement (as described elsewhere herein)). The purchase price is the product of arm's-length negotiations between DCCC and PNM. These negotiations were preceded by due diligence and analysis. As recognized by the Commission in NORTHEAST UTILITIES, Holding Co. Act Release No. 25221 (Dec. 21, 1990) citing OHIO POWER CO., 44 SEC 340, 346 (1970), prices arrived at through arm's-length negotiations are particularly persuasive evidence that Section 10(b)(2) is satisfied.

As set forth in Item 2 of this Application, PNM expects to incur a combined total of approximately \$650,000 in fees, commissions and expenses. PNM believes that the estimated fees and expenses in this matter bear a fair relation to the value of the transactions and the strategic benefits to be achieved, and further that the fees and expenses are fair and reasonable in light of the complexity of the transactions.

## 3. SECTION 10(b)(3) - CAPITAL STRUCTURE

Section 10(b)(3) of the Act requires the Commission to determine whether the proposed transactions will unduly complicate the capital structure of the Applicants or will be detrimental to the public interest, the interest of investors or consumers or the proper functioning of the PNM system. The acquisition of the Subject Stock will not involve the issuance of new securities. In addition, the acquisition of the Subject Stock will not be detrimental to the interest of consumers or the functioning of the PNM system because the EIP facilities already are included in PNM's transmission rates, which were established as part of a settlement agreement that occurred prior to the transfer of these facilities. PNM's transmission rates will not change as a result of the acquisition, and, in any event, would change only in a rate case or in a proceeding relating to an RTO where FERC would have jurisdiction. All of the facilities, before and after the transaction, will be subject to PNM's OATT or the OATT of an RTO to which PNM in the future may transfer operational control. PNM will fund the purchase price for the stock of DCC Project Finance from cash on hand.

## B. SECTION 10(c)

Section 10(c) of the 1935 Act provides that:

Notwithstanding the provisions of subsection (b), the Commission shall not approve:

- (1) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of Section 8 or is detrimental to the carrying out of the provisions of Section 11; or
- (2) the acquisition of securities or utility assets of a public-utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and the efficient development of an integrated public-utility system.

### 1. SECTION 10(c)(1)

Section 10(c)(1) of the Act provides that the Commission may not approve a transaction that is "unlawful under the provisions of section 8 or is detrimental to the carrying out of the provisions of section 11." Together these sections relate to the corporate simplification standards of Section 11(b)(2) of the Act, which require that each registered holding company take the necessary steps to ensure that the corporate or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure of such holding-company system. Sections 8 and 11, by their terms, only apply to registered holding companies, and PNM Resources will be exempt from registration under Section 3(a)(1) pursuant to Rule 2 of the Act.

### 2. SECTION 10(c)(2)

Section 10(c)(2) of the Act requires that any acquisition not be approved unless the Commission finds that "such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system."

Section 2(a)(29)(A) of the Act defines an "integrated public utility system" as applied to electric utility companies as a:

system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more states, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation.

As discussed in Item 1, PNM and DCCC have entered into the Purchase Agreement under which PNM will purchase all of the issued and outstanding stock of DCC Project Finance. PNM will maintain the EIP using the same mechanisms and same system operator as it has since 1985 and thereby meets the Commission's requirements for economical operation.

After consummation of the proposed transaction, PNM will continue to be subject to regulation by the NMPRC. Since the EIP is located within New Mexico, the proposed transaction will not impair the effectiveness of local management. Accordingly, the proposed acquisition complies with the single area or region requirement of Section 10(c)(2).

As part of its analysis under Section 10(c)(2), the Commission also considers whether the operation of the proposed integrated public-utility system will generate economies and efficiencies. Whether or not the Applicant's proposed transaction is consummated, PNM will be able to continue to meet its service demands in the same reliable manner as before the filing of this Application.

#### C. SECTION 10(f)

Section 10(f) of the Act prohibits the Commission from approving the transaction proposed in this Application unless the Commission is satisfied that the transaction will be undertaken in compliance with applicable state laws. The Applicants commit to complete the transaction in a manner consistent with the laws of the State of New Mexico. Additionally, the acquisition of the stock of DCC Project Finance will not impair effective regulation because the Applicants will continue to be subject to the jurisdiction of the Commission, FERC and the NMPRC after acquisition of such stock in the same manner and to the same extent as they were prior to such acquisition.

#### D. EXEMPTION UNDER SECTION 3(a)(1)

PNM Resources claims exemption, under Section 3(a)(1), from all provisions of the Act except Section 9(a)(2). PNM Resources will continue to claim this exemption after PNM's purchase of the Subject Stock.

### **ITEM 4. REGULATORY APPROVAL**

The Applicants are contemporaneously with this Application seeking appropriate approvals from the NMPRC and FERC. Exhibits D-1 and D-2 hereto. The Applicants are seeking all necessary regulatory approvals contemporaneously with the filing of this Application. The acquisition is not subject to Hart-Scott-Rodino reporting requirements because it falls below the minimum threshold for reporting a proposed transaction under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

### **ITEM 5. PROCEDURE**

The Applicants request that the Commission issue and publish no later than Friday, February 1, 2002, the requisite notice under Rule 23 with respect to the filing of this Application, such notice to specify a date not later than Tuesday, February 26, 2002 as the date after which an order granting and permitting this Application to become effective may be entered by the

Commission and that the Commission enter not later than Friday, March 12, 2002 an appropriate order granting and permitting this Application to become effective.

No recommended decision by a hearing officer or other responsible officer of the Commission is necessary or required in this matter. The Division of Corporate Regulation of the Commission may assist in the preparation of the Commission's decision in this matter. There should be no thirty-day waiting period between the issuance and effective date of any order issued by the Commission in this matter, and the Applicants respectfully request that any such order be made effective immediately upon the entry thereof.

## **ITEM 6. EXHIBITS AND FINANCIAL STATEMENTS**

### **A. EXHIBITS**

#### **A-1 Certificate of Incorporation of DCC Project Finance Two, Inc.**

B-1 Purchase Agreement between Dana Commercial Credit Corporation and Public Service Company of New Mexico dated as of January 15, 2002.

B-2 Amended and Restated Lease dated as of September 1, 1993 under which PNM leases, as lessee, the 60% undivided interest.

(Schedules 1, 2 and 3 are not available electronically.)

B-3 Amendment, Restatement and Consolidation of Forms U-7D executed on September 14, 1993 by The First National Bank of Boston, as owner trustee, and DCC Project Finance Two, Inc.

#### **D-1 Application to the New Mexico Public Regulation Commission.**

#### **D-2 Application to FERC.**

E-1 Map showing the interconnection of the Eastern Interconnection Project to PNM's properties (filed on Form SE).

#### **F-1 Opinion of Counsel to the Applicants.**

#### **F-2 Opinion of Counsel to the Applicants.**

F-3 "Past Tense" Opinion of Counsel (to be filed by amendment).

#### **G-1 Form of Notice.**

### **B. FINANCIAL STATEMENTS**

FS-1 Form 10-K Annual Report of Public Service Company of New Mexico for the year ended December 31, 2000 (incorporated by reference to such filing, File No. 1-6986).

FS-2 Form 10-K/A Amendment No. 1 to Annual Report of Public Service Company of New Mexico for the year ended December 31, 2000 (incorporated by reference to such filing, File No. 1-6986).

FS-3 Form 10-K/A Amendment No. 2 to the Annual Report of Public Service Company of New Mexico for the year ended December 31, 2000 (incorporated by reference to such filing, File No. 1-6986).

FS-4 Form 10-Q Quarterly Report of Public Service Company of New Mexico for the period ended March 31, 2001 (incorporated by reference to such filing, File No. 1-6986).

FS-5 Form 10-Q Quarterly Report of Public Service Company of New Mexico for the period ended June 30, 2001 (incorporated by reference to such filing, File No. 1-6986).

FS-6 Form 10-Q/A Amended Quarterly Report of Public Service Company of New Mexico for the period ended June 30, 2001 (incorporated by reference to such filing, File No. 1-6986).

FS-7 Form 10-Q Quarterly Report of Public Service Company of New Mexico for the period ended September 30, 2001 (incorporated by reference to such filing, File No. 1-6986).

FS-8 A balance sheet for DCC Project Finance Two, Inc. as of December 31, 2001. No other financial statements are available for DCC Project Finance Two, Inc.

There have been no material changes, not in the ordinary course of business, to the aforementioned balance sheet from December 31, 2001, to the date of this Application.

#### **ITEM 7. INFORMATION AS TO ENVIRONMENTAL EFFECTS**

None of the matters that are the subject of this Application involve a "major federal action" nor do they "significantly affect the quality of the human environment" as those terms are used in Section 102(2)(C) of the National Environmental Policy Act. None of the proposed transactions that are the subject of this Application will result in changes in the operation of the Applicants that will have an impact on the environment. The Applicants are not aware of any federal agency which has prepared or is preparing an environmental impact statement with respect to the transactions proposed herein.

**SIGNATURES**

Pursuant to the requirements of the Public Utility Holding Company Act of 1935, the undersigned companies have duly caused this statement to be signed on their behalf by the undersigned thereunto duly authorized.

Date: January 22, 2002  
Albuquerque, New Mexico

**PNM RESOURCES, INC.**

*By: /s/ John R. Loyack*

-----  
*Name: John R. Loyack*  
*Title: Vice President, Controller and*  
*Chief Accounting Officer*

**PUBLIC SERVICE COMPANY  
OF NEW MEXICO**

*By: /s/ Terry R. Horn*

-----  
*Name: Terry R. Horn*  
*Title: Vice President and Treasurer*

## Exhibit Index

### Exhibits

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FS-8 A balance sheet for DCC Project Finance Two, Inc. as of December 31, 2001. No other financial statements are available for DCC Project Finance Two, Inc.

**Exhibit 99.A-1**

**Delaware PAGE 1**

**The First State**

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "DCC PROJECT FINANCE TWO, INC." AS RECEIVED AND FILED IN THIS OFFICE.

**THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:**

**CERTIFICATE OF INCORPORATION, FILED THE SEVENTEENTH DAY OF SEPTEMBER, A.D.**

**1990, AT 10 O'CLOCK A.M.**

**AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.**

*/s/ Harriet Smith Windsor*

-----  
*Harriet Smith Windsor, Secretary of State*

2241354      8100H

AUTHENTICATION:      1558455

020025634

DATE:      01-14-02

STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 10:00 AM 09/17/1990  
730260043 - 2241354

CERTIFICATE OF INCORPORATION  
OF  
**DCC Project Finance Two, Inc.**

\* \* \* \* \*

1. The name of the corporation is

**DCC Project Finance Two, Inc.**

2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

3. The nature of the business or purposes to be conducted or promoted is:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

4. The total number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000)

and the par value of each of such shares is One Dollars (\$1.00) amounting in the aggregate to One Thousand Dollars (\$1,000).

5A. The name and mailing address of each incorporator is as follows:

NAME ----	MAILING ADDRESS -----
V. A. Brookens	Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801
M. C. Kinnamon	Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801
T. L. Ford	Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801

5B. The name and mailing address of each person, who is to serve as a director until the first annual meeting of the stockholders or until a successor is elected and qualified, is as follows:

NAME ----	MAILING ADDRESS -----
Edward J. Shultz	P.O. Box 7011 Troy, Michigan 48007

6. The corporation is to have perpetual existence.

7. In furtherance and not in limitation of the powers conferred by statute, the board of directors is expressly authorized:

To make, alter or repeal the by-laws of the corporation.

To authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation.

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

By a majority of the whole board, to designate one or more committees, each committee to consist of one or more of the directors of the corporation. The board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The by-laws may provide that in the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors, or in the by-laws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it;

but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution, or amending the by-laws of the corporation; and, unless the resolution or by-laws, expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

When and as authorized by the stockholders in accordance with law, to sell, lease or exchange all or substantially all of the property and assets of the corporation, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property including shares of stock in, and/or other securities of, any other corporation or corporations, as its board of directors shall deem expedient and for the best interests of the corporation.

8. Elections of directors need not be by written ballot unless the by-laws of the corporation shall so provide.

Meetings of stockholders may be held within or without the State of Delaware, as the by-laws may provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the corporation.

9. The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being each of the incorporators hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is our act and deed and the facts herein stated are true, and accordingly have hereunto set our hands this 17th day of September, 1990.

*/s/ V. A. Brookens*  
-----  
*V. A. Brookens*

*/s/ M. C. Kinnamon*  
-----  
*M. C. Kinnamon*

*/s/ T. L. Ford*  
-----  
*T. L. Ford*

**PURCHASE AGREEMENT**

dated as of

January 15, 2002

between

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

and

**DANA COMMERCIAL CREDIT CORPORATION**

---

**PURCHASE AND SALE OF ALL THE STOCK OF  
DCC PROJECT FINANCE TWO, INC.**

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## **PURCHASE AGREEMENT**

This PURCHASE AGREEMENT dated as of January 15, 2002 (this "AGREEMENT") is between (i) DANA COMMERCIAL CREDIT CORPORATION, a Delaware corporation ("DCCC" or the "SELLER"), and (ii) PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("PNM" or the "PURCHASER"). Capitalized terms used herein without definition have the respective meanings specified in Section 9.11 below.

A. DCC Project Finance Two, Inc., a Delaware corporation (the "COMPANY"), is a direct, wholly owned subsidiary of DCCC. DCCC owns 500 shares of stock, \$1.00 par value, of the Company ("SHARES"). The Shares comprise all of the issued and outstanding stock of the Company.

B. The Seller desires to sell to the Purchaser, and the Purchaser desires to purchase from the Seller, all of the Shares for a purchase price of \$5,672,000, subject to possible upward adjustment as provided in Section 1.4 of this Agreement (collectively, the "PURCHASE PRICE"), subject to the terms and conditions set forth in this Agreement.

ACCORDINGLY, the parties hereto agree as follows on the date hereof and on the Closing Date:

### **ARTICLE 1**

#### **PURCHASE FROM THE SELLER**

1.1. PURCHASE AND SALE OF THE SHARES. Subject to the terms and conditions set forth herein, on the Closing Date, (i) the Seller agrees to sell and deliver, and the Purchaser agrees to purchase and accept, the Shares and (ii) the Purchaser agrees to pay the Purchase Price.

1.2. DELIVERY OF THE SHARES. Subject to the terms and conditions set forth herein (including receipt by the Seller of the Purchase Price), the Seller will, on the Closing Date, deliver to the Purchaser stock certificates representing ownership of the Shares duly endorsed for transfer and transferred on the books and records of the Company.

1.3. DELIVERY OF THE PURCHASE PRICE. Subject to the terms and conditions set forth herein (including delivery to the Purchaser of the Shares which shall be deemed to have occurred upon delivery of the stock certificates set forth in Section 1.2 above), the Purchaser shall pay the Purchase Price by wire transfer of immediately available funds to an account designated in writing by the Seller.

1.4. PURCHASE PRICE ADJUSTMENT. If the Closing Date shall occur after February 28, 2002, interest on the cash payment of \$5,672,000 will be computed at the lower of (x) DCCC's 60-day funding cost and (y) 5% per annum for the actual number of days elapsed from but

excluding January 15, 2002 to and including the Closing Date. Such interest (if due) shall be an upward adjustment to such cash Purchase Price. Except as provided in Sections 4.1(b) and 7.4 hereof, no other pricing adjustment is applicable to the purchase or sale of the Shares.

1.5. NO SECTION 338(h)(10) ELECTION. It is understood and agreed that the parties will not make an election under Section 338(h)(10) of the Code in respect of the sale and purchase of the Shares.

1.6. CERTAIN GOVERNMENTAL APPROVALS. The Purchaser began the process of seeking the governmental approvals specified in EXHIBIT B hereto (the "EXHIBIT B APPROVALS") by directing its counsel to begin preparation of draft applications and testimony, such direction having been given promptly after December 28, 2001. PNM shall make appropriate filings (together with ancillary documentation) to obtain the Exhibit B Approvals using its best efforts by January 22, 2002. The Purchaser expects that all Exhibit B Approvals can be obtained within 75 to 90 days of the date on which the filings are made. The Purchaser shall use its best efforts to obtain the Exhibit B Approvals as rapidly as reasonably practicable. The Purchaser expects to nominate a date for the Closing Date which is as soon as reasonably practicable after the date on which the last Exhibit B Approval is obtained. The Purchaser shall provide DCCC with a copy of each filing or application for an Exhibit B Approval at or prior to the submission of the same to the Governmental Authority in question.

## **ARTICLE 2**

### **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

To induce the Purchaser to enter into and perform this Agreement, the Seller represents and warrants to the Purchaser as follows on the date hereof and on the Closing Date (PROVIDED, HOWEVER, that the Seller does not represent or warrant as to any matter to the extent that PNM shall have provided a specific representation or warranty as to such matter in the Transaction Documents):

2.1. ORGANIZATION AND QUALIFICATION OF THE COMPANY. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is not, and is not required to be, qualified, admitted or otherwise authorized to transact business as a foreign corporation in any other state, except where the failure to be so qualified, admitted or authorized to transact business would reasonably be expected to have a material adverse effect on its ability to conduct its business as currently conducted. The copies of the organizational documents, stock transfer records and minute books of the Company previously delivered or otherwise provided to the Purchaser are true, correct and complete copies of such documents and reflect all amendments of the Company's organizational documents and minutes of all meetings of the shareholders and directors of the Company (or, in each case, written consent in lieu thereof) held through and including the date hereof.

2.2. AUTHORITY OF THE SELLER. The Seller has the corporate power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery by the Seller of, and performance by the Seller of its obligations under, this Agreement and the transactions contemplated hereby have been duly authorized by all necessary corporate action on

the part of the Seller other than any such action (including, without limitation, approval by the Seller's Operating Committee) that will have been taken prior to the Closing Date. No registration or filing with, consent or approval of, notice to or action by any Governmental Authority is required to permit the sale of the Shares by the Seller or the taking of any other action by the Seller with respect to the transactions contemplated by this Agreement, except that no representation or warranty is given by the Seller with respect to any Exhibit B Approval.

**2.3. AUTHORITY OF THE COMPANY.** The Company has the corporate power and authority to own its assets and to conduct its business as currently conducted.

**2.4. ENFORCEABILITY.** This Agreement constitutes the valid and legally binding obligations of the Seller enforceable against the Seller in accordance with the terms hereof, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting generally the enforcement of creditors' rights and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

**2.5. TITLE TO THE SHARES; ETC.** The Seller has, and (subject to the satisfaction of the conditions set forth herein) on the Closing Date the Seller shall convey, sell and assign to the Purchaser, legal, beneficial, valid and indefeasible title to the Shares, free and clear of all Liens, restrictions on sale or transfer (other than restrictions imposed by applicable federal and state securities laws), preemptive rights, options or any other claims by any Person. There are no Owner Participant Liens on the Subject Interest.

**2.6. EFFECT OF THIS AGREEMENT.** The execution, delivery and performance of this Agreement by the Seller and the consummation by the Seller of the transactions contemplated hereby will not (i) violate any law, statute, regulation, judicial or administrative order, writ, award, judgment, injunction or decree involving the Seller or the Company, (ii) conflict with, result in a breach of, or constitute a default under, any agreement or other instrument of the Seller or the Company or by which either of them or any of their respective properties are bound (provided that no representation or warranty is made with respect to the Transaction Documents) or (iii) violate the organizational documents of the Company or the Seller.

**2.7. CAPITALIZATION.** The authorized capital stock of the Company consists of 1,000 shares of common stock, \$1.00 par value per share ("COMMON STOCK"), of which 500 shares are issued and outstanding. The Company has not issued or authorized any shares of Preferred Stock. The Seller is the record holder of the Shares, constituting all of the issued and outstanding stock of the Company. All of the Shares have been duly authorized, validly issued and are fully paid and nonassessable. There are no existing agreements, plans, options, warrants, rights, calls or commitments of any character to which the Company is a party or by which it is bound providing for the issuance of any additional shares, or for the repurchase or redemption of the Shares, and there are no outstanding securities or other instruments convertible into or exchangeable for shares of the Company's capital stock or commitments to issue such securities or instruments.

## 2.8. ASSETS AND LIABILITIES.

- (a) As of the Closing Date, the Company will have no assets or Liabilities of any nature other than those existing by virtue of the Transaction Documents and the Acquisition Agreement and, in each case, the Company's participation in the transactions contemplated thereby. The Company conducts no business other than holding the Subject Interest.
- (b) The Company has no obligation or Liability under Section 7.6 of the Acquisition Agreement with respect to a Refinancing Fee (as defined in such Section 7.6).

## 2.9. TAXES.

- (a) The Company or the Seller has duly and timely filed, or will duly and timely file, all returns, reports, information returns, questionnaires, declarations or other documents (including any related or supporting information) relating to Taxes required to be filed on or prior to the Closing Date in respect of the income, properties, status and activities of the Company (collectively, "TAX RETURNS"). All such Tax Returns are, or will be when filed, materially true, complete and correct in respect of the income, properties, status and activities of the Company.
- (b) All Taxes due and payable by the Company (or by any member of any consolidated, combined, affiliated, unitary or other similar Tax group that includes the Company (a "TAX GROUP") in respect of the income, properties, status and activities of the Company) which relate to periods ending on or prior to the Closing Date have been, or will be, duly and timely paid by or on behalf of the Company. Any charges, accruals or reserves (if any) for Taxes of the Company accrued as of December 31, 2001 but not yet due and payable on that date will be adequate to cover all such Taxes.
- (c) Attached hereto as SCHEDULE 2.9(c) is information showing the manner in which the Company's adjusted basis for federal income tax purposes in the Undivided Interest and Transaction Expenses has been derived. As of January 1, 2002, the Company will have an adjusted tax basis in the Undivided Interest and Transaction Expenses for federal income tax purposes of not less than \$15,734,568.
- (d) (i) None of the Company or any member of a Tax Group has executed or filed with any Tax Authority any consent, agreement or other document extending or having the effect of extending the period for filing any Tax Return with respect to the Company (other than routine six-month extensions of the time for filing income Tax Returns), or assessment or collection of any Taxes with respect to the Company, (ii) there is no action, suit, proceeding, investigation, audit or claim relating to Taxes currently pending or threatened with respect to the Company or a Tax Group in respect of the Company and none of the Company or any member of a Tax Group in respect of the Company has received any notice of the commencement of any such action, suit, proceeding, investigation, audit or claim, (iii) all deficiencies in Taxes that have been claimed, proposed or asserted against the Company or a Tax Group have been paid in full, (iv) no Person currently holds, with respect to the Tax Returns filed or to be filed prior to the Closing Date, powers of attorney from the Company or any member of a Tax Group in respect of the Company, and (v) the Company is not party to, is not bound by and does not have any

obligation under any Tax sharing or similar agreement, other than an agreement with respect to which the Purchaser or an Affiliate of the Purchaser is a party or an agreement with respect to which all the parties are members of a Tax Group. There are no Tax liens (other than for Taxes not yet due and payable) outstanding against any of the assets of the Company.

(e) All Taxes that the Company (or any member of a Tax Group in respect of the Company) is required by law to withhold or collect have been duly withheld or collected and have been timely paid over to the appropriate Tax Authority to the extent due and payable.

(f) None of the Company or any member of a Tax Group in respect of the Company has filed a consent to the application of Section 341(f)(2) of the Code or any comparable provision of any Tax Law.

(g) The Company is not a party to any "safe harbor lease" within the meaning of Section 168(f)(8) of the Internal Revenue Code of 1954, as in effect before amendment by the Tax Equity and Fiscal Responsibility Act of 1982. The Company has not made any payment, is not obligated to make any payment and is not a party to any agreement that could or does obligate the Company to make any payment that is not, or would not be, deductible under Section 280G of the Code. None of the assets of the Company secures any debt the interest on which is tax exempt under Section 103 of the Code.

(h) None of the Company or any member of a Tax Group has agreed to make any adjustment under Section 481(a) of the Code (or comparable provision of any other Tax Law), by reason of a change in accounting method or otherwise, in respect of the Company. To the best knowledge of the Seller, no Tax Authority has proposed, or is contemplating, any such adjustment or any change in accounting method in respect of the Company. None of the Company or any member of a Tax Group has an application pending with any Tax Authority requesting permission for any change in accounting method in respect of the Company.

(i) Except as provided in SCHEDULE 2.9(i), the Company is not liable for the Taxes of any Person under (i) Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign Tax Law, (ii) as a transferee or successor or (iii) by contract or indemnity.

(j) To the best knowledge of the Seller and the Company, no claim has ever been made by a Tax Authority in a jurisdiction where the Company (or a Tax Group in respect of the Company) does not file Tax Returns that the Company (or a Tax Group in respect of the Company) is or may be required to file Tax Returns and/or be subject to taxation by that jurisdiction.

(k) None of the Company or any member of a Tax Group has received any letter ruling, determination letter or similar document issued by any Tax Authority, nor entered into any closing agreement pursuant to Section 7121 of the Code, or any similar Tax Laws, with any Tax Authority, which, in either case, could have an adverse effect on the Company following the Closing Date.

2.10. LITIGATION. There is no action or proceeding pending or, to the Seller's knowledge, threatened against the Company or affecting the Shares, and there is no outstanding

judgment, order or decree to which the Company is a party or which involves the transactions contemplated herein.

2.11. **NO SUBSIDIARIES OR OTHER AFFILIATES.** Other than holding the Subject Interest, the Company does not own any shares of, or control, directly or indirectly, or have any equity interest in, any corporation, partnership, joint venture, association or other business organization.

2.12. **COMPLIANCE WITH APPLICABLE LAWS.** To the Seller's knowledge, the Company is in material compliance with all federal, state, municipal and local laws, codes, statutes, ordinances, orders, judgments, decrees, injunctions, franchises, determinations, approvals, rules, regulations, permits, licenses, authorizations, certificates, notices, demand letters, circulars, opinion letters and directions imposed by any Governmental Authority having jurisdiction over the Company and which are relevant to the Company and its business, property or assets, except that no representation or warranty is given by the Seller with respect to (i) any Governmental Authority identified in EXHIBIT B hereto or (ii) any matter of whatever nature relating to or required by the leasing, use, operation or maintenance of the Transmission System or the Undivided Interest, or the business, operations or other activities of the Lessee and its Affiliates.

2.13. **EMPLOYEES, OFFICERS AND DIRECTORS.** The officers and directors of the Company are listed in SCHEDULE 2.13. The Company has no, and has not, at any time, had any, employees and is not, and was not, at any time during the past five years, party to or bound by any collective bargaining agreement, written employment agreements, or any incentive compensation, deferred compensation, profit sharing, stock option, stock bonus, savings, retirement pension, severance, post retirement supplement or retirement, health, welfare or other similar plan or arrangement for the benefit of any Person. The Company has no outstanding financial obligation (i) to any director of the Company or any relative of any director or any person or entity controlled directly or indirectly by, or otherwise affiliated with, any director or (ii) to the Seller, or any person or entity controlled directly or indirectly by, or otherwise affiliated with, the Seller, except for such obligations which arise or could arise by operation of law, from any reimbursement obligations under any guarantee of the Company's obligations provided by the Seller or otherwise, from the Seller's ownership of the Shares.

2.14. **FINDER'S FEE.** Other than Farragut Investments, Inc. (whose fee or commission is the sole responsibility of DCCC), neither the Seller nor the Company has retained any investment banker, broker, finder or other intermediary or authorized any such person or entity to act on its or their behalf in connection with the transactions contemplated hereby and no such person or entity is entitled to any fee or commission from the Seller, any of its Affiliates or the Company upon the consummation of the transactions contemplated hereby.

2.15. **AGREEMENTS AND OTHER RIGHTS.** The Company is not a party to or otherwise bound by any Contracts other than the Transaction Documents and the Acquisition Agreement.

2.16. **TITLE TO ASSETS.** The Company is the owner of, and has legal title to, the Subject Interest.

2.17. **BANK ACCOUNTS; POWERS OF ATTORNEY.** As of the Closing Date, the Company will maintain no account or safe deposit box with any bank or other financial institution and no one holds any powers of attorney from the Company.

2.18. **DUE DILIGENCE.** Listed in EXHIBIT C hereto are certain due diligence materials provided by the Seller to the Purchaser at the Purchaser's request. The copies of such materials provided by the Seller to the Purchaser and its counsel are complete and correct in all material respects.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

To induce the Seller to enter into this Agreement, the Purchaser represents and warrants to the Seller as follows on the date hereof and on the Closing Date:

3.1. **ORGANIZATION AND QUALIFICATION OF THE PURCHASER.** The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico.

3.2. **AUTHORITY OF THE PURCHASER.** The Purchaser has the right, power, legal capacity and authority to own its assets, to conduct its business and to execute, deliver and perform its obligations under this Agreement. The execution and delivery by the Purchaser of, and performance by the Purchaser of its obligations under, this Agreement and the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Purchaser other than approval by the Purchaser's Board of Directors (which it expects to obtain at a meeting of the Board of Directors to be held on January 18, 2002). No registration or filing with, or consent or approval of, or notice to or action by any Governmental Authority is required to permit the purchase of the Shares by the Purchaser or the taking of any other action by the Purchaser with respect to the transactions contemplated by this Agreement other than the Exhibit B Approvals.

3.3. **ENFORCEABILITY.** This Agreement constitutes the valid and legally binding obligations of the Purchaser, enforceable against the Purchaser in accordance with the terms hereof, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting generally the enforcement of creditors' rights and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

3.4. **EFFECT OF THIS AGREEMENT.** The execution, delivery and performance of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby will not (i) violate any statute, regulation, judicial or administrative order, writ, award, judgment, injunction or decree involving the Purchaser, (ii) conflict with, result in a breach of or constitute a default under any agreement or other instrument of the Purchaser by which the Purchaser or any of its properties is bound or (iii) violate the organizational documents of the Purchaser.

### 3.5. INVESTMENT REPRESENTATIONS.

(a) The Shares are being acquired by the Purchaser for investment and not with a view to the resale or distribution of any part thereof, and the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same, and has no contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person or to any third person, with respect to any of the Shares.

(b) The Purchaser believes it has received all the information necessary or appropriate to decide whether to acquire the Shares. The Purchaser has had an opportunity to ask questions and receive answers from the Company and the Seller regarding the Company and its business. The Purchaser has not relied upon, and is not relying upon, the Company or the Seller with respect to tax and other economic considerations related to the transactions contemplated hereby, except as otherwise expressly provided herein.

(c) The Purchaser understands that the Shares are not registered under the Securities Act, and that the sale of the Shares are being made by the Seller in reliance upon one or more exemptions from registration under the Securities Act and under exemptions from registration under the securities laws of the various states. The Purchaser understands that the Seller's reliance on such exemptions will be based, in part, on the Purchaser's representations in this Section 3.5.

3.6. FINDERS' FEE. Other than Schrickel Capital (whose fee or commission is the sole responsibility of the Purchaser), the Purchaser has not retained any investment banker, broker, finder or other intermediary or authorized any such person or entity to act on its or their behalf in connection with the transactions contemplated hereby and no such person or entity is entitled to any fee or commission from the Purchaser, any of its Affiliates or the Company upon the consummation of the transactions contemplated hereby.

3.7. TRANSACTION DOCUMENTS. The Transaction Documents constitute all of the Contracts currently in effect in connection with the lease financing transaction which is the subject of the documents listed in EXHIBIT A hereto. The purchase by the Purchaser of the Shares pursuant to this Agreement complies with the Transaction Documents and no consent or approval is needed to consummate the Share purchase.

3.8. LITIGATION. There is no action or proceeding pending or, to the Purchaser's knowledge, threatened against the Purchaser which involves the transactions contemplated herein or in the Transaction Documents, except that no representation or warranty is given by the Purchaser in respect of the Acquisition Agreement.

## ARTICLE 4

### COVENANTS OF THE SELLER AND THE PURCHASER

#### 4.1. TAX MATTERS; COOPERATION; TAX RETURNS.

(a) The Seller shall cause the Company to be included in the Seller's consolidated federal income Tax Returns for all periods for which it is eligible to be so included, including without limitation the period from January 1, 2002 through the Closing Date, and in any other required state, local and foreign Tax Group Tax Returns for all periods ending on or before the Closing Date for which the Company is required to be so included. The Seller shall (i) timely prepare and file all such Tax Returns and timely pay when due all Taxes relating to such Tax Returns and (ii) timely prepare and file, or cause to be prepared and filed, all other Tax Returns of the Company for all taxable periods ending on or prior to the Closing Date and timely pay, or cause to be paid, when due all Taxes relating to such Tax Returns. Before the filing of any Tax Return described in the preceding sentence that was not filed before the Closing Date, the Seller shall provide the Purchaser with a substantially final draft of such Tax Return (or, with respect to Tax Returns described in clause (i) above, the portion of such draft Tax Return that relates to the Company) at least fifteen

(15) business days prior to the due date for filing such Tax Return, and the Purchaser shall have the right to review such Tax Return prior to the filing of such Tax Return. Such Tax Returns shall be prepared or completed in a manner consistent with prior practice of the Seller and the Company with respect to Tax Returns concerning the income, properties, status and activities of the Company (including elections and accounting methods and conventions), except as otherwise required by applicable Tax Law or otherwise agreed to by the Purchaser prior to the filing thereof.

(b) Any Taxes with respect to the Company that relate to a Tax period beginning before the Closing Date and ending after the Closing Date (an "OVERLAP PERIOD") shall be apportioned between the Seller and the Purchaser, (i) in the case of Taxes not measured or measurable, in whole or in part, by net or gross income or receipts, on a PER DIEM basis, and (ii) in the case of other Taxes, as determined from the books and records of the Company during the portion of such period ending on the Closing Date and the portion of such period beginning on the day following the Closing Date consistent with the past practices of the Seller and the Company. The Purchaser shall cause the Company to file any Tax Returns for any Overlap Period, and the Purchaser shall pay, or cause to be paid, all state, local or foreign Taxes shown as due on any such Tax Returns. The Seller shall pay the Purchaser, as an adjustment to the Purchase Price, its share of any such Taxes due pursuant to the filing of any such Tax Returns under the provisions of this Section 4.1(b) (to the extent the Seller is liable therefor in accordance with this Section 4.1

(b) and to the extent not already paid by the Seller or the Company or accrued or otherwise reflected as a Liability on the books of the Company) within ten (10) business days of receipt of notice of such filing by the Purchaser, which notice shall set forth in reasonable detail the calculations regarding the Seller's share of such Taxes; provided, however, that if, within ten (10) business days after receipt of such notice, the Seller notifies the Purchaser in writing that the Seller disagrees with the computation of the Seller's share of such Taxes, the Seller and the Purchaser shall proceed in good faith to determine the Seller's share of such Taxes and the Seller's payment to the Purchaser under this Section 4.1(b) shall be due ten (10) business days after the Seller and the Purchaser agree to the amount payable by the Seller.

(c) Notwithstanding anything in this Agreement to the contrary, the Seller, the Purchaser and the Company agree to prepare all Tax Returns for 2002 periods described in this Section 4.1 in accordance with the methodology described in SCHEDULE 4.1(c).

(d) The Purchaser and the Company shall be responsible for and shall indemnify and hold the Seller harmless from all Taxes of the Company for any taxable period (or portion thereof) beginning on or after the Closing Date and for all Taxes resulting from any action taken without the Seller's written consent by the Purchaser or the Company after the closing (including, without limitation, any election made by the Purchaser under Section 338 of the Code with respect to the Company and actions taken outside the ordinary course of business and occurring on the Closing Date). The Purchaser and the Company shall be entitled to all refunds of such Taxes.

(e) The Seller shall have the right to represent the interests of the Company (i) in any Tax audit or administrative or court proceeding relating to Tax Returns described in Section 4.1(a) with respect to which the Seller may be liable for Taxes pursuant to this Agreement (including any such proceedings relating to the Company) or (ii) with respect to any claim for indemnification for Taxes for which the Seller is or may be liable pursuant to Section 7.1; PROVIDED, HOWEVER, that the Purchaser shall have the right to participate in any such audit or proceeding to the extent that any such audit or proceeding may affect the Tax Liability of the Purchaser, any of its Affiliates, or the Company for any period ending after the Closing Date and to employ counsel of its choice at its own expense for purposes of such participation. Neither the Purchaser nor its Affiliates (including the Company) shall be entitled in any way to release, waive, settle, modify or pay any claim with respect to Taxes for which the Seller may be liable under this Agreement, without written consent of the Seller. Notwithstanding anything to the contrary contained or implied in this Agreement, without the prior written approval of the Purchaser, neither the Seller nor any affiliate of the Seller shall agree or consent to compromise or settle, either administratively or after the commencement of litigation, any issue or claim arising in any such audit or proceeding, or otherwise agree or consent to any Tax Liability, to the extent that any such compromise, settlement, consent or agreement may increase the Tax Liability of the Purchaser, any of its Affiliates or the Company for any period ending after the Closing Date (including, without limitation, the imposition of Tax deficiencies, the reduction of asset basis or cost adjustments, the lengthening of any amortization or depreciation periods, the denial of amortization or depreciation deductions, or the reduction of loss or credit carryforwards arising in taxable periods after the Closing Date), unless the Seller indemnifies the Purchaser for the increase in Taxes resulting from such compromise, settlement, consent or agreement.

(f) The Purchaser shall promptly notify the Seller in writing upon receipt by the Purchaser, any affiliate of the Purchaser or the Company of notice of any pending or threatened Tax audits or assessments relating to the income, properties, status and activities of the Company, in each case for periods ending on or before the Closing Date only; PROVIDED, HOWEVER, that in no event shall such notification to the Seller be given more than 10 business days after the Purchaser's, its Affiliates' or the Company's receipt of such notice. Failure by the Purchaser to comply with this Section 4.1(f) shall not affect the Purchaser's right to indemnification relating to Taxes if such failure does not prejudice the rights of the Seller. The Seller shall promptly notify the Purchaser in writing upon receipt by the Seller or any Affiliate of the Seller of notice of any pending or threatened Tax audits or assessments relating to the

income, properties, status and activities of the Company, but only for periods arising in taxable periods after the Closing Date.

(g) Notwithstanding any other provision of this Agreement, the Seller shall have no obligation to pay or to indemnify or hold the Purchaser or the Company harmless from any Tax imposed or assessed as a result of any action taken by the Purchaser or the Company with respect to any contest, audit, assessment or other proceeding without the Seller's written consent, to the extent such written consent is required by this Agreement.

(h) Neither the Seller nor any Affiliate of the Seller shall, without the prior written consent of the Purchaser, file, or cause to be filed, any amended Tax Return or claim for Tax refund, with respect to the income, properties, status and activities of the Company to the extent such amended Tax Return or claim for Tax Refund adversely affects the income, properties, status or activities of the Company for periods ending after the Closing Date. Neither the Purchaser nor any affiliate of the Purchaser (including the Company) shall, without the prior written consent of the Seller, file or cause to be filed any amended Tax Return or claim for Tax refund with respect to the income, properties, status and activities of the Company for any period ending on or before the Closing Date. The Seller shall be entitled to any reductions in Taxes or Tax refunds (including interest) of or relating to the Company not heretofore received for taxable periods ending on or before the Closing Date to the extent the Seller is obligated to indemnify the Purchaser or the Company in respect of such Taxes. If the Purchaser or its Affiliates (including the Company) receives any such refund, the Purchaser shall promptly pay (or cause to be paid) the entire amount of the refund (including interest) to the Seller, net of any Tax cost to the Purchaser or the Company. In the event that any loss, credit or other item of the Company for a period ending after the Closing Date may be carried back to a taxable period for which the Company and the Seller or any corporation affiliated with the Seller filed a consolidated, unitary, combined, affiliated, or similar Tax Return, the Seller, the Purchaser and the Company will negotiate in good faith with a view to providing the Purchaser or the Company with the economic benefit of such carryback, provided that the Seller (or an affiliate of the Seller) shall not be required to file an amended Tax Return or claim for Tax refund in respect of any taxable period for which any such Tax Return was filed without its consent, which consent shall not be unreasonably withheld. The Purchaser shall pay the out-of-pocket costs of preparing and filing any such amended Tax Return or claim for Tax refund and, in addition, shall pay and reimburse and hold the Seller (or any Affiliate of the Seller) harmless from any costs incurred in connection with securing, or attempting to secure, such benefit up to an amount not in excess of such benefit.

(i) Any and all existing Tax sharing, allocation, compensation or like agreements or arrangements, whether or not written, between the Company, the Seller or any Affiliate of the Seller, including without limitation any arrangement by which the Company makes compensating payments to any member of any Tax Group for the use of certain tax attributes, shall be terminated as to the Company as of the Closing Date (pursuant to a writing executed on or before the Closing Date by all parties concerned) and shall have no further force or effect. All Liabilities of the Company, the Seller or any Affiliate of the Seller under such agreements (for Taxes or otherwise pursuant to such agreements or arrangements) shall be canceled on or prior to the Closing Date. Any and all powers of attorney relating to Tax matters

concerning the Company shall be terminated as to the Company on or prior to the Closing Date and shall have no further force or effect.

(j) Subject to the other provisions of this Section 4.1, after the Closing Date, the Purchaser and the Seller shall provide each other, and the Purchaser shall cause the Company to provide the Seller, with such cooperation and information relating to the Company as either party reasonably may request in (i) filing any Tax Return, amended Tax Return or claim for Tax refund, (ii) determining any Tax Liability or a right to refund of Taxes, (iii) conducting or defending any audit or other proceeding in respect of Taxes or (iv) effectuating the terms of this Agreement. The parties shall retain, and the Purchaser shall cause the Company to retain, all Tax Returns, schedules and work papers, and all material records and other documents relating thereto with respect to the Company, until the expiration of the statute of limitation (and, to the extent notified by any party, any extensions thereof) with respect to the taxable years to which such Tax Returns and other documents relate and, unless such Tax Returns and other documents are offered and delivered to the Seller or the Purchaser, as applicable, until the final determination of any Tax in respect of such years. Any information obtained under this Section 4.1 shall be kept confidential, except as may be otherwise necessary in connection with filing any Tax Return, amended Tax Return, or claim for refund, determining any Tax Liability or right to refund of Taxes, or in conducting or defending any audit or other proceeding in respect of Taxes. Notwithstanding the foregoing, neither the Seller nor the Purchaser, nor any of their Affiliates, shall be required unreasonably to prepare any document, or determine any information not then in its possession, in response to a request under this Section 4.1(j).

(k) Notwithstanding any other provision of this Agreement, (i) the Seller shall not pay, reimburse, be liable for, indemnify or hold harmless the Purchaser or its Affiliates from and against any amount for which the Purchaser or its Affiliates are liable under the Tax Indemnity Agreement or any of the other Transaction Documents and (ii) the Seller and its Affiliates shall be entitled to any amounts that are or shall become payable to or for the benefit of the Company under the Tax Indemnity Agreement or any of the other Transaction Documents with respect to any taxable period (or portion thereof) ending on or before the Closing Date. The Purchaser, the Seller and the Company acknowledge and agree that, after the Closing Date, the Tax Indemnity Agreement will remain in effect with respect to taxable periods (or any portion thereof) ending on or before the Closing Date; PROVIDED, HOWEVER, that the Seller will be substituted for the Company under that agreement for such periods. The Seller may assign its rights hereunder with respect to the Tax Indemnity Agreement to Dana Corporation or any other member of the consolidated group of which Dana Corporation is the common parent for purposes of filing federal income Tax Returns.

(l) Notwithstanding any other provision of this Agreement, in addition to the provisions of Article 7, the provisions of this Section 4.1 shall apply to claims for indemnification for Taxes and, in the event and to the extent of any inconsistency between this Section 4.1 and Article 7, this Section 4.1 shall apply.

(m) The amount of any Tax indemnification otherwise payable by or on behalf of the Seller under this Agreement shall be reduced by the Tax benefit actually received by the Purchaser, the Company, or any Tax Group that includes the Company for any taxable period ending after the Closing Date resulting from any adjustment to or change in any Tax item

relating to the Company for any taxable period ending on or before the Closing Date. The Purchaser shall pay (or cause to be paid) to the Seller the Tax benefit actually received by the Purchaser, the Company, or any Tax Group that includes the Company promptly after any such Person realizes any such benefit, up to an amount (in the aggregate) not in excess of the Tax indemnification payment otherwise payable by or on behalf of the Seller.

(n) The Seller shall be liable for, and shall pay when due, any transfer, gains, documentary, sales, use, registration, stamp, value added or other similar Taxes (other than any such Taxes imposed by the State of New Mexico or any political subdivision thereof or therein) payable by reason of the transactions contemplated by this Agreement or attributable to the sale, transfer or delivery of the Shares hereunder, and the Seller shall, at its own expense, file all necessary Tax returns and other documentation with respect to all such Taxes. The Seller and the Purchaser shall cooperate to comply with all Tax Return requirements for such Taxes and shall provide such documentation and take such other actions as may be necessary to minimize the amount of any such Taxes.

#### 4.2. FINDERS' FEE; FEE INDEMNIFICATION.

(a) The Seller shall indemnify and hold harmless the Purchaser, its Affiliates and the Company from all Liabilities, costs and expenses incurred by the Purchaser, any of its Affiliates, or the Company as a result of the Seller retaining any investment banker, broker, finder or other intermediary or authorizing any person or entity to act on its or their behalf in connection with the transactions contemplated hereby and such person becoming entitled to any fee or commission with respect to the transactions contemplated hereby.

(b) The Purchaser shall indemnify and hold harmless the Seller and its Affiliates from all Liabilities, costs and expenses incurred by the Seller or any of its Affiliates as a result of the Purchaser retaining any investment banker, broker, finder or other intermediary or authorizing any person or entity to act on its or their behalf in connection with the transactions contemplated hereby and such person becoming entitled to any fee or commission with respect to the transactions contemplated hereby.

#### 4.3. ADDITIONAL PURCHASER COVENANTS.

(a) The Purchaser hereby covenants and agrees that, from and after the Closing Date, (i) it will not permit the Company to take any action that would breach any obligation of the Company as Owner Participant under or pursuant to the Transaction Documents or would violate or be inconsistent with the Transaction Documents and (ii) it will cause the Company to comply with all of its obligations under the Transaction Documents.

(b) The Purchaser covenants and agrees that it will exercise its right to purchase the Undivided Interest pursuant to Section 14(a)(2) of the Lease by giving the requisite notice immediately following the closing on the Closing Date.

(c) The Purchaser will use its best efforts to have State Street Bank and Trust Company ("STATE STREET") join, in its individual capacity and not just in its capacity as Owner Trustee, in the release contemplated by Section 6.5(d) of this Agreement (provided that this

Section 4.3(c) shall not require PNM to offer a guarantee of the obligations of the Company to State Street in its individual capacity).

(d) Promptly upon a purchase of the Undivided Interest pursuant to Section 14 of the Lease, the Purchaser shall cause the Company to terminate the trust created by the Trust Agreement.

## **ARTICLE 5**

### **CONFIDENTIALITY; PUBLICITY**

5.1. **CONFIDENTIALITY AGREEMENT.** The Confidentiality Agreement shall be applicable according to its terms for the period beginning on January 3, 2002 and shall cease to be applicable from and after the Closing Date (if it occurs). For a period of one year from and after the Closing Date, each party hereto shall keep strictly confidential any and all information furnished to it or to its Affiliates, agents or representatives in the course of negotiations relating to this Agreement or any transaction contemplated by this Agreement, and the business and financial reviews and investigation conducted by any party hereto in connection with this Agreement, and each such party has instructed its respective officers, employees and other representatives having access to such information of such obligation of confidentiality. The obligations of confidentiality set forth herein shall not apply to information (a) disclosed to actual or prospective assignees or transferees, (b) disclosed to each party's counsel or independent auditors, (c) requested to be disclosed by any Governmental Authority or required to be disclosed by law, rule, regulation or administrative proceeding, (d) for which a party has received a subpoena or similar demand (provided that such party shall to the extent permitted by applicable law first, as promptly as practicable upon receipt of such demand, furnish a copy to the other party), (e) generally available to the public or in the possession of the receiving party before its disclosure under this Agreement or (f) that is given to the receiving party by another person other than in breach of obligations of confidentiality owed by such person to the disclosing party under this Agreement.

5.2. **NO PUBLIC ANNOUNCEMENT.** No party shall make any public announcement with respect to the transactions contemplated hereby, except as may be required by law or regulation having in such case given prior written notice of such requirement to the other party.

5.3. **DISCLOSURE.** Notwithstanding the foregoing provisions of this Article 5 and notwithstanding the Confidentiality Agreement, the Purchaser may disclose such information as is necessary or appropriate to make and/or procure the Exhibit B Approvals or satisfy the Purchaser's obligations under federal securities laws in connection with the transactions contemplated by this Agreement or in the filings made by the Purchaser in connection with the Exhibit B Approvals, in each case having given prior written notice of such disclosure and the reason (s) therefor to the Seller; PROVIDED, HOWEVER, that no such prior written notice need be given for any disclosure that (i) is in furtherance of the Purchaser's compliance with its obligations under federal securities laws and (ii) does not identify the Seller or any of its Affiliates.

## ARTICLE 6

### CLOSING

6.1. CLOSING. The closing is to take place not later than March 20, 2002 unless both of the parties shall have agreed in writing to extend the Closing Date beyond March 20, 2002.

6.2. FURTHER ACTS. If, at any time after the closing, any further action by any party hereto is necessary to carry out the purposes of this Agreement, such party shall take all such necessary action or use commercially reasonable efforts to cause such action to be taken upon the written request of the other party.

6.3. SURVIVAL OF REPRESENTATIONS AND WARRANTIES. Subject to Section 7.3, all representations and warranties shall survive the closing (except that Section 2.9 shall survive only to the expiration of the statute of limitations with respect to the underlying Tax claim) and shall not be affected by any investigation at any time made by or on behalf of the Purchaser, on the one hand, or the Seller, on the other hand.

6.4. DELIVERIES OF THE SELLER. The Seller agrees on the Closing Date to deliver or cause to be delivered to the Purchaser the following:

(a) TITLE TO THE SHARES. All stock powers, endorsements, certificates, approvals, consents and any and all further instruments as may be necessary to complete any and all conveyances, transfers and assignments provided for herein and to convey to the Purchaser legal, beneficial, valid and indefeasible title to the Shares.

(b) GOOD STANDING CERTIFICATES. Good standing and tax certificates (or analogous documents), dated no more than ten (10) days before the Closing Date, from the appropriate Governmental Authorities in the Company's jurisdiction of incorporation and in each jurisdiction in which the Company is qualified to do business, showing the Company to be in good standing and to have paid all Taxes due in the applicable jurisdiction.

(c) RESIGNATIONS. The resignations of all of the officers and directors of the Company effective as of the Closing Date.

(d) FIRPTA CERTIFICATE. An affidavit from the Seller in the form of SCHEDULE 6.4(e) that the Seller is not a "foreign person" within the meaning of section 1445 of the Code.

(e) TAX SHARING, ETC. The writing contemplated by Section 4.1(i) hereof (which writing shall also effect the cancellation of Liabilities and termination of powers of attorney specified in such Section 4.1(i)), in the form of EXHIBIT D hereto.

(f) OPINIONS OF COUNSEL TO THE SELLER. An opinion of Hunton and Williams, the special counsel to the Seller, and an opinion of the General Counsel of the Seller, in each case in form and substance reasonably satisfactory to the Purchaser.

(g) PRO FORMA TAX RETURN. The pro forma federal tax return for the Company utilized in preparing Dana Corporation's consolidated federal tax return for 2001.

(h) **BOOKS AND RECORDS.** The original of the corporate minute book for the Company and related corporate books and records.

(i) **OTHER DELIVERIES.** Such other documents or instruments as the Purchaser or its counsel may reasonably request consistent with the Seller's obligations hereunder.

**6.5. DELIVERIES OF THE PURCHASER.** The Purchaser agrees on the Closing Date to deliver or cause to be delivered to the Seller the following:

(a) **PURCHASE PRICE.** The Purchase Price to be delivered in the manner provided in Sections 1.3 and 1.4 hereof.

(b) **OPINION OF COUNSEL TO THE PURCHASER.** An opinion from each of Keleher & McLeod, P.A., and Pillsbury Winthrop LLP, counsel to the Purchaser, in form and substance reasonably satisfactory to the Seller.

(c) **FILINGS, NOTICES AND APPROVALS; ETC.** A certificate dated the Closing Date from an authorized officer of the Purchaser certifying that both the approval by the Purchaser's Board of Directors and the Exhibit B Approvals have been obtained and attaching copies of such approvals.

(d) **RELEASE OF DCCC GUARANTEE.** A release by the Purchaser and certain other parties to the Participation Agreement of the DCCC Guarantee (as defined in Section 19(f) of the Participation Agreement), such release to be in the form of EXHIBIT E hereto.

(e) **AMENDMENT TO CERTIFICATE OF INCORPORATION.** A duly executed amendment to the Certificate of Incorporation of the Company changing the name of the Company to "PNM Project Finance Two, Inc.", in form ready for filing immediately upon consummation of the closing on the Closing Date.

(f) **OTHER DELIVERIES.** Such other documents or instruments as the Seller or its counsel may reasonably request consistent with the Purchaser's obligations hereunder.

## **ARTICLE 7**

### **INDEMNIFICATION**

#### **7.1. AGREEMENTS TO INDEMNIFY.**

(a) The Seller hereby indemnifies and holds harmless the Purchaser, its officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates (and their respective officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates), and the Company from and against (i) all Liability, damage, deficiency, loss, costs, claims, encumbrances or expense, including interest or reasonable attorneys' fees and disbursements (collectively, "DAMAGES") incurred by any of them and which arise as a result of any breach of any representation, warranty, covenant or agreement made by the Seller herein, (ii) any Liability (other than Specified Liabilities) to the extent arising

from facts, events or circumstances occurring on or prior to the Closing Date and, (iii) subject to the provisions of Section 4.1 hereof, any and all (A) Taxes imposed on the Seller or any Affiliate of the Seller (including, without limitation, the Company) for, or relating to, all periods ending on or before the Closing Date, including, without limitation, (I) any Liability of the Company under any Tax sharing agreement, whether or not written, and

(II) any Tax Liability resulting from the termination, as of the Closing Date, of the Company as a member of any Tax Group and (B) Liabilities of the Seller or any Affiliate of the Seller (including, without limitation, the Company) for Taxes imposed under Treasury Regulation Section 1.1502-6 or any analogous provision of state, local or foreign Tax Law, as a result of being a member of a Tax Group for any taxable period ending on or before the Closing Date; PROVIDED, HOWEVER, that the Seller's indemnification obligations under Section 7.1(a)(i) (other than in respect of Sections 2.9 and 4.1 as to which the parties agree that the limitation in this proviso shall not be applicable) and 7.1(a)(ii) shall not exceed, in the aggregate, an amount equal to the Purchase Price.

(b) The Purchaser hereby indemnifies and holds harmless the Seller, its officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates (and their respective officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates) from and against (i) all Damages incurred by any of them and which arise as a result of any breach of any representation, warranty, covenant or agreement made by the Purchaser herein, (ii) any Liability (other than a Liability as to which the Seller is responsible under Section 7.1(a) hereof) to the extent arising from facts, events or circumstances occurring after the Closing Date, (iii) taxes (and related items) as provided in Section 4.1 and as provided in the Tax Indemnity Agreement (as modified in Section 4.1(k) hereof) and (iv) any failure by the Company promptly and completely to perform its obligations under the Transaction Documents to the extent such obligations are in respect of facts, events or circumstances occurring after the Closing Date (other than obligations for which the Seller is otherwise responsible under this Agreement).

7.2. NOTICE OF CLAIMS. If any Person benefited by Section 7.1 or 7.5 hereof (an "INDEMNIFIED PERSON") is threatened with any claim, or any claim is presented to or made to an Indemnified Person, or any action is commenced against an Indemnified Person, which may give rise to a right to indemnification hereunder, such Indemnified Person shall, with reasonable promptness, give written notice of such claim to the Person obligated to provide indemnification with respect thereto pursuant to Section 7.1 hereof (the "INDEMNIFYING PERSON") and, without prejudice to the Indemnified Person's right of indemnification under this Article 7, shall, before taking any action with respect to the subject claim, make itself available to meet with the Indemnifying Person and, along with the Indemnifying Person, attempt to resolve and/or settle the subject claim. The Indemnifying Person may elect, within thirty (30) days after receipt of such notice, or five (5) days before the return date required by any claim, citation or other statute, whichever occurs earlier, to contest and defend against such claim at the Indemnifying Person's expense, and shall give written notice to the Indemnified Person of the commencement of such contest or defense with reasonable promptness after the giving of the written notice of such claim by the Indemnified Person. The Indemnified Person shall be entitled to participate with the Indemnifying Person in such event, but shall not be entitled in any way to release, waive, settle, modify or pay such claim without the written consent of the Indemnifying Person if the Indemnifying Person shall have assumed the defense of, or otherwise be contesting, such claim (provided that such written consent shall not be unreasonably withheld). In the event that the

Indemnifying Person shall have assumed the defense of any claim, and has employed counsel with respect thereto, the Indemnified Person shall also be entitled to employ counsel at the its own cost and expense. In the event that the Indemnifying Person does not elect to contest or defend the claim as provided in this Section 7.2, the Indemnified Person, its successors and assigns shall have the exclusive right to prosecute, defend, compromise, settle or pay the claim in its sole discretion and pursue its rights under this Agreement. In the event that the Indemnifying Person shall assume the defense, the parties hereto shall cooperate in the defense of such action and the records of each shall be available to the other and to the Indemnified Person with respect to such defense.

### 7.3. SURVIVAL OF REPRESENTATIONS; EFFECT OF CERTIFICATES.

(a) The parties hereto agree that the provisions of this Article 7 and all representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and any investigation or audit made by any party hereto; PROVIDED, HOWEVER, that: (i) representations, warranties and covenants in this Agreement with respect to taxes shall survive until, and a claim for indemnification with respect thereto must be made prior to, the expiration of the statute of limitations with respect to the underlying tax claim; and (ii) the Seller's obligations under Section 7.1(a) hereof (except to the extent survival is expressly dealt with in clause (i) of this proviso) and the Seller's representations and warranties contained in this Agreement (other than (A) Section 2.9, which is governed by clause (i) of this PROVISIO, and (B) so much of the Seller's representations and warranties that address the absence of remarketing, residual sharing or other similar contracts to which the Company may be party or by which the Subject Interest may be bound as to which the survival period shall be April 1, 2015) shall survive only until, and a claim with respect thereto must be made prior to, the first anniversary of the Closing Date. If notice of a claim for which indemnity is sought shall be made under this Article 7 for a breach of a representation or warranty, such representation or warranty shall survive until such indemnification claim is finally resolved and all obligations with respect thereto are fully satisfied.

(b) Each statement contained in any certificate delivered in connection with this Agreement or the consummation of the transactions contemplated hereby shall constitute the representation, warranty and agreement of the party delivering such certificate and shall have the same force and effect as if it had been incorporated into this Agreement as a representation, warranty and agreement by such party.

7.4. INDEMNITY AMOUNTS TO BE COMPUTED ON AN AFTER-TAX BASIS. Any amount payable by or on behalf of the Seller to the Purchaser, or vice versa, pursuant to the provisions of Section 4.1 or Article 7 hereof shall, to the extent possible, be treated as an adjustment to the Purchase Price. The amount of any indemnification payable under any of the provisions of Section 4.1 and this Article 7 shall be (i) net of any Tax benefit actually realized by the Indemnified Person (including, where the Purchaser is the Indemnified Person, the Company) by reason of the facts and circumstances giving rise to the indemnification and (ii) increased by the amount of any Tax required to be actually paid by the Indemnified Person on the accrual or receipt of the indemnification payment (including any amount payable pursuant to this clause (ii)). For purposes of the preceding sentence, the amount of any state income Tax benefit or cost shall take

into account the federal income Tax effect of such benefit or cost. The Indemnified Person shall notify the Indemnifying Person of the receipt of any Tax benefit or the incidence of any Tax referred to in the previous sentence (whether any such Tax benefit or Tax occurs in the year of payment or otherwise), shall provide documentation in reasonable detail supporting such notice and cooperate with the Indemnifying Person, consistent with Section 4.1(j) hereof, with respect to such notice and documentation. The Indemnified Person shall pay (or cause to be paid) to the Indemnifying Person the Tax benefit actually received by the Indemnified Person promptly after the Indemnified Person realizes any such benefit, up to an amount (in the aggregate) not in excess of the indemnification payment otherwise payable by the Indemnifying Person. No party may recover a duplicate economic benefit under this Section 7.4 and Section 4.1(m) hereof.

**7.5. INDEMNIFICATION FOR ONGOING EIP TRANSACTION.** The Purchaser hereby indemnifies and holds harmless the Seller, its officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates (and their respective officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates) from and against any Liability occurring, or relating to events occurring, after the Closing Date and arising out of the Transaction Documents, the transactions contemplated thereby or any act or omission of the Purchaser (or any of its Affiliates, officers, directors, employees, agents, members, representatives, shareholders or partners) or any other party to the Transaction Documents with respect to the Transaction Documents, including, without limitation, any amendment, election, consent, waiver, omission or any other action of whatever nature taken, given or made by PNM or any other party to the Transaction Documents in connection with or pursuant to the Transaction Documents. The obligations of the Purchaser under this Section 7.5 shall be absolute, unconditional and irrevocable and the Purchaser hereby waives any and all defenses (whether available at law or in equity), rights of set-off or counterclaims that may at any time be available to or asserted by the Purchaser against the Seller, its officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates (and their respective officers, directors, employees, members, representatives, agents, shareholders, partners and Affiliates) in respect of the matters for which indemnity has been provided under this Section 7.5. The parties hereto agree that the provisions contained in this Section 7.5 shall survive the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and any investigation or audit made by any party hereto.

## **ARTICLE 8**

### **TERMINATION**

#### **8.1. TERMINATION.**

(a) This Agreement and the parties' obligations hereunder shall terminate (i) at the option of the Seller, if the Closing Date shall not have occurred by March 20, 2002, (ii) at the option of the Purchaser, if the Exhibit B Approvals (A) shall not have been obtained by March 20, 2002 or (B) shall contain any terms or conditions which, in the reasonable judgment of the Purchaser's Board of Directors, would have, or would be reasonably likely to have, an adverse impact on the benefits that the Purchaser had expected to realize from the purchase of the Shares, (iii) at the option of the Seller, if any Exhibit B Approval shall have been denied or (iv) at the

option of the Purchaser, if DCCC's credit committee shall not have approved the sale of the Shares pursuant to this Agreement by February 19, 2002.

(b) In the event that the Purchaser shall not have purchased the Shares as a result of a termination of this Agreement pursuant to Section 8.1(a) (i), (ii) or (iii), the Purchaser shall pay or reimburse up to \$10,000 of DCCC's costs and expenses in connection with its consideration and negotiation of the sale of the Shares and this Agreement; PROVIDED, HOWEVER, that the Purchaser shall have no obligation under this Section 8.1(b) in the event that the Purchaser's failure to purchase the Shares shall have resulted from a breach by the Seller of a representation, warranty, covenant or agreement contained in this Agreement.

## **ARTICLE 9**

### **GENERAL**

9.1. AMENDMENT. Except as otherwise provided herein, the parties may amend, modify or supplement this Agreement at any time, but only in writing duly executed by each of the parties to this Agreement.

9.2. ENTIRE UNDERSTANDING. Except for the Confidentiality Agreement, the terms set forth in this Agreement (including the schedules hereto) are intended by the parties as a final, complete and exclusive expression of the terms of their agreement and may not be contradicted, explained or supplemented by evidence of any prior agreement, any contemporaneous oral agreement or any consistent additional terms. Without limiting the generality of the foregoing, the parties have agreed that this Agreement has superseded the Letter of Intent in its entirety.

9.3. COUNTERPARTS. This Agreement may be executed simultaneously in any number of identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.4. HEADINGS. The headings preceding the text of Sections of this Agreement are for convenience only and shall not be deemed a part hereof.

9.5. APPLICABLE LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York. The Purchaser and the Seller hereby irrevocably and unconditionally submit to the nonexclusive jurisdictions of the courts of such State in relation to any claim, dispute or difference which may arise hereunder but without prejudice to the rights of such parties to commence any legal actions or proceedings in the courts of any other competent jurisdiction.

9.6. PARTIES IN INTEREST; ASSIGNMENT. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto, whether herein so expressed or not, but neither this Agreement nor any of the rights, interests or obligations hereunder of any party hereto shall be assigned without the prior written consent of the other party; PROVIDED, HOWEVER, that no consent by the Seller shall be necessary in connection with an assignment by the Purchaser to one of its Affiliates so long as such assignee shall have become party hereto by executing a counterpart

hereof. No purported assignment will relieve the assigning party of its obligations hereunder unless the other party hereto has consented in writing to such assignment. This Agreement is not intended, nor shall it be construed, to confer any enforceable rights on any person not a party hereto.

9.7. NOTICES. Any notice or demand to be given hereunder shall be in writing and deemed given when personally delivered, sent by telecopier, overnight courier or deposited in the mail, postage prepaid, sent certified or registered, return receipt requested, and addressed as set forth below or to such other address as any party shall have previously designated by such a notice. Any notice so delivered personally or by telecopy shall be deemed to be received on the date of delivery or transmission by telecopier; any notice so sent by overnight courier shall be deemed to be received two (2) business days after the date sent; and any notice so mailed shall be deemed to be received on the date stamped on the receipt (rejection or other refusal to accept or inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice).

**If to the Purchaser:**

Public Service Company of New Mexico

Alvarado Square  
Albuquerque, New Mexico 87158 Attention of Treasurer Phone: (505) 241-2119  
Fax: (505) 241-2369

With a copy to:

Pillsbury Winthrop LLP One Battery Park Plaza New York, New York 10004-1490 Attention of Timothy Michael Toy, Esq.

Phone: (212) 858-1344

Fax: (212) 858-1500

**If to the Seller:**

Dana Commercial Credit Corporation  
1801 Richards Road  
Toledo, Ohio 43607

Attention of Capital Markets Group Operations Phone: (419) 322-7400  
Fax: (419) 322-7454

9.8. EXPENSES. Subject to Section 4.1(i) and Article 8, the Purchaser shall bear its own expenses and the Seller shall bear its own expenses in connection with the negotiation and execution of this Agreement.

9.9. WAIVER. Waiver by any party of any term, provision or condition of this Agreement shall not be construed to be a waiver of any other term, provision or condition. Failure or delay by any party to require performance of any provision of this Agreement should not affect or impair such party's right to require full performance of such provision at any time thereafter.

9.10. NAME CHANGE; RELEASE.

(a) On the Closing Date, the Purchaser shall cause the name of the Company to be changed to "PNM Project Finance Two, Inc."

(b) Upon the Notes being paid in full pursuant to Section 5.2 of the Indenture and the Indenture having been released and discharged, the Purchaser will procure for the benefit of DCCC a release from the Lease Indenture Trustee of DCCC from its obligations under the DCCC Guarantee (as defined in Section 19(f) of the Participation Agreement) and DCCC's written confirmation of such Guarantee dated September 14, 1993, in each case to the same extent as provided in EXHIBIT D hereto.

9.11. CERTAIN DEFINITIONS.

(a) Capitalized terms used, but not otherwise defined, in this Agreement shall have the respective meanings specified in Appendix A to the Participation Agreement specified in EXHIBIT A hereto.

(b) For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

"ACQUISITION AGREEMENT" means the PNM Beneficial Interest Transfer Agreement dated December 31, 1991 between GATX Capital Corporation, seller thereunder, and the Company, the buyer thereunder.

"ACTIONS" means any claims, actions, suits, proceedings and investigations, whether at law, in equity or in admiralty or before any court, arbitrator, arbitration panel or Governmental Authority.

"AGREEMENT" has the meaning specified in the Preamble.

"CLOSING DATE" means the date not later than March 20, 2002 selected by the Purchaser (upon at least 5 days prior written notice to the Seller), which date shall be as soon as reasonably practicable after the last Exhibit B Approval shall have been obtained.

"CODE" means the Internal Revenue Code of 1986, as amended.

"COMMON STOCK" has the meaning specified in Section 2.7 hereof.

"COMPANY" has the meaning specified in Recital A.

"CONFIDENTIALITY AGREEMENT" means the Confidentiality Agreement dated January 3, 2002 between PNM and DCCC (also executed by Schrickel Capital, advisor to PNM).

"CONTRACTS" means all contracts, agreements, indentures, notes, loans, leases and other instruments.

"DAMAGES" has the meaning specified in Section 7.1(a) hereof.

"DCCC" has the meaning specified in the Preamble hereto.

"EXHIBIT B APPROVALS" has the meaning specified in Section 1.6 hereof.

"GOVERNMENTAL AUTHORITY" means any person or government, state, province or other political subdivision thereof, and any entity exercising regulatory or administrative functions of such governments.

"INDEMNIFIED PERSON" has the meaning specified in Section 7.2 hereof.

"INDEMNIFYING PERSON" has the meaning specified in Section 7.2 hereof.

"IRS" means the Internal Revenue Service.

"LETTER OF INTENT" means the proposal letter dated December 28, 2001 of PNM which was accepted by DCCC on December 28, 2001.

"LIABILITIES" means claims, debts, liabilities, obligations, duties and responsibilities of any kind and description, whether absolute or contingent, monetary or non-monetary, direct or indirect, known or unknown or matured or unmatured, or of any other nature.

"LIEN" means any security interest, lien, mortgage, claim, charge, pledge, restriction, equitable interest or encumbrance of any nature.

"OVERLAP PERIOD" has the meaning specified in Section 4.1(b) hereof.

"PERSON" means any natural person, corporation, business trust, joint venture, association, company, firm, partnership, or other entity or Governmental Authority.

"PNM" has the meaning specified in the Preamble.

"PREFERRED STOCK" means any equity issue that would receive preferential liquidation treatment as compared to the Common Stock.

"PURCHASE PRICE" has the meaning specified in Recital B hereto.

"PURCHASER" has the meaning specified in the Preamble.

"SCHRICKEL CAPITAL" means Schrickel Capital Corp.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SELLER" has the meaning specified in the Preamble.

"SHARES" has the meaning specified in Recital A.

"SPECIFIED LIABILITIES" means Liabilities as to which Lessee would be obligated to provide indemnification and/or reimbursement under the Transaction Documents.

"STATE STREET" has the meaning specified in Section 4.3(c).

"SUBJECT INTEREST" means all of the Company's right, title and interest in and to the Transaction Documents and the Trust Estate (including, without limitation, the right to receive Excepted Payments, if any).

"TAX" or "TAXES" means any federal, state, local or foreign income, gross receipts, license, payroll, wage, employment, excise, utility, communications, production, occupancy, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, capital levy, surcharges, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative, or add-on minimum, estimated, or other tax of any kind whatsoever, including, without limitation, penalties, additions to tax, and interest attributable thereto (together with any interest on any such interest, penalties and additions to tax), but excluding any taxes (and related amounts) for which the Purchaser or an affiliate of the Purchaser is responsible under the Transaction Documents.

"TAX AUTHORITY" means the IRS and any other domestic or foreign authority responsible for the administration of any Taxes.

"TAX GROUP" has the meaning specified in Section 2.9(b) hereof.

"TAX INDEMNITY AGREEMENT" means, collectively, the Tax Indemnity Agreement and the Confirmation (as defined in Section 19(f) of the Participation Agreement).

"TAX LAWS" means the Code, and any other federal, state, county, local or foreign laws related to any Tax, as well as any regulations, administrative pronouncements, rules or requirements pursuant thereto.

"TAX RETURNS" has the meaning specified in Section 2.9(a) hereof.

"TRANSACTION DOCUMENTS" means the Contracts specified in EXHIBIT A hereto.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first above written.

**DANA COMMERCIAL CREDIT CORPORATION**

*By: /s/ Joseph A. Beham*

-----  
*Name: Joseph A. Beham*  
*Title: SR. V.P.*

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

*By: /s/ Terry R. Horn*

-----  
*Name: Terry R. Horn*  
*Title: VP & Treasurer*

Acknowledged and agreed  
with respect to Section 4.1(k):

**DCC PROJECT FINANCE TWO, INC.**

*By: /s/ Joseph A. Beham*

-----  
*Name: Joseph A. Beham*  
*Title: V.P.*

**TRANSACTION DOCUMENTS**

1. Amended and Restated Participation Agreement dated as of September 1, 1993 (the "PARTICIPATION AGREEMENT") between DCC Project Finance Two, Inc. ("DCC TWO") and Public Service Company of New Mexico ("PNM"), among others. CAPITALIZED TERMS USED IN THIS EXHIBIT A HAVE THE RESPECTIVE MEANINGS SPECIFIED IN APPENDIX A TO THE PARTICIPATION AGREEMENT.
2. Lease.
3. Easement.
4. Operating Agreement.
5. Tax Indemnity Agreement.
6. Trust Agreement.
7. Indenture and Notes.
8. Assignment of Construction Contract.
9. Instrument of Assignment of Other Construction Contracts.
10. Refunding Extension Letter.
11. Extension Letter.
12. Omnibus Notice.
13. Omnibus Receipt.
14. First 1991 Agreement, Second 1991 Agreement, GATX Letter, Confirmation and DCC Guarantee (as each such term is defined in Section 19(f) of the Participation Agreement).
15. Beneficial Interest Transfer Agreement dated December 31, 1991 between GATX Capital Corporation and DCC Two.
16. Confirmation of Transferee's Parent Guarantee dated September 14, 1993.
17. Consent Agreement dated as of June 9, 2000 between DCC Two, PNM and PNM Electric and Gas Services, Inc. (with consent of Lessor subscribed thereon).

**FILINGS, NOTICES AND APPROVALS**

1. New Mexico Public Regulation Commission.
2. Federal Energy Regulatory Commission (section 203 of the Federal Power Act, as amended).
3. Securities and Exchange Commission (Form U-1 under section 9(a)(2) of the Public Utility Holding Company Act of 1935, as amended).

**DUE DILIGENCE ITEMS**

1. Complete copy of corporate minute book of DCC Project Finance Two, Inc.
2. The pro-forma federal tax returns for DCC Project Finance Two, Inc. utilized in preparing Dana Corporation's consolidated federal tax return (for 1991 (09/17/91 to 12/31/91 only) and for 1992 through 2000) and other accounting / tax information concerning the adjusted tax basis of the assets and tax status of DCC Project Finance Two, Inc. The Federal Employer Identification Number of DCC Project Finance Two, Inc. is 34-1696422.
3. Pro-forma State Tax worksheets for the years 1991 to 2000.
4. Beneficial Interest Transfer Agreement (asset sale from GATX Capital to DCC Project Finance Two, Inc.) and all closing papers.
5. Balance Sheet for DCC Project Finance Two, Inc., at December 31, 2001 (subject to possible adjustments) (such balance sheet to be finalized and delivered to the Purchaser not later than February 15, 2002).

**FORM OF  
TERMINATION OF  
TAX SHARING ARRANGEMENTS**

Reference is made to the Purchase Agreement dated as of January 15, 2002 (the "PURCHASE AGREEMENT") between Public Service Company of New Mexico and Dana Commercial Credit Corporation. Capitalized terms used herein have the respective meanings specified in the Purchase Agreement. This instrument is being delivered at, and effective as of, the closing on the Closing Date pursuant to Sections 4.1(i) and 6.4(e) of the Purchase Agreement.

1. Any and all Tax sharing, allocation, compensation or like arrangements, whether or not reduced to a written instrument, between the Company and the Seller or any affiliate of the Seller, including, without limitation, any arrangement by which the Company makes or receives compensating payments to or from any member of any Tax Group of which the undersigned are members for the use of certain tax attributes (collectively, the "TAX SHARING ARRANGEMENTS") are hereby TERMINATED, RELEASED and DISCHARGED and shall be of no further force or effect. Without limiting the generality of the foregoing, the undersigned acknowledge and agree that the term "Tax Sharing Agreements" encompasses all Grid Note and Tax Allocation Agreements heretofore executed by the Company to DCCC.
2. All Liabilities of the Company, the Seller or any Affiliate of Seller under the Tax Sharing Agreements (for Taxes or otherwise pursuant to the Tax Sharing Arrangements) are hereby CANCELLED, RELEASED and DISCHARGED.
3. All powers of attorney relating to Tax Matters concerning the Company are hereby TERMINATED and shall have no further force or effect.
4. All service agreements (including, without limitation, the Service Agreements dated September 17, 1990, January 1, 1991, January 1, 1992, January 1, 1993, January 1, 1994 and January 1, 1995) between the Company and DCCC are hereby CANCELLED, RELEASED, DISCHARGED and TERMINATED, in each case without Liability on the part of any party thereto, whether in respect of such cancellation, release, discharge and termination, in respect of services performed or costs incurred under such agreements or otherwise in respect of any other matter, event or circumstance.

DCC PROJECT FINANCE TWO, INC.

DANA COMMERCIAL CREDIT  
CORPORATION, for itself and its  
Affiliates,

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**FORM OF  
RELEASE AND DISCHARGE OF  
TRANSFEREE'S PARENT GUARANTEE AND RELATED CONFIRMATION  
BY CERTAIN BENEFICIARIES THEREUNDER**

**Dated March \_\_, 2002**

Reference is made to (i) the Transferee's Parent Guarantee dated as of December 31, 1991 (the "DCC GUARANTEE") by Dana Commercial Credit Corporation ("DCCC") accepted by Public Service Company of New Mexico ("PNM"), (ii) the Confirmation of Transferee's Parent Guarantee dated September 14, 1993 (the "CONFIRMATION OF PARENT GUARANTEE"), (iii) the Participation Agreement (as defined in the DCC Guarantee), and (iv) the Participation Agreement (as defined in the Confirmation of Parent Guarantee). Capitalized terms used herein without definition have the respective meanings specified in Appendix A to the Participation Agreement (as defined in the Confirmation of Parent Guarantee).

1. On the date hereof, DCC Project Finance Two, Inc., a Delaware Corporation ("PF TWO") (the corporation whose obligations are guaranteed under the DCC Guarantee and the Confirmation of Parent Guarantee), (i) changed its name to "PNM Project Finance Two, Inc." and (ii) became a wholly-owned subsidiary of PNM. Effective upon the occurrence of the event specified in clause (ii) of the immediately preceding sentence (the "EFFECTIVE TIME"), each of the undersigned (each, a "RELEASING BENEFICIARY") RELEASES and DISCHARGES DCCC from any and all of its obligations under the DCC Guarantee and the Confirmation of Parent Guarantee (other than with respect to any obligations of PF Two arising solely from facts, events or circumstances occurring prior to the Effective Time).
2. By its acceptance (as set forth below) of this instrument, DCCC agrees that it shall not be entitled to be subrogated to any of the rights of a Releasing Beneficiary against PF Two or any right of offset held by any Releasing Beneficiary with respect to the payment of any Obligations (as defined in the DCC Guarantee) arising solely from facts, events or circumstances occurring prior to the Effective Time, nor shall DCCC seek or be entitled to seek any reimbursement from PF Two in respect of payments made by DCCC under the DCC Guarantee or the Confirmation of Parent Guarantee after the Effective Time (in each case, with respect to Obligations arising solely from facts, events or circumstances occurring prior to the Effective Time).
3. By its acceptance (as set forth below) of this instrument, PF Two authorizes and directs the Owner Trustee to execute, deliver and perform this instrument.
4. THIS INSTRUMENT HAS BEEN DELIVERED IN AND SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN THE STATE OF NEW YORK.

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

By:

Name:

Title:

**EIP REFUNDING CORPORATION**

By:

Name:

Title:

**STATE STREET BANK AND TRUST COMPANY,  
[in its individual capacity and] as Owner  
Trustee as aforesaid,**

By:

Name:

Title:

**Accepted:**

**DCC PROJECT FINANCE TWO, INC.**  
(to be renamed "PNM Project Finance Two, Inc.")

By:

Name:

Title:

**Accepted:**

**DANA COMMERCIAL CREDIT CORPORATION**

By:

Name:

Title:

**SCHEDULE 2.9(c)**

1.	ASSET:	Undivided Interest
	BASIS (original):	\$35,481,375
	BASIS (remaining as of 1/1/02):	\$15,038,585
	DEPRECIATION START:	1991 (using the half-year convention)
	DEPRECIABLE LIFE & SYSTEM:	20 year MACRS (as more fully described in Section 1(e) of the Tax Indemnity Agreement)
2.	ASSET:	Transaction Expenses
	BASIS (original):	\$1,131,812
	BASIS (remaining as of 1/1/02):	\$695,983
	DEPRECIATION START:	September 14, 1993
	DEPRECIABLE LIFE & SYSTEM:	21.54 years, Straight Line

Capitalized terms used in this Schedule 2.9(c) have the respective meanings specified in Appendix A to the Participation Agreement (as defined in Exhibit A to the Purchase Agreement).

**SCHEDULE 2.9(i)**

For the period of the Company's existence, the Company is contingently liable for federal income Taxes of members of the consolidated federal income Tax Group of which the Seller is a member and may also be contingently liable for New Mexico state income Taxes for members of the New Mexico Tax Group of which various Affiliates of the Seller are members.

**SCHEDULE 2.13**

**OFFICERS AND DIRECTORS OF  
DCC PROJECT FINANCE TWO, INC.**

Office(s) -----	Name ----
Chairman of the Board (also a Director)	Edward J. Shultz
President (also a Director)	Paul J. Bishop
Vice President	Neal B. Barnard
Vice President	Judith A. Eyster
Vice President	James A. Vigneau
Vice President (also a Director)	Joseph A. Beham
Secretary	Letitia D. Marth
Assistant Secretary	Sheryl A. Weingrow
Treasurer	Teresa Mulawa
Assistant Treasurer	Cheryl Hickerson
Assistant Treasurer	Wendy Snell

**SCHEDULE 4.1(c)**

**ALLOCATIONS OF ITEMS OF TAXABLE INCOME AND EXPENSE  
OF DCC PROJECT FINANCE TWO, INC. FOR TAX YEAR 2002**

**CLOSING DATE OF MARCH 15, 2002 (TO BE UPDATED TO REFLECT ACTUAL CLOSING DATE)**

The Seller, the Purchaser and the Company agree to allocate items of income, expense and deduction, to the maximum extent possible, based on a closing of the books as of the Closing Date, consistent with Treas. Reg. Sec. 1.1502-76(b)(2)(i). No party shall make the election described in Treas. Reg. Sec. 1.1502-76(b)(2)(ii), but the parties may agree to use the method described in Treas. Reg. Sec. 1.1502-76(b)(2)(iii). In any event, the parties agree that this Schedule 4.1(c) (as adjusted as of the Closing Date) is an accurate reflection of such closing-of-the-books methodology.

**ITEMS OF TAXABLE INCOME & EXPENSE:**

**1) ACCRUAL OF SCHEDULED RENTAL INCOME FOR TAX YEARS 2001/02:**

	TOTAL -----	DCCC (2001): -----	DCCC (2002): -----	PNM (2002): -----
from & including:	01-Oct-01	01-Oct-01	01-Jan-02	16-Mar-02
to & including:	30-Mar-02	30-Dec-01	15-Mar-02	30-Mar-02
# of days of 180:	180	90	75	15
	2,243,559.84	1,121,779.92	934,816.60	186,963.32

**2) ACCRUAL OF SCHEDULED INTEREST EXPENSE FOR TAX YEARS 2001/02:**

	TOTAL -----	DCCC (2001): -----	DCCC (2002): -----	PNM (2002): -----
from & including:	01-Oct-01	01-Oct-01	01-Jan-02	16-Mar-02
to & including:	30-Mar-02	30-Dec-01	15-Mar-02	30-Mar-02
# of days of 180:	180	90	75	15
	1,426,185.00	713,092.50	594,243.75	118,848.75

**3) DEPRECIATION SCHEDULED FOR TAX YEAR 2002:**

	TOTAL -----	DCCC (2002): -----	PNM (2002): -----
from & including:	01-Jan-02	01-Jan-02	16-Mar-02
to & including:	30-Dec-02	15-Mar-02	30-Dec-02
# of days of 360:	360	75	285
	1,583,009.00	329,793.54	1,253,215.46

**4) AMORTIZATION SCHEDULED FOR TAX YEAR 2002:**

	TOTAL -----	DCCC (2002): -----	PNM (2002): -----
from & including:	01-Jan-02	01-Jan-02	16-Mar-02
to & including:	30-Dec-02	15-Mar-02	30-Dec-02
# of days of 360:	360	75	285
	52,527.00	10,943.13	41,583.88

**SCHEDULE 6.4(e)**

**FIRPTA CERTIFICATE**

**NONFOREIGN AFFIDAVIT**  
Exemption From Withholding Tax For

Dispositions of U.S. Real Property Interests

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform Public Service Company of New Mexico ("PURCHASER") that withholding of tax is not required upon the disposition of United States real property interests by Dana Commercial Credit Corporation ("SELLER"), the undersigned hereby certifies the following:

1. Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, or foreign estate for purposes of United States income taxation;
2. Seller's U.S. employer identification number is [\_\_\_\_\_]; and
3. Seller's office address is [\_\_\_\_\_] and place of incorporation is Delaware.

Seller understands that this certification may be disclosed to the Internal Revenue Service by Purchaser and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

**DANA COMMERCIAL CREDIT CORPORATION**

By:

Name:

Title:

Dated: March \_\_, 2002

**Exhibit 99.B-2**

CERTAIN RIGHTS OF THE LESSOR UNDER THIS LEASE AND IN THE UNDIVIDED INTEREST COVERED HEREBY HAVE BEEN ASSIGNED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, CHEMICAL BANK, AS INDENTURE TRUSTEE. THIS LEASE HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. SEE SECTION 20(e) FOR INFORMATION CONCERNING THE RIGHTS OF HOLDERS OF VARIOUS COUNTERPARTS HEREOF.

**THIS COUNTERPART IS THE ORIGINAL COUNTERPART**

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**AMENDED AND RESTATED LEASE**

dated as of

September 1, 1993

between

**THE FIRST NATIONAL BANK OF BOSTON,**

not in its individual capacity, but solely as Owner Trustee under a Trust Agreement dated as of January 2, 1985 with DCC Project Finance Two, Inc.

**LESSOR**

and

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**LESSEE**

---

**EASTERN INTERCONNECTION PROJECT LEASE**

THIS AMENDED AND RESTATED LEASE dated as of September 1, 1993, between THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity but solely as Owner Trustee under a Trust Agreement dated as of January 2, 1985 with DCC Project Finance Two, Inc., as lessor (the LESSOR), and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, as lessee (the LESSEE).

**WITNESSETH:**

WHEREAS, the parties hereto have heretofore executed and delivered the Lease dated February 5, 1985 with respect to the Undivided Interest (such Lease, as amended and/or supplemented by (i) Supplement Number One thereto dated as of September 30, 1985 and (ii) Lease Amendment No. 2 thereto dated as of March 7, 1987, being hereinafter called the "Original Lease"), which Lease was recorded (a) at Volume Misc. 174, page 808 in the Office of the County Clerk of Sandoval County, New Mexico, (b) at Volume 512, page 608 in the Office of the County Clerk of Santa Fe County, New Mexico, (c) at Volume Misc. 230, page 2850 in the Office of the County Clerk of San Miguel County, New Mexico, (d) at Volume Misc. 52, page 701, in the Office of the County Clerk of Guadalupe County, New Mexico, (e) at Volume 57 Misc., page 843, in the Office of the County Clerk of De Baca County, New Mexico, (f) at Volume Misc. 76, page 353, in the Office of the County Clerk of Quay, County, New Mexico, (g) at Volume Misc. 45, page 459, in the Office of the County Clerk of Roosevelt County, New Mexico, and (h) at Volume 94 Misc., page 521, in the Office of the County Clerk of Curry County, New Mexico; and

WHEREAS, in connection with the prepayment of the Initial Series Note as contemplated by the Amended and Restated Participation Agreement of even date hereof among the Lessor, the Lessee and the other parties named therein, the parties hereto have agreed to amend and restate the Original Lease in the terms set forth herein;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. DEFINITIONS.**

For purposes hereof, capitalized terms used herein shall have the meanings set forth in Appendix A hereto. References in this Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Lease unless otherwise indicated.

**SECTION 2. LEASE OF UNDIVIDED INTEREST; TERM.**

Upon and subject to the terms and conditions of this Lease, the Lessor hereby agrees to lease to the Lessee, and the Lessee hereby agrees to lease from the Lessor, the Undivided Interest. The term of this Lease (the LEASE TERM) began on February 5, 1985 and shall end on April 1, 2015, or such earlier or later date on which, or to which, this Lease shall have been terminated,

extended or renewed pursuant to the terms hereof.

### SECTION 3. RENT; ADJUSTMENTS TO RENT.

(a) BASIC RENT. The Lessee shall pay to the Lessor as basic rent (BASIC RENT) for the Undivided Interest, the following amounts:

(1) (i) on October 1, 1993, an amount equal to the product obtained by multiplying Lessor's Cost by 0.0000000%; (ii) on April 1, 1994, an amount equal to the product obtained by multiplying Lessor's Cost by 3.9629251%; (iii) on October 1, 1994, an amount equal to the product obtained by multiplying Lessor's Cost by 5.1917930%; and (iv) on each Basic Rent Payment Date during the Basic Term from and including April 1, 1995 to and including April 1, 2015 (unless the Basic Term is terminated prior to such date in accordance with the terms hereof), an amount, determined initially on the basis of the Pricing Assumptions, but subject to adjustments pursuant to Section 3(d), equal to the product obtained by multiplying Lessor's Cost by 5.1222827%;

(2) on each Basic Rent Payment Date subsequent to the date of execution of a Lease Supplement in respect of any Additional Equity Investment or Supplemental Financing and during the Basic Term, an amount set forth in, and determined under, such Lease Supplement, subject to adjustments pursuant to Section 3(d);

(3) on the date of any refunding of the Refunding Notes or any Additional Notes which shall occur on any date other than a Basic Rent Payment Date, an amount equal to any principal of, and premium, if any, and interest on, the Notes so refunded and payable on the date of such refunding in accordance with the terms of such Notes;

(4) on each Basic Rent Payment Date during any Fixed Rent Renewal Term permitted pursuant to Section 13(a)(2), an amount equal to 50% of the installment of Basic Rent paid or payable on the last Basic Rent Payment Date; and

(5) on each Basic Rent Payment Date during any Fair Market Renewal Term permitted pursuant to Section 13(a)(1), an amount equal to the Fair Market Rental Value of the Undivided Interest established for such Fair Market Renewal Term pursuant to Section 13(b).

(b) SUPPLEMENTAL RENT. The Lessee shall pay the following amounts as supplemental rent (SUPPLEMENTAL RENT):

(1) on demand, any amount (other than Basic Rent, Casualty Value, Special Casualty Value and Early Purchase Value) which the Lessee assumes the obligation to pay, or agrees to pay, under this Lease (including each Lease Supplement) or any other Transaction Document;

(2) on the date herein provided, any amount, or the sum of any amounts, payable hereunder (including each Lease Supplement) as Casualty Value, Special Casualty Value or Early Purchase Value; and

(3) on demand and in any event on the next succeeding Basic Rent Payment Date, to the extent permitted by applicable law, interest (computed on the basis of a 360-day year of twelve 30-day months) at a rate per annum equal to (i) the Overdue Interest Rate, on that portion of any payment of Basic Rent or Supplemental Rent distributable pursuant to clause "FIRST" of Section 5.1 or clause "SECOND" of Section 5.3 of the Indenture (determined prior to the computation of interest on overdue payments referred to in such clauses), and (ii) 2% over the Prime Rate, on the balance of any such payment of Basic Rent or Supplemental Rent (including, in the case of both clause (i) and clause (ii) above, but without limitation, to the extent permitted by law, interest payable pursuant to this clause (3)) not paid when due (whether or not declaration of this Lease to be in default for such nonpayment is subject to any period of grace) for any period for which the same shall be overdue.

In the event of any failure on the part of the Lessee to pay any Supplemental Rent when the same shall become due and payable, the Lessor shall have all rights, powers and remedies provided for in this Lease or in equity or otherwise in the case of nonpayment of Basic Rent.

(c) FORM OF PAYMENT. All payments of Rent shall be made by wire transfer of immediately available funds on the date each such payment shall be payable hereunder and shall be paid to either (i) in the case of payments other than Excepted Payments, the Lessor at its address set forth in Section 17 or to such other Person at such other address in New York, New York as the Lessor may direct by notice in writing to the Lessee, or (ii) in the case of Excepted Payments, the Person entitled to receive such payments under the terms hereof (including each Lease Supplement) or of any other Transaction Document at such address in New York, New York as such Person may direct by notice in writing to the Lessee. The Lessee shall cause each such wire transfer to be initiated by such time as to permit oral confirmation thereof (specifying the wire number) to be given no later than 11:00 a.m., New York City time on the date the corresponding payment of Rent is payable hereunder, and shall cause such confirmation to be duly given in each such case. If the date on which any payment of Rent is due shall not be a Business Day, such payment shall be payable on the next succeeding Business Day, together with interest thereon at the Overdue Interest Rate or 2% over the Prime Rate, as the case may be, for the period from, and including, the due date to, but excluding, such next succeeding Business Day.

(d) ADJUSTMENTS. Basic Rent payable under Section 3(a)(1) and Section 3(a)(2) and the Schedules of Casualty Value, Special Casualty Value and Early Purchase Value attached hereto from time to time (after giving effect to any prior adjustments pursuant to this Section 3(d)) shall be subject to adjustment, upward or downward, to reflect and to preserve Net Economic Return in consequence of, any Additional Equity Investment, any Supplemental Financing, or any

refunding of the Refunding Notes, any Additional Notes or all Notes, which adjustment shall be made on or before the Basic Rent Payment Date next following such refunding, shall take into account the terms of such refunding, Additional Equity Investment or Supplemental Financing (including, without limitation, any payment of principal, premium, if any, and interest on any Notes refunded and paid on or to a date other than a Basic Rent Payment Date), and shall be effective as of the date of such Additional Equity Investment, Supplemental Financing or refunding.

(e) ADEQUACY AND CONFIRMATION OF ADJUSTMENTS. Notwithstanding any adjustment pursuant to this Section 3, each installment of Basic Rent, as adjusted, shall be, under any circumstances and in any event, at least sufficient to pay on each Basic Rent Payment Date thereafter all principal of, and premium, if any, and interest on, all Notes then due and payable. The amount of any such adjustment shall first be determined by the Owner Participant, in its sole discretion, but shall be subject to verification by Salomon Brothers Inc if the Lessee shall so request. Subject only to such verification, such adjustment shall be conclusive and binding on the Lessee if the Owner Participant confirms to the Lessee in writing that such adjustment was computed on a basis consistent with the original computation of Basic Rent and Casualty Value, Special Casualty Value and Early Purchase Value. Each adjustment pursuant to this Section 3 shall be evidenced by the execution and delivery of a Lease Supplement, but shall be effective as provided herein without regard to when such Lease Supplement is so executed and delivered.

#### SECTION 4. NET LEASE.

This Lease shall be a net lease and the Lessee hereby acknowledges and agrees that the Lessee's obligation to pay all Rent hereunder, and the rights of the Lessor in and to such Rent, shall be absolute and unconditional and shall not be affected by any circumstances of any character, including, without limitation, (i) any set-off, abatement, counterclaim, suspension, recoupment, reduction, defense or other right which the Lessee may have against the Lessor, the Owner Participant, Funding Corp, the Indenture Trustee, the Collateral Trust Trustee, the Contractor or any vendor or manufacturer of any equipment or assets incorporated in the Transmission System or any other Person for any reason whatsoever, (ii) any defect in or failure of the title, merchantability, condition, design, compliance with specifications, operation or fitness for use of all or any part of the Transmission System, (iii) any loss, theft or destruction of all or any part of the Transmission System, or any interference, interruption or cessation in the use or possession thereof or of the Undivided Interest by the Lessee by any Person for any reason whatsoever or of whatever duration, (iv) any restriction, prevention or curtailment of or interference with any use of all or any part of the Transmission System or of the Undivided Interest, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, the Lessor, the Owner Participant, Funding Corp or any other Person, (vi) the invalidity, illegality or unenforceability of this Lease or of any other Transaction Document or any other infirmity herein or therein or any lack of right, power or authority of the Lessor or the Lessee, the Owner Participant, Funding Corp, the Indenture Trustee or any other party to enter into this Lease or any other Transaction Document, (vii) the breach or failure of any warranty or representation made in this Lease or in any other Transaction Document by the Lessor, the Owner Participant, Funding Corp, the Indenture Trustee or any other Person,

(viii) any amendment or other change of, or any assignment of rights under, this Lease, or any other Transaction Document, or any waiver or any other action or inaction under or in respect of this Lease or any other Transaction Document, or any exercise or nonexercise of any right or remedy under this Lease or any other Transaction Document, including, without limitation, the exercise of any foreclosure or other remedy under the Indenture, the Refunding Collateral Trust Indenture, or this Lease, or the sale of the Transmission System, the Undivided Interest, or any part thereof or any interest therein, or (ix) any other circumstance or happening whatsoever whether or not similar to any of the foregoing. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor an amount equal to each installment of Basic Rent and all Supplemental Rent at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each payment of Rent made by the Lessee shall be final, and the Lessee shall not seek to have any right to recover all or any part of such payment from the Lessor or any other Person for any reason whatsoever.

#### SECTION 5. RETURN OF TRANSMISSION SYSTEM.

(a) RETURN OF TRANSMISSION SYSTEM. Upon the expiration or termination of the Lease Term or the last applicable Renewal Term, as the case may be, the Lessee will surrender possession of the Undivided Interest to the Lessor, subject to the terms and provisions of the Support Agreements. At the time of such return the Undivided Interest shall be free and clear of all Liens (other than Lessor's Liens, Owner Participant's Liens and the Lien of the Support Agreements), and the Transmission System shall be in the condition and repair required by Section 8 hereof.

(b) DISPOSITION SERVICES. The Lessee agrees that if it does not exercise its option to renew or purchase as provided in Sections 13 and 14, respectively, then during the last twenty-four months of the Basic Term or the applicable Renewal Term, as the case may be, the Lessee will fully cooperate with the Lessor in connection with the Lessor's efforts to dispose of, and in addition the Lessee will make a reasonable effort to dispose of, the Undivided Interest and the Lessor's interest under the Support Agreements. The Lessor agrees to reimburse the Lessee for its reasonable out-of-pocket costs and expenses of such cooperation or such reasonable effort incurred, at the Lessor's request, whether or not the Lessor disposes of the Undivided Interest.

#### SECTION 6. WARRANTY OF THE LESSOR.

(a) QUIET ENJOYMENT. The Lessor warrants that during the Basic Term and any applicable Renewal Term, if the Lessee is in compliance with each and every term and provision of this Lease and each other Transaction Document to which it is a party, the Lessee's use of the Transmission System, including the Undivided Interest, shall not be interrupted by the Lessor or

any Person claiming through or under the Lessor, and their respective assigns.

(b) **DISCLAIMER OF OTHER WARRANTIES.** The warranty set forth in Section 6(a) is in lieu of all other warranties of the Lessor, whether written, oral or implied, with respect to this Lease, the Transmission System or the Undivided Interest. As between the Lessor and the Lessee, execution by the Lessee of this Lease (including each Lease Supplement) shall be conclusive proof of the compliance of the Transmission System, any Alteration and any Replacement Component and the Undivided Interest with all requirements of this Lease and any such Lease Supplement, and **THE LESSOR LEASES AND THE LESSEE TAKES THE UNDIVIDED INTEREST AS IS AND WHERE IS**, and the Lessor shall not be deemed to have made, and **THE LESSOR HEREBY DISCLAIMS, ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE TRANSMISSION SYSTEM OR THE UNDIVIDED INTEREST, OR ANY PART THEREOF, THE MERCHANTABILITY THEREOF OR THE FITNESS THEREOF FOR ANY PARTICULAR PURPOSE, TITLE TO THE TRANSMISSION SYSTEM OR THE UNDIVIDED INTEREST, OR ANY PART THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO THE PLANS AND SPECIFICATIONS, OR THE ABSENCE OF ANY LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, NOR SHALL THE LESSOR BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LIABILITY IN TORT, STRICT OR OTHERWISE)**, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee, but the Lessor authorizes the Lessee, at the Lessee's expense, to assert for the Lessor's account, during the Lease Term, so long as no Default or Event of Default shall have occurred and be continuing hereunder, all of the Lessor's rights under any applicable warranty and any other claims that the Lessee or the Lessor may have against the Contractor, whether under the Construction Contract or otherwise, or any vendor, manufacturer or sub-contractor with respect to the Transmission System or the Undivided Interest hereunder or under the Purchase Documents, and the Lessor agrees to cooperate, at the Lessee's expense, with the Lessee in asserting such rights. Any amount received by the Lessee as payment under any such warranty or other claim shall be applied **FIRST**, to restore the Transmission System to the condition required by Section 8 hereof, **SECOND**, to reimburse the Lessee for its reasonable out-of-pocket fees and expenses, if any, incurred in enforcing any such warranty or other claim, and **THIRD**, the balance, if any, of such amount shall, to the extent, but only to the extent, of the Lessor's Share, be paid over to and retained by the Lessor.

#### SECTION 7. LIENS.

The Lessee will not directly or indirectly create, incur, assume or suffer to exist any Liens on or with respect to the Undivided Interest, the Lessor's title thereto or any interest of the Lessor therein (and the Lessee will promptly, at its own expense, take such action as may be necessary duly to discharge any such Lien), except Permitted Liens.

SECTION 8. OPERATION AND MAINTENANCE; MARKING; INSPECTION.

(a) OPERATION AND MAINTENANCE. The Lessee covenants that it will (i) operate, service and maintain the Transmission System so that the condition of the Transmission System and the operating efficiency thereof will be maintained and preserved, ordinary wear and tear excepted, in accordance with (x) Prudent Utility Practice, (y) such operating standards as shall be required to enforce warranty claims against the Contractor and all vendors, manufacturers and subcontractors; PROVIDED, HOWEVER, that the Lessee may operate the Blackwater HVDC Station at levels above the limits provided by the Contractor under the Construction Contract in respect of the Contractor's warranties so long as such operation will not, in the Lessee's reasonable judgment, cause damage to the Blackwater HVDC Station or reduce the useful life of the Transmission System and

(z) the terms and conditions of all insurance policies in effect at any time with respect to the Transmission System, the Undivided Interest or any part thereof, (ii) comply with all Governmental Rules, whether pertaining to health, safety, the environment or otherwise, affecting the Transmission System and the use, operation and maintenance thereof, and (iii) keep and maintain proper books and records relating to all services rendered and all funds expended for operation and maintenance of the Transmission System and the acquisition, construction and installation of all Replacement Components and Alterations incorporated in the Transmission System, all in accordance with the Uniform System of Accounts and customary practices in the electric utility industry in the Southwestern region of the United States of America. The Lessor shall not be obliged in any way to maintain, alter, repair, rebuild or replace the Undivided Interest or the Transmission System or any portion thereof, and the Lessee expressly waives the right to perform any such action at the expense of the Lessor pursuant to any law at any time in effect.

(b) INSPECTION. The Lessor, the Owner Participant, the Indenture Trustee and the Collateral Trust Trustee shall have the right, but not the duty, to inspect the Transmission System at their expense. Upon the request of the Lessor, the Owner Participant, the Indenture Trustee or the Collateral Trust Trustee, the Lessee shall, at any reasonable time, make the Transmission System, and the Lessee's operating, maintenance and repair records pertaining to the Transmission System, available to the Lessor, the Owner Participant, the Indenture Trustee or the Collateral Trust Trustee for inspection at such times during business hours as the Lessor, the Owner Participant, the Indenture Trustee or the Collateral Trust Trustee may reasonably request.

(c) REPLACEMENT OF COMPONENTS. If and to the extent required by paragraph (a) above and in compliance with the Lessee's covenant and agreement thereunder, UNLESS prohibited by applicable Governmental Rule, the Lessee, at its sole expense, will promptly replace each necessary and useful Component, the replacement of which shall be required in accordance with Prudent Utility Practice (each replacement of a Component being herein referred to as a REPLACEMENT COMPONENT), which may from time to time be incorporated in the Transmission System and which may from time to time fail to function in accordance with its intended use, or become worn out, destroyed, damaged beyond repair, lost, condemned, confiscated, stolen or seized for any reason whatsoever. In addition, in the ordinary course of maintenance, service, repair or testing, the Lessee may remove any Component; PROVIDED, HOWEVER, that the Lessee shall cause such Component to be

replaced by a Replacement Component as promptly as practicable and, subject to this paragraph (c), the Lessee shall be entitled to retain the entire amount of the net proceeds of (including the Undivided Interest in the net proceeds of) any sale or disposition of such removed Component. Each Replacement Component shall be free and clear of all Liens EXCEPT Permitted Liens and shall be in as good operating condition as, and shall have a value and utility at least equal to, the Component replaced, assuming such replaced Component was in at least the condition and repair required to be maintained under paragraph (a) above. The Undivided Interest in each Component at any time removed from the Transmission System shall remain the property of the Lessor, no matter where located, until such time as such Component shall be replaced by a Replacement Component which has been incorporated in the Transmission System (including the Undivided Interest) and which meets the requirements for Replacement Components specified above. Immediately upon any Replacement Component becoming incorporated in the Transmission System, without further act, (i) title to an Undivided Interest in the removed Component shall thereupon vest in the Lessee or such other Person as shall be designated by the Lessee, free and clear of all rights of the Lessor, the Indenture Trustee or the Collateral Trust Trustee, (ii) title to an undivided interest in such Replacement Component, the percentage of which shall be equal to the Lessor's Share, shall thereupon vest in the Lessor and (iii) such undivided interest in such Replacement Component shall become subject to this Lease and be deemed part of the Undivided Interest and the Transmission System for all purposes hereof to the same extent that the Lessor had an Undivided Interest in the Component originally incorporated in the Transmission System.

(d) **REQUIRED ALTERATIONS.** The Lessee shall make all Severable and Nonseverable Alterations to the Transmission System as may be required from time to time to maintain the Transmission System in accordance with Prudent Utility Practice or to meet applicable Governmental Rules (all such Alterations being herein referred to as **REQUIRED ALTERATIONS**). All Required Alterations shall be completed in a good and workmanlike manner, with reasonable dispatch.

(e) **OPTIONAL ALTERATIONS.** The Lessee may from time to time make such Severable and Nonseverable Alterations to the Transmission System which are not Required Alterations (all such Alterations being herein referred to as **OPTIONAL ALTERATIONS**) as the Lessee, in its sole discretion, may deem desirable in the proper conduct of its business; **PROVIDED, HOWEVER,** that no Optional Alteration shall diminish the value, utility or condition of the Transmission System below the value, utility and condition thereof immediately prior to such Optional Alteration, assuming the Transmission System was then in at least the condition and repair required to be maintained by the terms of this Lease. If at any time the Lessee shall propose to incorporate in the Transmission System any Nonseverable Optional Alteration with a cost in excess of \$2,000,000, the Lessee will give to the Lessor 30 days' prior written notice thereof, including the Lessee's proposal for the financing of the cost of the Lessor's Undivided Interest therein. Such alteration shall be subject to the Lessor's consent; **PROVIDED, HOWEVER,** that if the Lessor shall not have objected to the incorporation of such proposed Nonseverable Optional Alteration in the Transmission System within such 30-day period, the Lessor will be deemed to have consented thereto. In such connection, the Lessor acknowledges that its interest in the Transmission System is only with

respect to its Undivided Interest and, therefore, that the Lessee shall be required to take into account the rights and interests of all other Persons having an undivided interest in the Transmission System, including any undivided interest in such proposed Nonseverable Optional Alteration. All Optional Alterations shall be completed in a good and workmanlike manner, with reasonable dispatch.

(f) **REPORTS OF ALTERATIONS.** On or before April 1 of each year throughout the Lease Term, commencing April 1, 1993, the Lessee shall furnish the Lessor with a report describing separately and in reasonable detail (i) each Alteration having a cost in excess of \$500,000 which was incorporated in the Transmission System during the preceding calendar year and (ii) each Alteration having an estimated cost in excess of \$500,000 which the Lessee then proposes to incorporate in the Transmission System during the calendar year which includes the date of such report. Each such report shall indicate, separately with respect to each Alteration, (x) in the case of Alterations referred to in clause (i) above, the actual cost thereof, the arrangement for the financing thereof and the Person or Persons who hold title thereto or to an undivided interest therein in accordance with the provisions of paragraph (g) of Section 8, and (y) in the case of Alterations referred to in clause (ii) above, the estimated cost thereof, any proposed arrangement (including, without limitation, a proposed Supplemental Financing and any request for Additional Equity Investment) for the financing of an undivided interest therein, the percentage of which shall be equal to the Lessor's Share and the Person who, upon completion could or, upon completion of any plan for the financing of such an undivided interest would, hold title thereto in accordance with the provisions of paragraph (g) of this Section 8.

(g) **TITLE TO ALTERATIONS.** Title to an undivided interest, the percentage of which shall be equal to the Lessor's Share, in each Alteration shall vest, as follows:

(1) in the case of each Alteration other than a Severable Optional Alteration, whether or not the Lessor shall have financed or provided financing (in whole or in part) for such undivided interest by an Additional Equity Investment or a Supplemental Financing, or both, effective on the date such Alteration shall have been incorporated in the Transmission System, the Lessor shall, without further act, acquire title to such undivided interest in such Alteration;

(2) in the case of each Severable Optional Alteration, if the Lessor shall have financed (by an Additional Equity Investment or a Supplemental Financing or both) its Share in any such Alteration, effective on the date of payment, or the date on which the Lessor shall unconditionally be obligated to make payment of an amount equal to the product obtained by multiplying the cost (or the then estimated cost) thereof by the Lessor's Share, the Lessor shall, without further act, acquire title to such undivided interest in such Alteration; and

(3) in the case of each Severable Optional Alteration the Lessor's Share of the cost of which the Lessor does not finance, the Lessee shall retain title to such undivided interest, and the Lessor shall have no interest therein, and neither such Alteration nor any such undivided interest shall thereafter be, or be deemed to be, incorporated in the Undivided Interest.

Immediately upon title to such undivided interest in any Alteration vesting in the Lessor pursuant to subparagraph (1) or (2) of this paragraph (g), such undivided interest in such Alteration shall, without further act, become subject to this Lease and be deemed part of the Undivided Interest and the Transmission System for all purposes hereof.

(h) FUNDING OF ALTERATIONS AND REPLACEMENT COMPONENTS. The Lessee may request that the Lessor provide financing of an undivided interest in (i) any Alteration or (ii) the Incremental Cash Cost of any Replacement Component incorporated in the Transmission System at any time during the preceding twelve months, in each case in an amount equal to the product obtained by multiplying the actual cost thereof or the Incremental Cash Cost thereof by the Lessor's Share; PROVIDED that in each case the actual cost and the Incremental Cash Cost of all Alterations and Replacement Components included in such request shall exceed the Lessor's Share of \$3,000,000. Such request may be made (i) in the notice given under paragraph (e) above in respect of each such Nonseverable Optional Alteration, (ii) in the report given under paragraph (f) above in respect of each such Alteration other than a Nonseverable Optional Alteration, or (iii) on February 1 of each year during the Lease Term, commencing February 1, 1993, in respect of the Incremental Cash Cost of each such Replacement Component. With respect to (i), (ii) and (iii) of the preceding sentence, the Lessor may, with funds provided by the Owner Participant in its sole discretion, make an additional direct investment in any such Alteration or the Incremental Cash Cost of any such Replacement Component (any such direct investment being herein referred to as an ADDITIONAL EQUITY INVESTMENT). If no Default or Event of Default shall have occurred and be continuing and if the Lessee so elects, the Lessee shall have the right to cause the Lessor, without the Lessor's consent, to issue one or more Additional Notes to finance (x) the difference between (A) an amount equal to the product obtained by multiplying the actual cost of any such Alteration or the Incremental Cash Cost of any such Replacement Component by the Lessor's Share, and (B) any Additional Equity Investment, or

(y) if the Owner Participant shall elect not to make any Additional Equity Investment, the product obtained under sub-clause (A) of clause (x) above, by arranging for one or more other Persons (other than a party affiliated with the Lessee within the meaning of section 318 of the Code) to provide to the Lessor, through the Indenture, the funds required to finance the amount determined under clause (x) or clause (y) above (such financing being herein called a SUPPLEMENTAL FINANCING); PROVIDED, HOWEVER, that, unless the Lessor shall have given its prior written consent, the Lessor shall not be obligated to accept any Supplemental Financing pursuant to clause (y) above to the extent that the total amount financed by the Lessor pursuant to such Supplemental Financing, when added to the amount of previous Supplemental Financings under clause (y) above, effected without the prior written consent of the Lessor, exceeds the Lessor's Share of \$10,000,000; and PROVIDED, FURTHER, that such Supplemental Financing shall

comply with the requirements of Section 3.5 of the Indenture, as if such requirement were fully set forth herein and shall not, in the opinion of independent tax counsel for the Owner Participant, adversely affect the status of this Lease as a "true lease" for Federal income tax purposes or, in the opinion of the Owner Participant, otherwise adversely affect the capacity or the anticipated value or useful life of the Undivided Interest after the termination or expiration of this Lease. The failure or inability of the Lessee to effect a Supplemental Financing in respect of any such Alteration or the Incremental Cash Cost of any such Replacement Component shall not in any manner affect (i) the Lessee's obligation to make any Required Alteration or to incorporate such Replacement Component in the Transmission System in accordance with the terms of this Lease, in which case the Lessee shall carry out such obligation at its own expense and title to such Alteration shall in such case vest as provided in paragraph (g) of this Section 8, or (ii) the Lessee's obligations under the Tax Indemnity Agreement. Any Supplemental Financing shall be conditioned upon the Lessee's having a credit rating at the time of such Supplemental Financing at least equal to the Lessee's credit rating at February 5, 1985. Each such Supplemental Financing and each such Additional Equity Investment shall be subject to the condition that the Owner Participant and the Lessee negotiate in good faith the specific terms thereof, including, without limitation, (A) the amount of such Additional Equity Investment, if any, (B) the terms of the Additional Notes (including, but not limited to, interest rate, amortization and maturity (which must be earlier than, or co-terminus with, the Basic Term)), (C) the nature and extent of any Federal tax benefits attributable thereto and to the Lessor's acquisition thereof and investment therein and appropriate indemnification with respect to such tax benefits if, and to the extent that the value thereof is reflected in adjustments referred to below, (D) the net economic return then required by the Owner Participant in its sole discretion, and (E) the adjustments to Basic Rent, Casualty Value, Special Casualty Value and Early Purchase Value pursuant to Section 3(d). As soon as possible thereafter, such terms shall be reflected in, and the Lessor and Lessee shall execute, a Lease Supplement and the parties thereto shall execute a Supplemental Indenture and amendments to any other Transaction Documents, including, without limitation, the Tax Indemnity Agreement, affected thereby. Except as amended or modified by such Lease Supplement, this Lease shall continue in full force and effect.

(i) **MARKING.** The Lessee agrees, at its own cost, expense and liability, to maintain in a prominent place in the control room of the Blackwater HVDC Station a durable, readily visible inscription of such type and content as from time to time may be required by law or otherwise deemed necessary by the Lessor or the Indenture Trustee in order to protect the title of the Lessor to the Undivided Interest, the rights of the Lessor under this Lease and the Lien of the Indenture Trustee under the Indenture. The Lessee will replace promptly such marking if the same shall have been removed, defaced, obliterated or destroyed.

#### **SECTION 9. EVENT OF LOSS; DEEMED LOSS EVENT.**

(a) **EVENT OF LOSS.** In the event that the Transmission System shall suffer either (i) an Event of Loss or (ii) an event which, in the reasonable opinion of the Lessee, might constitute an Event of Loss, such fact and the date of the occurrence thereof shall promptly be reported by the Lessee to the Lessor. In the case of any event described in clause (ii) of the preceding sentence, the

Lessee shall determine, within six months of the occurrence of such event, whether such event constitutes an Event of Loss and shall furnish the Lessor with a copy of the opinion of an independent engineer (to the extent required pursuant to the definition of Event of Loss) upon which such determination is based.

(b) **PAYMENT OF CASUALTY VALUE.** In the case of an Event of Loss, on the Basic Rent Payment Date next following the date of any report given pursuant to paragraph (a) above (but in no event later than the six month period referred to in paragraph (a)), the Lessee shall pay to the Lessor Casualty Value determined as of such Basic Rent Payment Date, plus any Basic Rent or Supplemental Rent then owing. Upon receipt of such amount, the Lessor shall terminate the Easement and the Operating Agreement and transfer the Undivided Interest to the Lessee on an AS IS, WHERE IS basis, free and clear of all Lessor's Liens and Owner Participant's Liens, but without any other recourse, representation or warranty, express or implied, by the Lessor or the Owner Participant.

(c) **DEEMED LOSS EVENT.** In the case of a Deemed Loss Event, on the last day of the month during which such event occurs or, if such last day shall be less than 30 days following the date on which such event shall occur, on the last day of the month following the month during which such event occurs, the Lessee shall pay to the Lessor the Special Casualty Value applicable on such date, plus any Supplemental Rent then owing. Upon payment of Special Casualty Value the Lessor shall terminate the Easement and the Operating Agreement and transfer the Undivided Interest to the Lessee on an AS IS, WHERE IS basis, free and clear of all Lessor's Liens and Owner Participant's Liens, but without any other recourse, representation or warranty, express or implied, by the Lessor or the Owner Participant.

(d) **TERMINATION OF OBLIGATION.** Upon satisfaction by the Lessee of all requirements of either paragraph (b) or paragraph (c) above, as the case may be, the Lessee's obligation to pay further Basic Rent shall cease, but the Lessee's obligation to pay all Supplemental Rent becoming due before, on and after such satisfaction shall remain unchanged and shall survive such termination.

#### SECTION 10. INSURANCE.

The Lessee will, at its own expense, cause to be carried and maintained insurance, with financially sound and reputable insurers satisfactory to the Lessor, against damage to or destruction of any substations and the Blackwater HVDC Station (but specifically excluding all towers and lines included in the Transmission System), and liability insurance with respect to third party bodily injury and property damage, in each case in amounts (after deductibles) and against risks (i) consistent with Prudent Utility Practice,

(ii) at least comparable in amounts and against risks customarily insured against by the Lessee or others in the electric utility business in the Southwestern region of the United States and (iii) sufficient to prevent the Lessor and the Indenture Trustee from becoming at any time a coinsurer with respect to any loss relating to events or occurrences covered under any policy; PROVIDED, HOWEVER, that in the case of insurance in respect of

damage to or destruction of the Transmission System, the Lessee shall not be required to insure towers and lines, but the insurance so provided shall cover the loss of or damage to any substations included in the Transmission System and the Blackwater HVDC Station and such insurance shall be in an amount equal to that portion of Casualty Value which bears the same relation to Casualty Value as the aggregate construction cost of such substations and Station bears to Transmission System Cost. Any policies with respect to such insurance shall (i) name the Lessee, the Lessor, the Owner Participant and the Indenture Trustee as insureds and loss payees, as their interests may appear, (ii) provide for at least 60 days prior written notice by the insurance carrier to the Lessor, the Owner Participant and the Indenture Trustee in the event of cancellation, expiration or material modification thereof, (iii) waive any right to claim any premiums or commissions against the Lessor, the Owner Participant or the Indenture Trustee, (iv) provide that the insurers shall waive any rights of subrogation against the Lessor, the Owner Participant or the Indenture Trustee, (v) provide that if such insurance is cancelled for any reason whatsoever, or any substantial change is made in the coverage which affects the interest of the Lessor, the Owner Participant or the Indenture Trustee, or if such insurance is allowed to lapse for nonpayment of premium, such cancellation, change or lapse shall not be effective against the Lessor, the Owner Participant or the Indenture Trustee for 60 days after receipt by the Lessor, the Owner Participant and the Indenture Trustee, respectively, of written notice from any applicable insurers of such cancellation, change or lapse, and (vi) provide that each of the Lessor, the Owner Participant and the Indenture Trustee shall be permitted to make payments to effect the continuation of such insurance coverage upon notice of cancellation due to nonpayment of premiums. Each such policy shall be primary without right of contribution from any other insurance which is carried by the Lessor, the Owner Participant or the Indenture Trustee with respect to its interest in the Transmission System. The Lessee shall, on or before April 1 of each year, commencing April 1, 1994, furnish to the Lessor, the Owner Participant and the Indenture Trustee (i) a certificate signed by an independent insurance broker satisfactory to the Lessor, the Owner Participant and the Indenture Trustee showing the insurance then maintained by the Lessee pursuant to this Section 10 and stating that in the opinion of such independent broker such insurance complies with the provisions hereof, and (ii) copies of policies carried and maintained by the Lessee pursuant to this Section 10. The Lessee shall not reduce the amounts of its liability insurance as in effect on February 5, 1985. In the event that the Lessee shall fail to maintain insurance as herein provided the Lessor, the Owner Participant or the Indenture Trustee may at its option maintain insurance which is required to be maintained by the Lessee hereunder, and, in such event, the Lessee shall reimburse such party upon demand for the cost thereof, together with interest thereon at the Overdue Interest Rate, as Supplemental Rent. So long as no Default or Event of Default shall have occurred and be continuing, all insurance proceeds paid in respect of damage to or destruction of the Undivided Interest and received by the Lessor (directly or from the Indenture Trustee) in respect of the Undivided Interest with respect to an occurrence not constituting an Event of Loss shall be paid to the Lessee. Nothing in this Section 10 shall prohibit the Lessee or the Owner Participant from placing at its expense insurance on or with respect to the Transmission System or the Undivided Interest, or the operation of either thereof, naming the Lessee or the Owner Participant, as the case may be, as insured and loss payee, in an amount exceeding the amount of insurance required to be maintained by the Lessee hereunder from time to time, unless, in the case of insurance maintained by the Lessee, such insurance would

conflict with or otherwise limit the insurance to be provided or maintained by the Lessee in accordance with this Section 10.

## SECTION 11. INDEMNIFICATION.

The Lessee agrees, whether or not any of the transactions contemplated hereby shall be consummated and whether or not this Lease shall have expired or terminated, to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless each Indemnitee, on an After-Tax Basis, from and against any and all Claims which may be imposed on, incurred by or asserted against any Indemnitee, whether or not such Indemnitee shall also be indemnified as to any such Claim by any other Person, (i) in any way relating to or arising out of this Lease, any other Transaction Document or any Financing Document, or the performance or enforcement of any of the terms hereof or thereof, (ii) in any way relating to a disposition of all or any part of the Undivided Interest in connection with a termination upon an Event of Default, an Event of Loss or a Deemed Loss Event or (iii) in any way relating to or arising out of the design, manufacture, erection, purchase, acceptance, rejection, financing, ownership, delivery, lease, sublease, possession, use, operation, maintenance, condition, sale, return, storage or disposition of the Transmission System or any accident in connection therewith (including, without limitation, latent and other defects, whether or not discoverable, and any Claim for patent, trademark, service-mark or copyright infringement and expenses of any such Indemnitee incurred in the administration of this Lease, any other Transaction Document or any Financing Document, and not paid as a Transaction Expense or included in Lessor's Cost, and reasonable fees and disbursements of outside counsel incurred in connection therewith); PROVIDED, HOWEVER, that the Lessee shall not be required to indemnify any Indemnitee for (A) any Claim in respect of the Transmission System or the Undivided Interest arising from acts or events which occur after possession of the Undivided Interest has been redelivered to the Lessor in accordance with Section 5 hereof (other than after an Event of Default), EXCEPT as provided in the Participation Agreement, (B) any Claim resulting from acts which would constitute the willful misconduct or gross negligence of such Indemnitee, (C) any Transaction Expenses to be paid by the Lessor or the Owner Participant pursuant to Section 14 of the Amended and Restated Participation Agreement, (D) any Claim resulting directly from a transfer by such Indemnitee of all or part of its interest in this Lease, the Undivided Interest or the Transmission System other than in connection with an Event of Default, an Event of Loss, a Deemed Loss Event or the exercise by the Lessor of its rights under Section 16 of this Lease, (E) any Claim, including attorney fees, arising out of either (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by such Indemnitee, or any agent or employee of such Indemnitee, or (2) the giving of or the failure to give directions or instructions by such Indemnitee, or any agent or employee of such Indemnitee, where such giving of or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property, or (F) any Claim in respect of the payment of principal, premium, if any, or interest on the Notes or the Bonds. The Lessor shall have no duty to give any such directions or instructions referred to in Clause (E) above, except as expressly provided herein. To the extent that an Indemnitee in fact receives indemnification payments from the Lessee under this Section 11, and so long as no Default or Event of Default shall have occurred and be continuing, the Lessee shall be subrogated, to the extent of any indemnity paid, to such Indemnitee's rights with respect to the transaction or event requiring or giving rise to such indemnity.

## SECTION 12. ASSIGNMENT OR SUBLEASE.

Without the prior written consent (which consent shall not be unreasonably withheld) of the Lessor, the Lessee shall not assign, transfer, encumber (EXCEPT for Permitted Liens) or sublease its leasehold interest under this Lease. The Lessee shall not, without the prior written consent of the Lessor and the Owner Participant, part with the possession or control of, or suffer or allow to pass out of its possession or control, the Transmission System, EXCEPT to the extent permitted by the provisions of this Section 12 or the provisions of the Support Agreements. No wheeling agreement, interconnection agreement, power sales contract, grant by the Lessee of any right to tap the Transmission System or utility agreement or grant, however denominated, shall be deemed to be an assignment, transfer, encumbrance or sublease for purposes of this Section, so long as any such agreement or grant shall not transfer possession or control of the Transmission System, or purport to create or grant rights to use the Transmission System, beyond the end of the Lease Term.

## SECTION 13. LEASE RENEWALS.

(a) LEASE RENEWAL. At the end of the Basic Term or the then applicable Renewal Term, as the case may be, PROVIDED that no Default or Event of Default shall have occurred and be continuing hereunder and the Notes shall have been paid in full, the Lessee shall have the right to exercise one of the following two options to renew the term of this Lease for the Renewal Term or Renewal Terms described below:

(1) At the end of the Basic Term, the Fixed Rent Renewal Term, if any, elected by the Lessee under clause (2) below, or any expiring Fair Market Renewal Term theretofore elected by the Lessee under this clause

(1), upon notice given as provided in Section 13(b), the Lessee may renew the term of this Lease during the remaining term of the Support Agreements for one or more periods of not less than three years, nor more than five years (each such period so determined being herein referred to as a FAIR MARKET RENEWAL TERM), each at a Fair Market Rental Value, payable on each Basic Rent Payment Date occurring during such Fair Market Renewal Term; PROVIDED, HOWEVER, that if the Lessee shall elect more than one Fair Market Renewal Term, all such Fair Market Renewal Terms shall be successive; and PROVIDED, FURTHER, that notwithstanding the foregoing, the last Fair Market Renewal Term may be for a period of less than three years if the period from the expiration of the preceding Fair Market Renewal Term to the expiration date of the Support Agreements shall be less than three years; and

(2) Upon notice given as provided in Section 13(b), at the end of the Basic Term only, the Lessee may renew the term of this Lease for one period of not less than one year nor more than the Maximum Option Period (such period so determined being herein referred to as the FIXED RENT RENEWAL TERM), in which case the Basic Rent payable under the Fixed Rent Renewal Term shall be the rental provided in Section 3(a)(4) hereof.

(b) NOTICE; APPRAISAL. Not less than two years prior to the expiration date of the Basic Term, or the then applicable Fixed Rent Renewal Term or any then applicable Fair Market Renewal Term, the Lessee may indicate its desire to exercise the lease renewal option described in either Section 13(a)(1) or, only in respect of the expiration of the Basic Term, Section 13(a)(2). Any such election shall be irrevocable, but shall be binding against the Lessor only if on the effective date thereof no Default or Event of Default shall have occurred and be continuing. The Maximum Option Period or the Fair Market Rental Value of the Undivided Interest, as the case may be, shall be established in accordance with the Appraisal Procedure. Upon a determination of the Maximum Option Period the Lessor and the Lessee shall amend the Support Agreements to extend the date of the expiration thereof to the then estimated useful life of the Transmission System.

#### SECTION 14. PURCHASE OPTIONS.

(a) Unless a Default or Event of Default shall have occurred and be continuing, the Lessee shall have the right to exercise one of the following options to purchase the Undivided Interest:

(1) On the date of expiration of the Basic Term, the Fixed Rent Renewal Term or any then applicable Fair Market Renewal Term, the Lessee shall have the right upon not less than two years' prior written notice, to purchase the Undivided Interest on the date of expiration of such Term at a purchase price equal to the Fair Market Value thereof; or

(2) On the Basic Rent Payment Date designated in a written notice given at least two years prior to such Basic Rent Payment Date (which date may only be a Basic Rent Payment Date during the Basic Term occurring on or after the thirtieth Basic Rent Payment Date), at a purchase price equal to the greater of the Early Purchase Value applicable on the date of purchase and the Fair Market Value of the Undivided Interest on such date, plus an amount equal to the sum of any Basic Rent then owing and any premium due on prepayment of the Notes.

(b) Any such election shall be irrevocable, but shall be binding against the Lessor only if on the effective date thereof no Event of Default shall have occurred and be continuing. If the Lessee shall have elected to purchase the Undivided Interest, payment by the Lessee of the purchase price thereof plus all Rent then due and owing shall be made in immediately available funds against delivery of (i) a bill of sale transferring and assigning to the Lessee all right, title and

interest of the Lessor in and to the Undivided Interest free and clear of all Lessor's Liens and all Owner Participant's Liens, but without other recourse, representation or warranty, and (ii) the agreement of the Lessor and the Indenture Trustee (in recordable form) terminating their respective interests in the Undivided Interest and under the Transaction Documents to which the Lessor or the Indenture Trustee, as the case may be, is a party, EXCEPT that indemnity obligations of the Lessee with respect to periods prior to the date of termination shall survive. In connection with any sale by the Lessor to the Lessee under this Section 14, the Lessor may specifically disclaim representations and warranties (other than as contemplated by clause (i) of the preceding sentence) in a manner comparable to that set forth in the second sentence of Section 6 (b).

#### SECTION 15. EVENTS OF DEFAULT.

The term EVENT OF DEFAULT, wherever used herein, shall mean any of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any Governmental Rule or Governmental Action):

- (1) the Lessee shall fail to make, or cause to be made, payment of Casualty Value, Special Casualty Value or Early Purchase Value when due, any payment of Basic Rent within 10 days after the same shall become due, or any payment of Supplemental Rent (other than Casualty Value, Special Casualty Value or Early Purchase Value) within 30 days after the same shall become due; or
- (2) the Lessee shall fail to maintain insurance as required by Section 10 hereof; or
- (3) the Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it under Section 12 hereof or Section 10(b)(iii) of the Participation Agreement (except as expressly permitted by the terms of this Lease or the Participation Agreement, as the case may be); or
- (4) the Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease or any other Transaction Document to which the Lessee is a party, and such failure shall continue for a period of 30 days after there shall have been given to the Lessee by the Lessor or the Indenture Trustee a notice specifying such failure; or
- (5) any representation or warranty made by the Lessee in this Lease, any other Transaction Document to which the Lessee is a party, any Financing Document, or any agreement, document or certificate delivered by the Lessee in connection herewith or therewith shall prove to have been incorrect in any material respect when any such representation or warranty was made or given; or

(6) the Lessee shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official or agency in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing; or an involuntary case or other proceeding shall be commenced against the Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official or agent of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismitted and unstayed for a period of 60 days; or

(7) final judgment for the payment of money in excess of \$1,000,000 shall be rendered against the Lessee and the Lessee shall not have discharged the same or provided for its discharge in accordance with its terms or bonded the same or procured a stay of execution thereof within 30 days from the entry thereof; or

(8) an event of default under any other lease to the Lessee of any undivided interest in the Transmission System shall occur, and any applicable grace period shall have expired.

#### SECTION 16. REMEDIES.

(a) REMEDIES. Upon the occurrence of any Event of Default and so long as the same shall be continuing, the Lessor may, at its option, declare this Lease to be in default by written notice to such effect given to the Lessee, and at any time thereafter the Lessor may exercise one or more of the following remedies, as the Lessor in its sole discretion shall elect:

(1) the Lessor may, by notice to the Lessee, rescind or terminate this Lease and exercise its rights under the Support Agreements;

(2) the Lessor may sell the Undivided Interest, together with its interest under the Support Agreements and any other Transaction Document to which the Lessor is a party, or any part thereof, at public or private sale, as the Lessor may determine, free and clear of any rights of the Lessee in the Undivided Interest and without any duty to account to the Lessee with respect to such action or inaction or any proceeds with respect thereto (except to the extent required by paragraph (4) below if the Lessor shall elect to exercise its rights thereunder), in which event the Lessee's obligation to pay Basic Rent hereunder for periods commencing after the date of such sale shall be terminated (except to the extent that Basic Rent is to be included in computations under paragraph (3) or (4) below if the Lessor shall elect to exercise its rights thereunder);

(3) the Lessor may, whether or not the Lessor shall have exercised or shall thereafter at any time exercise its rights under paragraph (2) above, demand, by written notice to the Lessee specifying a payment date not earlier than 10 days after the date of such notice, that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after the payment date specified in such notice), any unpaid Rent due through the payment date specified in such notice plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the interest rate specified in Section 3(b)(3) hereof from the payment date specified in such notice to the date of actual payment):

(i) an amount equal to the excess, if any, of Casualty Value, computed as of the payment date specified in such notice, over the Fair Market Rental Value of the Undivided Interest (determined on the basis of the actual condition of the Transmission System) until the end of the Basic Term or the then applicable Renewal Term, after discounting such Fair Market Rental Value semiannually to present value as of the payment date specified in such notice at a rate per annum equal to the Overdue Interest Rate;

(ii) an amount equal to the excess, if any, of such Casualty Value over the Fair Market Value of the Undivided Interest (determined on the basis of the actual condition of the Transmission System) as of the payment date specified in such notice;

(iii) an amount equal to the greater of (A) such Casualty Value, (B) such discounted Fair Market Rental Value or (C) such Fair Market Value (assuming, in the case of (B) and (C) above, that the Transmission

System was then maintained in accordance with this Lease) and, in such event, upon full payment by the Lessee of all sums due hereunder, the Lessor shall, at its option, either (x) exercise its best efforts promptly to sell the Undivided Interest together with its interest under the Support Agreements and any other Transaction Document to which the Lessor is a party, and pay over to the Lessee the sale proceeds up to the amount claimed under (A), (B) or (C) above and actually paid by the Lessee to the Lessor, or (y) deliver to the Lessee (AA) a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Undivided Interest free and clear of all Lessor's Liens and Owner Participant's Liens, but without recourse or warranty, and (BB) the agreement of the Lessor terminating its interest under the Support Agreements and any other Transaction Document to which the Lessor is a party, whereupon this Lease shall terminate, except that indemnity obligations of the Lessee incurred prior to the date of termination shall survive; or

(iv) an amount equal to the excess of (A) the present value as of the payment date specified in such notice of all installments of Basic Rent until the end of the Basic Term, discounted semiannually at a rate of 10% per annum, over (B) the present value as of such payment date of the Fair Market Rental Value of the Undivided Interest (determined on the basis of the actual condition of the Transmission System) until the end of the Basic Term, discounted semiannually at a rate of 10% per annum; or

(4) if the Lessor shall have sold the Undivided Interest together with its interest under the Support Agreements and any other Transaction Document to which the Lessor is a party pursuant to paragraph (2) above, the Lessor, in lieu of exercising its rights under paragraph (3) above with respect to the Undivided Interest and its interest under the Support Agreements and any other Transaction Document to which the Lessor is a party, may, if it shall so elect, demand that the Lessee pay to the Lessor, and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing after the next Basic Rent payment date following the date of such sale), any unpaid Basic Rent and Supplemental Rent due through such payment date, plus the amount of any deficiency between the sale proceeds and Casualty Value, computed as of such payment date, together with interest at the Overdue Interest Rate on the amount of such Rent and such deficiency from the date of such sale until the date of actual payment.

(b) NO RELEASE. No rescission or termination of this Lease, in whole or in part, or repossession of the Undivided Interest or exercise of any remedy under paragraph (a) of this

Section 16 shall, except as specifically provided therein, relieve the Lessee of any of its liabilities and obligations hereunder. In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other costs and expenses incurred by the Lessor or the Indenture Trustee by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto. At any sale of the Undivided Interest and the Lessor's interest under the Support Agreements and any Transaction Documents to which the Lessor is a party or any part thereof pursuant to Section 16(a) hereof, the Lessor, the Owner Participant or the Indenture Trustee may bid for and purchase such property.

(c) REMEDIES CUMULATIVE. No remedy under paragraph (a) of this

Section 16 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under such paragraph (a) or otherwise available to the Lessor at law or in equity. No express or implied waiver by the Lessor of any Default or Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Default or Event of Default. The failure or delay of the Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by applicable law, the Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require the Lessor to sell, lease or otherwise use the Undivided Interest or the Transmission System in mitigation of the Lessee's damages as set forth in paragraph (a) of this Section 16 or which may otherwise limit or modify any of the Lessor's rights and remedies provided in such paragraph.

(d) EXERCISE OF OTHER RIGHTS OR REMEDIES. In addition to all other rights and remedies provided in this Section 16, the Lessor may exercise any other right or remedy that may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

#### SECTION 17. NOTICES.

All communications and notices provided for in this Lease shall be given in person or by means of telex, telecopy, or other wire transmission (with request for assurance of receipt in a manner typical with respect to communications of that type), or mailed by registered or certified mail, addressed as follows:

(i) if to the Lessor:

The First National Bank of Boston,

as Owner Trustee  
Blue Hill Office Park  
Mail Stop 45-02-15  
150 Royall Street  
Canton, Massachusetts 02021 Attention: Corporate Trust Division;

(ii) if to the Lessee:

Public Service Company of New Mexico

Alvarado Square  
Albuquerque, New Mexico 87158 Attention: Secretary;

(iii) in each case with copies to:

(A) the Indenture Trustee:

Chemical Bank  
450 West 33rd Street  
New York, New York 10001

Attention: Corporate Trustee Administration Department;

(B) the Collateral Trust Trustee:

Chemical Bank  
450 West 33rd Street  
New York, New York 10001

Attention: Corporate Trustee Administration Department;

(C) the Owner Participant:

DCC Project Finance Two, Inc.

c/o Dana Commercial Credit Corporation 1900 Indian Wood Circle Maumee, Ohio 43537  
Attention: Operations Manager - Public Service Company of New Mexico

or at such other address as such parties or such Persons shall from time to time designate by notice in writing to such other parties or such other Persons. All such communications and notices given in such manner shall be effective on the date of receipt of such communication or notice.

## SECTION 18. SUCCESSORS AND ASSIGNS.

This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of the Lessor and its successors and permitted assigns, and the Lessee and its successors and, to the extent permitted hereby, assigns.

## SECTION 19. RIGHT TO PERFORM FOR LESSEE.

If the Lessee shall fail to make any payment of Rent to be made by it hereunder or shall fail to perform or comply with any of its other agreements contained herein, the Lessor, the Owner Participant or the Indenture Trustee may, but shall not be obligated to, make such payment or perform or comply with such agreement, and the amount of such payment and the amount of all costs and expenses (including, without limitation, reasonable attorneys' and other professionals' fees and expenses) of the Lessor, the Owner Participant or the Indenture Trustee incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Overdue Interest Rate, shall be deemed Supplemental Rent, payable by the Lessee upon demand.

## SECTION 20. AMENDMENTS AND MISCELLANEOUS.

- (a) AMENDMENTS IN WRITING. The terms of this Lease shall not be waived, altered, modified, amended, supplemented or terminated in any manner whatsoever EXCEPT by written instrument signed by the Lessor and the Lessee.
- (b) SURVIVAL. All agreements, indemnities, representations and warranties contained in the Transaction Documents or any agreement, document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Lease and the expiration or other termination of this Lease.
- (c) SEVERABILITY OF PROVISIONS. Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and no such prohibition or unenforceability in any jurisdiction shall invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.
- (d) TRUE LEASE. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Transmission System, except as lessee only.
- (e) ORIGINAL LEASE. The single executed original of this Amended and Restated

Lease marked "ORIGINAL" shall be the "ORIGINAL" of this Lease. To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "ORIGINAL".

(f) **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the law of the State of New York.

(g) **HEADINGS.** The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Lease.

(h) **COUNTERPART EXECUTION.** This Lease may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, all such counterparts together constituting but one and the same instrument, with the counterparts delivered to the Indenture Trustee pursuant to the Indenture being deemed the "Original" and all other counterparts being deemed duplicates.

(i) **ENTIRE AGREEMENT.** This Lease, including the Schedules, Exhibit and Appendix hereto, supersedes all prior agreements, written or oral between or among the parties hereto (including the Original Lease) and each of the parties hereto represents and warrants to the other that this Lease and the other Transaction Documents (and any documents to be delivered hereby or thereby) constitute the entire agreement among the parties hereto and thereto relating to the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed in New York, New York, on the date first above written, by their respective officers thereunto duly authorized.

**THE FIRST NATIONAL BANK OF BOSTON,**  
not in its individual capacity, but solely  
as OWNER TRUSTEE under a Trust Agreement  
dated as of January 2, 1985 with DCC Project  
Finance Two, Inc.

By /s/ Donna Germano

-----  
Donna Germano  
Account Manager

**PUBLIC SERVICE COMPANY OF NEW MEXICO,**  
as LESSEE

By /s/ Terry Horn

-----  
Terry Horn  
Assistant Treasurer

**ACKNOWLEDGMENTS**

STATE OF NEW MEXICO            )  
  )  SS. :  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on September \_\_, 1993, by Terry R. Horn, Assistant Treasurer of Public Service Company of New Mexico, a New Mexico Corporation.

*/s/ Joan Novarrete*

-----

*Notary Public*

My Commission Expires: July 19, 1995

COMMONWEALTH OF MASSACHUSETTS )  
 )SS.  
COUNTY OF NORFOLK )

The undersigned a notary public for the County of Norfolk, Commonwealth of Massachusetts, does certify that on the \_\_\_\_ day of September, 1993, before me came Donna Germano, to me known, who, being by me duly sworn, did depose and say that she is an Account Manager of The First National Bank of Boston, a national banking association, the corporation described in and which executed the foregoing instrument, that she signed her name to said instrument on behalf of said association under authority of the by-laws of said association.

*/s/ Antonia Lopes*

-----  
*Notary Public*

Term Expires: September 5, 1997

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**APPENDIX A**

**DEFINITION OF TERMS**

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**EASTERN INTERCONNECTION PROJECT LEASE  
BOND REFUNDING**

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## DEFINITION OF TERMS

The terms defined herein relate to all Transaction Documents and such terms shall include the plural as well as the singular.

ACCOUNTING METHOD shall have the meaning set forth in the Tax Indemnity Agreement.

ACCOUNTING PRACTICE shall mean generally accepted utility accounting practice in accordance with the Uniform System of Accounts.

ACRS DEDUCTIONS shall have the meaning set forth in the Tax Indemnity Agreement.

ADDITIONAL EASEMENTS shall have the meaning set forth in Section 2(d) of the Easement.

ADDITIONAL EQUITY INVESTMENT shall have the meaning set forth in Section 8(h) of the Lease.

ADDITIONAL NOTES shall mean any non-recourse promissory notes (other than the Refunding Notes) issued by the Owner Trustee and authenticated by the Indenture Trustee under the terms of the Indenture.

ADJUSTED LESSOR'S COST shall have the meaning set forth in the Tax Indemnity Agreement.

AFFILIATE, with respect to any Person, shall mean any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. The term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

AFFILIATE TRANSACTION shall have the meaning set forth in Section 10(b)(v) of the Participation Agreement.

AFTER-TAX BASIS shall mean, with respect to any payment received or deemed to have been received by any Person, the amount of such payment supplemented by a further payment to that Person so that the sum of the two payments shall, after deduction of all taxes and other charges (taking into account any credits or deductions arising therefrom and the timing thereof) resulting from the receipt (actual or constructive) of such two payments imposed under any Governmental Rule or by any Governmental Authority, the United States of America, or any territory or possession of the United States of America, or any governmental authority of any foreign country or any subdivision or any taxing authority thereof, or any international taxing authority, be equal to such payment received or deemed to have been received.

ALTERATIONS shall mean alterations, modifications, additions and improvements to the Transmission System (including the Undivided Interest) the cost of which is required to be added to capital accounts pursuant to the Uniform System of Accounts; and such term shall include, as appropriate, all Severable Required Alterations, Nonseverable Required Alterations, Severable Optional Alterations and Nonseverable Optional Alterations, but shall not include any original or substitute Component or any Replacement Component.

AMENDED AND RESTATED LEASE means the Amended and Restated Lease dated as of September 1, 1993 between the Owner Trustee and PNM.

AMENDED AND RESTATED PARTICIPATION AGREEMENT means the Amended and Restated Participation Agreement dated as of September 1, 1993 between the Owner Participant, Funding Corp, the Owner Trustee, the Indenture Trustee and PNM.

AMENDED AND RESTATED TIA means the Amended and Restated Tax Indemnity Agreement dated as of September 1, 1993 between the Owner Participant and the Lessee.

AMENDMENT shall mean the Amendment dated the Closing Date to the Original Participation Agreement.

AMORTIZATION DEDUCTIONS shall have the meaning set forth in the Tax Indemnity Agreement.

APPLICABLE AGREEMENT shall have the meaning set forth in Section 2 of the Operating Agreement.

APPLICABLE LAWS shall mean all applicable laws, including, without limitation, Federal and state securities laws, ordinances, judgments, decrees, injunctions, writs and orders of any Governmental Authority and rules, regulations, orders, interpretations, licenses and permits of any Governmental Authority.

APPRAISAL PROCEDURE shall mean a procedure whereby, the Lessor and the Lessee having failed to agree, two independent appraisers, one chosen by the Lessee and one by the Lessor, shall mutually agree upon the determinations then the subject of appraisal. The Lessor or the Lessee, as the case may be, shall deliver a written notice to the other appointing its appraiser within 15 days after receipt from the other of a written notice appointing its appraiser. If one party shall fail to appoint its appraiser within 15 days after receipt from the other party of a written notice appointing its appraiser, the determination of the single appraiser shall be final. If within 30 days after appointment of the two appraisers they are unable to agree upon the amount in question, a third independent appraiser shall be chosen within ten days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser, such appointment shall be made by the American Arbitration Association, or any organization successor thereto, from a panel of arbitrators having experience in the business of operating a utility transmission system and a familiarity with equipment used or operated in such business. The decision of the third appraiser so appointed and chosen shall be given within 30 days after the selection of such third appraiser. If three appraisers shall be appointed and the determination of one appraiser is disparate from the middle determination by more than twice the amount by which the other determination is disparate from the middle determination, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on the Lessor and the Lessee; otherwise the average of all three determinations shall be binding and conclusive on the Lessor and the Lessee.

ASSIGNMENT OF CONSTRUCTION CONTRACT shall mean the Assignment of Construction Contract dated the Closing Date from PNM to the Owner Trustee.

ASSIGNMENT OF RIGHT OF USE shall mean the Assignment of Right of Use dated the Closing Date from PNM to the Owner Trustee.

B-A PROPERTY shall mean that portion of the Transmission System which is a part of the facility known as the "B-A Station".

BLM shall mean the United States Department of the Interior, Bureau of Land Management.

BASIC RENT shall mean the rent payable pursuant to Section 3(a) of the Lease, PROVIDED, HOWEVER, that Basic Rent as of any date shall be, under any circumstances and in any event, an amount at least sufficient to pay in full the aggregate of the regular installments of principal and interest due and payable and unpaid on the applicable Basic Rent Payment Date on all Notes then Outstanding under the Indenture, together with all accrued and unpaid interest thereon.

BASIC RENT PAYMENT DATES shall mean and include each April 1 and October 1 of each year, commencing October 1, 1985, throughout (and including the last day of) the Basic Term and each elected Renewal Term.

BASIC RENT PREPAYMENT shall mean the amount of Basic Rent prepaid by the Lessee on the Refunding Date.

BASIC TERM shall mean the period commencing on the Closing Date and ending on April 1, 2015, or such shorter period as may result from earlier termination of the Lease as provided in the Lease.

BILL OF SALE shall mean the Bill of Sale dated the Closing Date from PNM to the Owner Trustee.

BLACKWATER HVDC STATION shall mean the high voltage direct current converter station located in the Clovis-Portales area of Eastern New Mexico and constructed for PNM by the Contractor pursuant to the Construction Contract.

**BONDS shall mean the Refunding Bonds.**

BUSINESS DAY shall mean any day other than a Saturday or Sunday or other day on which banks in New York, New York are authorized to remain closed.

CASUALTY VALUE, as of any Basic Rent Payment Date, shall mean (i) during the Basic Term, an amount equal to the product obtained by multiplying Lessor's Cost by the percentage in the Schedule of Casualty Values attached to the Lease (which Casualty Values as originally attached to the Lease are based upon the Pricing Assumptions and are subject to adjustment pursuant to Section 3(d) of the Lease) and set forth opposite such Basic Rent Payment Date and (ii) during any Renewal Term, the amount determined by amortizing ratably the Fair Market Value of the Undivided Interest as of the day following the last day of the Basic Term or the last preceding Renewal Term, as the case may be, in semi-annual steps over the remaining term of the Easement, as such term may be extended in consequence of a determination of the Maximum Option Period, which amortized amounts shall be set forth in a revised Schedule of Casualty Values and attached to the Lease pursuant to a Lease Supplement prior to the last day of the Basic Term or

the last preceding Renewal Term, as the case may be; PROVIDED, HOWEVER, that, after giving effect to the payment of Basic Rent on such Basic Rent Payment Date and the application thereof to the payment of the regular installment of principal of, and all accrued and unpaid interest on, the Notes then due, Casualty Value as of any date shall be, under any circumstances and in any event, an amount at least sufficient to pay in full the aggregate unpaid principal amount of all Notes then Outstanding under the Indenture.

CERTIFICATE OF ACCEPTANCE shall mean a certificate, substantially in the form of Exhibit A to the Original Lease, duly completed and executed and delivered on the Closing Date or, in the case of any Alteration acquired by the Lessor pursuant to the terms of the Lease, a date required by the applicable Lease Supplement.

CHANGE IN TAX LAWS shall have the meaning set forth in the Tax Indemnity Agreement.

CLAIMS shall mean liabilities, costs, obligations, losses, damages, penalties, claims (including, without limitation, claims involving liability in tort, strict or otherwise), actions, suits, judgments, costs, expenses and disbursements (including without limitation legal fees and expenses) of any kind and nature whatsoever without any limitation as to amount.

CLOSING shall mean the proceedings which occurred on the Closing Date, as contemplated by the Original Participation Agreement.

CLOSING DATE shall mean the date the sale and leaseback of the Undivided Interest was completed and payment of Lessor's Cost was made. The Closing Date is February 5, 1985.

COLLATERAL TRUST TRUSTEE shall mean the trustee from time to time under the Refunding Collateral Trust Indenture.

COMPONENTS shall mean appliances, parts, instruments, appurtenances, accessories, furnishings, equipment and other property of whatever nature that may from time to time be incorporated in the Transmission System or any part thereof.

CONSTRUCTION CONTRACT shall have the meaning set forth in the Assignment of Construction Contract.

CONSULTING ENGINEER shall mean Marshall and Stevens or such other firm of construction engineers as shall be selected by the Owner Participant and approved by the Lessee.

CONTRACTOR shall mean Brown Bovari Corporation, a New York corporation.

DEEMED LOSS EVENT shall mean the following event: if at any time after the Closing Date and before the Lease Termination Date, the Owner Trustee or the Owner Participant, by reason of the ownership of the Undivided Interest or any part thereof by the Lessor or the lease of the Undivided Interest to the Lessee or any of the other transactions contemplated by the Transaction Documents (the term OWNER PARTICIPANT, as used in this definition, not including any Transferee who at the time of transfer to such Transferee is a non-exempt entity of the type referred to in this definition, whether by reason of such ownership, lease, transactions or otherwise) shall be deemed by any Governmental Authority having jurisdiction to be, or shall become subject to regulation as, an "electric utility" or a "public utility" or a

"public utility holding company" under any Governmental Rule or by reason of any Governmental Action, and the effect thereof on the Lessor or the Owner Participant would be, in the sole reasonable judgment of either such Person, adverse, and the Lessor and the Owner Participant have not waived application of this definition (which waiver shall be in writing and may be either indefinite or for a specific period); EXCEPT that if the Lessee, at its sole cost and expense, is contesting diligently and in good faith any action by any Governmental Authority which would otherwise constitute a Deemed Loss Event under this definition, such Deemed Loss Event shall be deemed not to have occurred so long as (i) such contest does not involve any danger of the foreclosure, sale, forfeiture or loss of, or the creation of any Lien on, the Undivided Interest or any part thereof or any interest therein, (ii) such contest does not adversely affect the Undivided Interest or any part thereof or any other property, assets or rights of the Lessor or the Owner Participant or the lien of the Indenture thereon, (iii) the Lessee shall have furnished the Lessor, the Owner Participant, and the Indenture Trustee with an opinion of independent counsel satisfactory to each such Person to the effect that there exists a reasonable basis for contesting such determination, (iv) such determination shall be effectively stayed or withdrawn during such contest (and shall not be subject to retroactive application at the conclusion of such contest) in a manner satisfactory to the Lessor and the Owner Participant, and the Owner Participant shall have determined that the Lessor's continued ownership of the Undivided Interest during the pendency of such contest or such contest will not adversely affect its business, and (v) the Lessee shall have indemnified the Lessor and the Owner Participant in a manner satisfactory to each such Person for any liability or loss which either such Person may incur as a result of Lessee's contest.

DEFAULT shall mean an event which, after giving of notice or lapse of time, or both, would become an Event of Default.

DIRECTIVE shall mean an instrument in writing executed in accordance with the terms and provisions of the Indenture by the holders, or their duly authorized agents or attorneys-in-fact, representing a majority of the aggregate unpaid principal amount of all Notes Outstanding under the Indenture, directing the Indenture Trustee to take or refrain from taking the action specified in such instrument.

EARLY PURCHASE VALUE as of any Basic Rent Payment Date occurring on or after the thirtieth Basic Rent Payment Date, shall mean an amount equal to the product obtained by multiplying Lessor's Cost by the percentage in the Schedule of Early Purchase Values attached to the Lease (which Early Purchase Values as originally attached to the Lease are based upon the Pricing Assumptions and are subject to adjustment pursuant to Section 3(d) of the Lease) and set forth opposite such Basic Rent Payment Date; PROVIDED, HOWEVER, that, after giving effect to (A) the payment of Basic Rent on such Basic Rent Payment Date and the application thereof to the payment of the regular installment of principal of, and accrued interest on, the Notes then due, and (B) the payment of premium, if any then due on the Notes, Early Purchase Value as of any date shall be, under any circumstances and in any event, an amount at least sufficient to pay in full the aggregate unpaid principal amount of all Notes then Outstanding under the Indenture.

EASEMENT shall mean the Easement dated the Closing Date between PNM and the Owner Trustee, as supplemented on March 27, 1987.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended, or any comparable successor law.

EVENT OF DEFAULT shall have the meaning set forth in Section 15 of the Lease.

EVENT OF LOSS shall mean any of the following events: (a) the loss of the Transmission System (including the Undivided Interest) due to theft, disappearance, destruction or, in the good faith and reasonable opinion of the Lessee (confirmed by an independent engineer reasonably satisfactory to the Owner Participant), damage beyond repair; (b) the receipt of insurance proceeds based upon an actual or constructive total loss with respect to the Transmission System; or (c) the confiscation or seizure of title to the Transmission System (including the Undivided Interest) or the property subject to the Easement (in its entirety or such a substantial portion that the then remaining portion cannot practically be utilized for the purposes intended) or the condemnation of the Undivided Interest or the property subject to the Easement by any Person other than the Lessee or a Person related to the Lessee, or the requisition of use of the Transmission System (including the Undivided Interest) or the property subject to the Easement (in its entirety or a substantial portion as aforesaid) for a stated period which shall, or for an indefinite period which is reasonably expected to, exceed the remaining portion of the Basic Term or any then effective Renewal Term.

EXCEPTED PAYMENTS shall mean any and all payments not due to or in respect of the Trust Estate or the Lease Indenture Estate or otherwise included in the Lease Indenture Estate, including (i) any indemnity or other payment (whether or not Supplemental Rent and whether or not a Default or Event of Default exists) payable under any Transaction Document directly to any Person, other than the Indenture Trustee or the Lessor (except Chemical Bank or FNB), or payable by the Lessee to the Lessor, FNB or the Owner Participant to reimburse any such Person for its costs and expenses in exercising its rights under the Transaction Documents, (ii) (A) insurance proceeds, if any, payable to the Lessor, FNB, Chemical Bank or the Owner Participant under insurance separately maintained by the Lessor, FNB, Chemical Bank or the Owner Participant with respect to the Undivided Interest as permitted by the Lease or (B) proceeds of personal injury or property damage liability insurance maintained under any Transaction Document for the benefit of the Lessor, FNB, Chemical Bank or the Owner Participant, (iii) any amounts payable under any Transaction Document to reimburse the Lessor or the Owner Participant (including the reasonable expenses of the Lessor or the Owner Participant incurred in connection with any such payment) for performing or complying with any of the obligations of the Lessee under and as permitted by any Transaction Document (including, but without limitation, amounts payable pursuant to Section 14 of the Participation Agreement), (iv) any amount payable to the Owner Participant by any Transferee as the purchase price of the Owner Participant's interest in the Trust Estate, (v) any payments, insurance proceeds or other amounts with respect to the Undivided Interest or any portion thereof which have been released from the lien of the Indenture and (vi) any payments in respect of interest to the extent attributable to payments referred to in clauses (i) through (v) above.

EXCEPTED RIGHTS shall mean (a) all rights with respect to Excepted Payments of the Person entitled thereto and (b) all rights and privileges expressly reserved to the Owner Trustee or the Owner Participant exclusively or jointly with the Indenture Trustee pursuant to the Indenture (including, but without limitation, Section 6.11 thereof) for the periods specified in the Indenture.

EXISTING MORTGAGE shall mean the Indenture of Mortgage and Deed of Trust dated as of June 1, 1947, between PNM and Irving Trust Company, as heretofore supplemented by all supplemental indentures thereto.

EXPENSES shall have the meaning set forth in Section 7.01 of the Trust Agreement.

EXPIRATION DATE shall have the meaning set forth in the Operating Agreement.

FAIR MARKET RENEWAL TERM shall mean a Renewal Term elected pursuant to Section 13(a)(1) of the Lease.

FAIR MARKET RENTAL VALUE or FAIR MARKET VALUE of any property or service as of any date shall mean the cash rent or cash price obtainable in an arm's-length lease, or sale or supply, respectively, between an informed and willing lessee or buyer (under no compulsion to lease or purchase) and an informed and willing lessor or seller or supplier (under no compulsion to lease or sell or supply) of the property or service in question, and shall, in the case of the Transmission System, be determined (except pursuant to Section 16(a)(3)(i), (ii) and (iv) of the Lease) on the basis that (i) the Transmission System has been maintained in accordance with, and the Lessee has complied with, the requirements of the Lease and the other Transaction Documents, (ii) the lessee or the buyer shall have rights in, or an assignment of, the Transaction Documents (including, without limitation, the Support Agreements) to which the Lessor is a party and (iii) the Lessee has complied with the requirements of the Lease and each Transaction Document to which the Lessee is a party. If the Lessor and the Lessee are unable to agree upon a determination of Fair Market Rental Value or Fair Market Value, as the case may be, such Fair Market Rental Value or Fair Market Value shall be determined in accordance with the Appraisal Procedure.

FEDERAL POWER ACT shall mean the Federal Power Act, as amended.

FEDERAL SECURITIES shall have the meaning set forth in Section 2.4(b) of the Indenture.

FEE LAND shall mean the parcels of land described in Part I of Exhibit A to the Easement.

FERC shall mean the Federal Energy Regulatory Commission of the United States of America.

FERC ORDER shall mean the Order Granting Petition for Declaratory Order, Authorizing Sale of Facilities, Noting Intervention, and Terminating Dockets issued by the FERC on December 31, 1984 (Docket Nos. EC85-4-000 and EL85-9-000).

FINAL PROSPECTUS means the prospectus with respect to the Refunding Bonds and the offering thereof constituting part of the Registration Statement at the time the Registration Statement is declared effective by the SEC, together with any supplement or modification to, or completion of, such prospectus filed by PNM with the SEC pursuant to Rule 424 under the Securities Act.

FINANCING DOCUMENTS shall mean the Underwriting Agreement, the Registration Statement, the Refunding Collateral Trust Indenture, the Refunding Supplemental Indenture and the Refunding Bonds.

**FIRST BASIC RENT PAYMENT DATE shall mean October 1, 1985.**

FIXED RENT RENEWAL TERM shall mean a Renewal Term elected pursuant to Section 13(a)(2) of the Lease.

FNB shall mean The First National Bank of Boston, a national banking association, in its individual capacity.

FORM U-7D shall mean the certificate filed pursuant to Rule 7(d) of the Holding Company Act for the purpose of exempting the Owner Participant and the Owner Trustee from registration under the Holding Company Act.

FUNDING CORP shall mean EIP Refunding Corporation, a Delaware corporation.

FUNDING CORP'S COUNSEL shall mean Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

GOVERNMENTAL ACTIONS shall mean all authorizations, consents, approvals, waivers, exceptions, variances, filings and declarations of or with, any Governmental Authority (other than routine reporting requirements the failure to comply with which will not affect the validity or enforceability of any of the Transaction Documents or have a material adverse effect on the transactions contemplated by the Participation Agreement), and shall include, without limitation, those siting, environmental and operating permits and licenses which are required for the use and operation of the Transmission System, including the Undivided Interest.

GOVERNMENTAL AUTHORITY shall mean any Federal, state, county, municipal, regional or other governmental or taxing authority, agency, board or court.

GOVERNMENTAL RULES shall mean statutes, laws, rules, codes, ordinances, regulations, permits, certificates and orders of any Governmental Authority, including without limitation those pertaining to health, safety, the environment or otherwise.

GRANTING CLAUSE DOCUMENTS shall have the meaning set forth in Section 2.1 of the Indenture.

GROUP shall mean the affiliated group of corporations of which the Owner Participant is a member.

HOLDERS shall mean the holders of the Notes.

HOLDING COMPANY ACT shall mean the Public Utility Holding Company Act of 1935, as amended.

"INCORPORATED IN" shall mean incorporated or installed in, attached to, or otherwise made a part of the Transmission System.

INCREMENTAL CASH COST of a Replacement Component shall mean the difference between the actual cost of the Replacement Component and the sum of any insurance proceeds received in respect of, and (if not assigned to the insurance carrier) the salvage value of, the Component replaced.

INDEMNITEE shall mean the Owner Participant, FNB, the Owner Trustee, the Indenture Trustee, Funding Corp, the Collateral Trust Trustee, the Escrow Fund created under the Escrow Deposit Agreement, the Trust Estate, the Lease Indenture Estate and each other holder of a Note from time to time Outstanding under the Indenture, and the successors, assigns, agents and employees of each such Person and

any Affiliate of each such Person. The failure to include in the definition of "Indemnitee" a Person which is an "Indemnitee" under the 1985 Transaction Documents shall not operate to alter or abridge the rights and obligations of such Person as an "Indemnitee" under the 1985 Transaction Documents.

INDENTURE shall mean the Amended and Restated Trust Indenture and Security Agreement dated as of September 1, 1993 between the Owner Trustee and Chemical Bank.

INDENTURE DEFAULT shall mean an event which, after giving of notice or lapse of time, or both, would become an Indenture Event of Default.

INDENTURE EVENT OF DEFAULT shall mean any of the events specified in Section 6.2 of the Indenture.

INDENTURE TRUSTEE shall mean the trustee from time to time under the Indenture.

INDENTURE TRUSTEE OFFICE shall mean the office of the Indenture Trustee located at 450 West 33rd Street, New York, New York 10001, or such other office as may be designated by the Indenture Trustee to the Owner Trustee and each holder of a Note Outstanding under the Indenture.

INDENTURE TRUSTEE'S COUNSEL shall mean Cravath, Swaine & Moore, Worldwide Plaza, 825 Eighth Avenue, New York, New York 10019.

INITIAL SERIES NOTE means the Owner Trustee's Nonrecourse Promissory Note, Due 1990-2015, Initial Series, issued on the Closing Date pursuant to the 1985 Lease Indenture.

INSTRUMENT OF ASSIGNMENT OF OTHER CONSTRUCTION CONTRACTS shall mean the Instrument of Assignment of Other Construction Contracts dated the Closing Date between PNM and the Owner Trustee.

INTEREST DEDUCTIONS shall have the meaning set forth in the Tax Indemnity Agreement.

INVESTMENT COMPANY ACT shall mean the Investment Company Act of 1940, as amended.

INVESTMENT CREDIT shall have the meaning set forth in Section 1(b) of the Tax Indemnity Agreement.

LEASE means the Original Lease as amended and restated by the Amended and Restated Lease.

LEASE INDENTURE ESTATE shall have the meaning set forth in Section 2.1 of the Indenture.

LEASE SUPPLEMENT shall mean a supplement to the Lease for purposes of (i) adjusting Basic Rent, Casualty Value, Special Casualty Value and Early Purchase Value pursuant to Section 3(d) of the Lease, (ii) adding the Lessor's Share in any Alteration, if title thereto shall vest in the Owner Trustee pursuant to the terms of the Lease, (iii) effecting Supplemental Financings and Additional Equity Investments, or (iv) otherwise changing or modifying the terms of the Lease, all in accordance with and subject to the terms of the Lease.

LEASE TERM shall have the meaning set forth in Section 2 of the Lease.

LEASE TERMINATION DATE shall mean the last day of the Lease Term (whether occurring by reason of the termination or the expiration of the Lease).

LESSEE shall mean Public Service Company of New Mexico, a New Mexico corporation.

LESSEE REQUEST shall have the meaning set forth in Section 1.01 of the Refunding Collateral Trust Indenture.

LESSEE'S GENERAL COUNSEL shall mean Keleher & McLeod, P.A., 414 Silver Avenue S.W., Albuquerque, New Mexico 87103.

LESSEE'S SPECIAL COUNSEL shall mean Mudge Rose Guthrie Alexander & Ferdon, 180 Maiden Lane, New York, New York 10038.

**LESSOR shall mean the Owner Trustee.**

LESSOR'S COST shall mean the Purchase Price of the Undivided Interest.

LESSOR'S LIENS shall mean Liens (other than Permitted Liens described in clauses (a) and (c) through (e) of the definition of such term) which result from acts of, or any failure to act by, or as a result of claims against, FNB or the Lessor unrelated either to the ownership of the Undivided Interest, the administration of the Trust Estate or the transactions contemplated by the Transaction Documents.

**LESSOR'S SHARE shall mean the Share of the Lessor.**

LIEN shall mean any mortgage, pledge, security interest, encumbrance, lien or charge of any kind, including without limitation any conditional sale or other title retention agreement, any lease in the nature thereof or the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

LOAN shall have the meaning set forth in Section 2 of the Participation Agreement.

MAJORITY IN INTEREST OF HOLDERS OF NOTES shall mean a majority of Holders of all Notes Outstanding at the time of any such determination.

MARSHALL AND STEVENS shall have the meaning set forth in the Tax Indemnity Agreement.

MAXIMUM OPTION PERIOD shall mean the period, determined as of the date of expiration of the Basic Term, (i) at the end of which the residual value of the Undivided Interest, without regard to inflation or deflation from the Basic Lease Commencement Date, but taking into consideration the existence and effect of the Support Agreements (including any extension of the terms thereof in consequence of any determination of the Maximum Option Period), shall be at least equal to 20% of Lessor's Cost, and (ii) which, when added to the Basic Term, does not exceed 80% of the sum of the then appraised remaining useful life of the Transmission System and 30 years.

MORTGAGE RELEASE shall mean the Indenture of Partial Release dated the Closing Date.

NET ECONOMIC RETURN shall mean the Owner Participant's (i) after tax yield and (ii) present value of after tax cash flow, each as of December 31, 1991 and each computed on a basis consistent with the computation of Basic Rent as adjusted on and as of the Refunding Date pursuant to the terms of the Lease.

NET WORTH shall mean the excess of assets over liabilities determined by PNM's independent accountants on the basis of generally accepted accounting principles.

NEW MEXICO COUNTIES shall mean Sandoval, Santa Fe, San Miguel, Guadalupe, De Baca, Quay, Roosevelt and Curry Counties, New Mexico.

NEW MEXICO COMMISSION means the New Mexico Public Utility Commission, formerly known as the New Mexico Public Service Commission, established pursuant to Section 62-5-1, New Mexico Statutes Annotated (1978).

**NEW MEXICO ORDER means the 1985 Order and the 1993 Order.**

NEW MEXICO PUBLIC UTILITY ACT shall mean the New Mexico Public Utility Act, as amended.

1985 BONDS means the "Security Facility Bonds, due 1990-2015" issued by 1985 Funding Corp under the 1985 Collateral Trust Indenture in the original principal amount of \$54,382,000.

1985 COLLATERAL TRUST INDENTURE means the Collateral Trust Indenture dated as of February 5, 1985 among PNM, 1985 Funding Corp. and the 1985 Collateral Trust Trustee, as amended and supplemented by (i) Indenture Supplement No. 1 dated as of the Closing Date and (ii) the 1992 Supplemental Indenture dated as of November 4, 1992.

1985 COLLATERAL TRUST TRUSTEE means Morgan Guaranty Trust Company of New York, a New York Banking Corporation, as trustee under the 1985 Collateral Trust Indenture.

1985 EXTENSION LETTER means the Extension Letter dated the Closing Date to the 1985 Collateral Trust Trustee from the owner participant named therein, the Owner Trustee, 1985 Funding Corp, PNM and the 1985 Indenture Trustee.

1985 FUNDING CORP. means E.I.P. Funding Corporation, a Delaware Corporation.

1985 INDENTURE TRUSTEE means Morgan Guaranty Trust Company of New York, a New York banking corporation, as trustee under the 1985 Lease Indenture.

1985 LEASE INDENTURE means the Trust Indenture and Security Agreement dated as of January 2, 1985 between the Owner Trustee and the 1985 Indenture Trustee.

1985 ORDER means the order issued by the New Mexico Public Service Commission on December 31, 1984 in Case No. 1930.

1985 TRANSACTION DOCUMENTS means the Transaction Documents (including the 1985 Extension Letter) as in effect immediately preceding the Signing Date.

1993 ORDER means the order issued by the New Mexico Public Utility Commission on March 1, 1993 in Case No. 2482.

NONSEVERABLE, when used in respect to any Alteration, shall mean any Alteration which is not a Severable Alteration.

NOTEHOLDER shall mean any holder from time to time of a Note Outstanding under the Indenture.

NOTES shall mean the Refunding Notes and any Additional Notes issued by the Owner Trustee and authenticated by the Indenture Trustee under the Indenture.

OFFICERS' CERTIFICATE shall mean a certificate signed by the President or any Vice President and by the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Person with respect to which such term is used.

OMNIBUS ACKNOWLEDGMENT has the meaning specified in Section 4(a) of the Amended and Restated Participation Agreement.

OMNIBUS RECEIPT shall mean the Omnibus Notice, Receipt, Payment Instruction and Acknowledgment with Respect to (I) the Issuance of the Secured Facility Bonds Due 1995 and 2012 and (II) the Redemption of the Secured Facility Bonds Due April 1, 1995 and April 1, 2015.

OPERATING AGREEMENT shall mean the Operating Agreement dated the Closing Date between PNM and the Owner Trustee.

OPERATING PERIOD shall have the meaning set forth in the Operating Agreement.

OPERATOR shall have the meaning set forth in Section 2 of the Operating Agreement.

OPTIONAL ALTERATIONS shall have the meaning set forth in Section 8(e) of the Lease.

ORIGINAL LEASE means the Lease dated the Closing Date from the Owner Trustee, as lessor, to PNM, as lessee, as amended and/or supplemented by (i) Supplement Number One to Lease dated as of September 30, 1985 between the Owner Trustee and PNM and (ii) Lease Amendment No.2 dated as of March 9, 1987 between the Owner Trustee and PNM.

ORIGINAL OF THE LEASE shall mean the fully executed counterpart of the Amended and Restated Lease marked "Original" pursuant to Section 20(e) of the Lease.

ORIGINAL PARTICIPATION AGREEMENT means the Participation Agreement dated as of January 2, 1985, as amended by the Amendment dated the Closing Date among the owner participant named therein, 1985 Funding Corp, the Owner Trustee, the 1985 Indenture Trustee and PNM.

ORIGINAL TIA means the Tax Indemnity Agreement dated the Closing Date between the Owner Participant and the Lessee.

OTHER CONSTRUCTION CONTRACTS shall have the meaning set forth in the Instrument of Assignment of Other Construction Contracts.

OUTSTANDING, when used with respect to Notes, shall mean, as of the date of determination, all such Notes theretofore issued, authenticated and delivered under the Indenture, except (a) Notes theretofore cancelled by the Indenture Trustee or delivered to the Indenture Trustee for cancellation, (b) Notes or portions thereof for the payment of which the Indenture Trustee holds (and has notified the holders thereof that it holds) in trust for that purpose an amount sufficient to make full payment thereof when due, (c) Notes or portions thereof which have been pledged as collateral for any obligations of the obligor thereof to the extent that an amount sufficient to make full payment of such obligations when due has been deposited with the pledgee of such Notes for the purpose of holding such amount in trust for the payment of such obligations in accordance with the indenture or agreement under which such obligations are secured and (d) Notes in exchange for, or in lieu of, which other Notes have been issued, authenticated and delivered pursuant to such Indenture; PROVIDED, HOWEVER, that any Note owned by the Lessee or the Owner Trustee or any Affiliate of either thereof shall be disregarded and deemed not to be Outstanding for the purpose of any Directive unless, in the case of the Owner Trustee, it shall own all Notes issued by it.

OVERDUE INTEREST RATE shall mean the rate per annum equal to 1% above the interest rate applicable to that portion of the Refunding Note that is due April 1, 2012.

OWNER PARTICIPANT shall mean DCC Project Finance Two, Inc., a Delaware corporation.

OWNER PARTICIPANT'S COUNSEL shall mean Hunton & Williams, 200 Park Avenue, New York, New York 10020.

OWNER PARTICIPANT'S LIENS shall mean Liens (other than Permitted Liens described in clauses (a) and (c) through (e) of the definition of such term) which result from acts of, or any failure to act by, or as a result of claims against, the Owner Participant unrelated to the transactions contemplated by the Transaction Documents.

OWNER TRUSTEE shall mean The First National Bank of Boston, a national banking association, not in its individual capacity, but solely as Owner Trustee under the Trust Agreement, and each successor as Owner Trustee under the Trust Agreement.

OWNER TRUSTEE'S COUNSEL shall mean Shipman & Goodwin, 799 Main Street, Hartford, Connecticut 06103.

**PARTICIPANT shall mean Funding Corp or the Owner Participant.**

PARTICIPATION AGREEMENT means, (i) as to the Persons which are party to both, the Original Participation Agreement as amended and restated by the Amended and Restated Participation Agreement and, (ii) as to any Person which is party to one but not the other of such instruments, the instrument to which such Person is party.

PERMITTED INVESTMENTS shall mean (i) obligations of the United States of America, or fully guaranteed as to interest and principal by the United States of America, maturing in not more than one year, (ii) certificates of deposit having a final maturity of not more than 30 days after the date of issuance thereof of any commercial bank incorporated under the laws of the United States of America or any state thereof or the District of Columbia which bank is a member of the Federal Reserve System and has a combined capital and surplus of not less than \$100,000,000 and (iii) commercial paper, rated P-1 by Moody's Investors Services, Inc., or A-1 by Standard and Poor's Corporation, having a remaining term until maturity of not more than 90 days, other than any such obligation, certificate of deposit or commercial paper issued by FNB, Chemical Bank or any institution which shall become a successor Owner Trustee, Indenture Trustee or Collateral Trust Trustee; PROVIDED, HOWEVER, that no such investment made while there shall have occurred and be continuing an Indenture Default or an Indenture Event of Default shall be a Permitted Investment if it has a maturity in excess of 30 days.

PERMITTED LIENS shall mean (a) the respective rights and interests of the Lessee, the Owner Participant, the Lessor, the Indenture Trustee and Funding Corp, as provided in the Transaction Documents, (b) Lessor's Liens and Owner Participant's Liens, (c) Liens for Taxes either not yet due or being contested in good faith and by appropriate proceedings, so long as such proceedings shall not involve any danger of the sale, forfeiture or loss of any part of the Undivided Interest, the Trust Estate, the Lease Indenture Estate, title thereto or any interest therein and shall not interfere with the use or disposition of any part of the Undivided Interest, the Trust Estate, the Lease Indenture Estate, title thereto or any interest therein, or the payment of Rent, and the Lessee shall have provided adequate reserves for the payment of such Taxes, (d) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens arising in the ordinary course of business of the Lessee for amounts either not yet due or being contested in good faith and by appropriate proceedings so long as such proceedings shall not involve any danger of the sale, forfeiture or loss of any part of the Undivided Interest, the Trust Estate, the Lease Indenture Estate, title thereto or any interest therein and shall not interfere with the use or disposition of any part of the Undivided Interest, the Trust Estate, the Lease Indenture Estate, title thereto or interest therein, or the payment of Rent, and the Lessee shall have provided adequate reserves for the payment of such amounts, (e) Liens arising out of judgments or awards against the Lessee with respect to which at the time an appeal or proceeding for review is being prosecuted in good faith and either which have been bonded or for the payment of which adequate reserves shall have been provided so long as such judgment, award or appeal shall not involve any danger of the sale, forfeiture or loss of any part of the Undivided Interest, the Trust Estate, the Lease Indenture Estate, title thereto or any interest therein and shall not interfere with the use or disposition of any part of the Undivided Interest, the Lease Indenture Estate, title thereto or any interest therein, or the payment of Rent, and (f) Liens consented to by the Lessor in accordance with the provisions of Section 12 of the Lease.

PERSON shall mean any individual, partnership, corporation, trust, unincorporated association or joint venture, a government or any department or agency thereof, or any other entity.

PLANS AND SPECIFICATIONS shall mean the technical specifications of the Transmission System (x) attached as Exhibit A to the Construction Contract and entitled "Public Service Company of New Mexico Technical Specifications for the Clovis Area Blackwater HVDC Station Specification HVDC-83-1 dated February 7, 1983" and all amendments thereto or modifications thereof as permitted by the Construction Contract, the Participation Agreement, and the Lease and the Assignment of Construction Contract, and (y) attached to, or constituting part of, the Other Construction Contracts.

PNM shall mean Public Service Company of New Mexico, a New Mexico corporation.

PREMIUM DEDUCTION shall have the meaning set forth in the Tax Indemnity Agreement.

PRICING ASSUMPTIONS shall mean the pricing assumptions set forth in Schedule II to the Amended and Restated Participation Agreement; PROVIDED, HOWEVER, that from and after any adjustment pursuant to Section 3(d) of the Lease such term shall mean such pricing assumptions, as so adjusted.

PRUDENT UTILITY PRACTICE shall mean, at a particular time, those practices, methods and acts as are in accordance with standards of prudence applicable to the electric utility industry in the Southwestern region of the United States of America which would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. PRUDENT UTILITY PRACTICE is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather is a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition, but PRUDENT UTILITY PRACTICE is intended to mean at least the same standard as the Lessee would, in the prudent management of its own properties, use from time to time. PRUDENT UTILITY PRACTICE shall not include any practice, method or act that discriminates against the Transmission System or the Undivided Interest in relation to those practices, methods or acts employed by the Lessee with respect to transmission facilities other than the Transmission System or those practices, methods or acts which would have been employed by the Lessee if it had been the owner of the Transmission System and such other transmission facilities in their entirety.

**PURCHASE DOCUMENTS shall mean the Bill of Sale.**

**PURCHASE PRICE means \$43,800,000.**

QUALIFIED INVESTMENT shall have the meaning set forth in Section 1(b) of the Tax Indemnity Agreement.

REFUNDING ACCOUNT shall have the meaning set forth in paragraph 3 of the Omnibus Receipt.

REFUNDING AMORTIZATION DEDUCTIONS shall have the meaning set forth in the Tax Indemnity Agreement.

REFUNDING BONDS means the "Secured Facility Bonds, Due 1995 and 2012" issued by Funding Corp under the Refunding Collateral Trust Indenture as supplemented by the Refunding Supplemental Indenture.

REFUNDING COLLATERAL TRUST INDENTURE means the Collateral Trust Indenture dated as of September 1, 1993 among Funding Corp, PNM and Chemical Bank.

REFUNDING DATE means the date on which the Refunding Bonds are issued and sold.

REFUNDING EXTENSION LETTER means the Extension Letter to be dated the Refunding Date to the Collateral Trust Trustee from the Owner Participant, the Owner Trustee, Funding Corp, and the Indenture Trustee.

REFUNDING NOTE SUPPLEMENTAL INDENTURE means Supplemental Indenture No. 1 dated as of the Refunding Date between the Owner Trustee and the Indenture Trustee pursuant to which the Refunding Notes are to be issued.

REFUNDING NOTES means the Owner Trustee's "Nonrecourse Promissory Notes, Refunding Series" issued by the Owner Trustee under the Indenture as supplemented by the Refunding Note Supplemental Indenture.

REFUNDING SUPPLEMENTAL INDENTURE means the Refunding Bond Supplemental Indenture dated as of the Refunding Date among Funding Corp, PNM and the Collateral Trust Trustee pursuant to which the Refunding Bonds are to be issued.

REGISTRATION STATEMENT means the registration statement on Form S-3 under the Securities Act filed by PNM, as the "issuer" and "registrant" of the Refunding Bonds (in each case, for purposes of the Securities Act and the Securities Act Rules), with the SEC (Registration Number 33-56148), together with any amendments thereto, the prospectus constituting a part thereof and the documents incorporated by reference therein.

REGULATIONS shall mean the income tax regulations promulgated under the Code.

RENEWAL TERM shall mean each period during which the Undivided Interest may be leased as permitted by Section 13 of the Lease, or such shorter period as may result from earlier termination as provided in the Lease.

RENT shall mean Basic Rent and Supplemental Rent, collectively.

REPLACEMENT COMPONENT shall have the meaning set forth in Section 8(c) of the Lease.

REQUIRED ALTERATIONS shall have the meaning set forth in Section 8(d) of the Lease.

RESPONSIBLE OFFICER shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his operational responsibility would have knowledge of such matter and the requirements with respect thereto.

SEC shall mean the Securities and Exchange Commission of the United States of America.

SECURED FACILITY BONDS shall mean Bonds issued by Funding Corp under the Refunding Collateral Trust Indenture.

SECURITIES ACT shall mean the Securities Act of 1933, as amended.

SECURITIES ACT RULE shall mean any Rule promulgated by the SEC under the Securities Act.

SECURITIES EXCHANGE ACT shall mean the Securities Exchange Act of 1934, as amended.

SECURITIES EXCHANGE ACT RULE shall mean any Rule promulgated by the SEC under the Securities Exchange Act.

SEVERABLE, when used with respect to any Alteration, shall mean any Alteration which can be readily removed from the Transmission System without materially damaging the Transmission System or materially diminishing or impairing the value, utility or condition which the Transmission System would have had if the applicable Alteration had not been made.

SFAS NO. 13 shall mean Statement of Financial Accounting Standards No. 13, as amended.

SHARE shall mean a percentage equal to the percentage of the Undivided Interest.

**SIGNING DATE means September 8, 1993.**

SPECIAL CASUALTY VALUE, as of the last day of any month on which Special Casualty Value shall be payable under the Lease, shall mean (i) during the Basic Term, the amount determined by multiplying Lessor's Cost by the percentage in the Schedule of Special Casualty Values attached to the Lease (which Special Casualty Values as originally attached to the Lease are based upon the Pricing Assumptions and are subject to adjustment pursuant to Section 3(d) of the Lease) and set forth opposite such day of such month and (ii) during any Renewal Term, the amount determined by amortizing ratably the Fair Market Value of the Undivided Interest as of the day following the last day of the Basic Term in monthly steps over the remaining term of the Easement, as such term may be extended in consequence of a determination of the Maximum Option Period, which amortized amounts shall be set forth in a revised Schedule of Special Casualty Values and attached to the Lease prior to the last day of the Basic Term or the last preceding Renewal Term, as the case may be; PROVIDED, HOWEVER, that Special Casualty Value as of any date shall be, under any circumstances and in any event, an amount at least sufficient to pay in full the aggregate unpaid principal amount of all Notes then Outstanding under the Indenture, together with all accrued and unpaid interest thereon.

SUBSTITUTED LESSEE shall have the meaning set forth in Section 6.8(c) of the Indenture.

SUPPLEMENTAL FINANCING shall have the meaning set forth in Section 8(h) of the Lease.

SUPPLEMENTAL RENT shall have the meaning set forth in Section 3(b) of the Lease.

SUPPORT AGREEMENTS shall mean the Operating Agreement, the Easement and the Assignment of Right of Use, collectively.

TAX shall mean any and all fees (including, without limitation, documentation, recording, license and registration fees), taxes (including, without limitation, income, gross receipts, sales, use, property (personal and real, tangible and intangible), intangibles, excise and stamp taxes), levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever, general or special, ordinary or extraordinary, together with any and all penalties, fines, additions to tax and interest thereon.

TAX COUNSEL shall have the meaning set forth in the Tax Indemnity Agreement.

TAX INDEMNITY AGREEMENT shall mean the Original Tax Indemnity Agreement, as amended

and restated by the Amended and Restated TIA.

TAX LOSS shall have the meaning set forth in the Tax Indemnity Agreement.

THIRD PARTY TRANSACTION shall have the meaning set forth in Section 10(b)(iv) of the Participation Agreement.

TRANSACTION DOCUMENTS shall mean the Participation Agreement, the Lease, the Easement, the Operating Agreement, the Tax Indemnity Agreement, the Trust Agreement, the Indenture, the Notes, the Assignment of Construction Contract, the Instrument of Assignment of Other Construction Contracts, the Refunding Extension Letter, the Bill of Sale, the Omnibus Notice and the Omnibus Receipt, together with all amendments and supplements thereto.

TRANSACTION EXPENSES shall be the sum of all amounts paid or payable pursuant to Section 14 of the Participation Agreement and shall mean and include:

- (i) the reasonable fees of Funding Corp's Counsel, Owner Trustee's Counsel, Indenture Trustee's Counsel and Owner Participant's Counsel for their services rendered in connection with the transactions occurring on the Signing Date and the Refunding Date and all expenses and disbursements incurred by them in connection with such transactions;
- (ii) the reasonable initial fees of the Owner Trustee and the Indenture Trustee, and out-of-pocket expenses of each through the Refunding Date;
- (iii) an amount equal to the product of (A) the aggregate of all costs of issue of the Bonds including, without limitation, the costs of preparing the Financing Documents, filing fees relating to the Registration Statement and the reasonable fees, expenses and disbursements of the Collateral Trust Trustee's counsel and the Underwriter's counsel, the reasonable initial fees of the Collateral Trust Trustee and its out-of-pocket expenses through the Refunding Date, rating agency fees, and the fees and commissions of the Underwriter, multiplied by (B) the Lessor's Share.
- (iv) all stenographic, printing and reproduction costs and expenses incurred in connection with the execution and delivery of the Amended and Restated Participation Agreement and the other Transaction Documents and all other agreements, documents or instruments prepared in connection therewith; and
- (v) the out-of-pocket expenses for travel, computer and related costs of the Owner Participant, but such amount shall not exceed an amount equal to the product obtained by multiplying \$25,000 by the Lessor's Share.

TRANSFER shall mean the transfer, by bill of sale or otherwise, by the Lessor to the Lessee of

all the Lessor's right, title and interest in and to the Undivided Interest on an "AS IS, WHERE IS" basis, free and clear of all Lessor's Liens but otherwise without recourse, representation or warranty, express or implied, including an express disclaimer of representations and warranties in a manner comparable to that set forth in Section 6(b) of the Lease, together with the due assumption by the Lessee of, and the due release of the Lessor from, all the Lessor's obligations and liabilities under the Transaction Documents by instrument or instruments satisfactory in form and substance to the Lessor, and TRANSFERRED shall be construed accordingly.

TRANSFEREE shall have the meaning set forth in Section 16 of the Participation Agreement.

TRANSMISSION SYSTEM shall mean the 216 mile, 345 kV Bulk power transmission line between existing PNM facilities near Bernalillo, New Mexico, and the Blackwater HVDC Station and an interconnection with the transmission system of Southwestern Public Service Company in the area of Clovis/Portales, New Mexico, as more particularly described in the Bill of Sale.

TRANSMISSION SYSTEM COST shall mean the fair market value of the Transmission System, as set forth in, or determined in accordance with, the letter of Marshall and Stevens.

TRUST shall mean the trust created by the Trust Agreement.

TRUST AGREEMENT shall mean the Trust Agreement dated as of January 2, 1985 between the Owner Participant and FNB.

TRUST ESTATE shall have the meaning set forth in Section 2.02 of the Trust Agreement.

TRUST INDENTURE ACT shall mean the Trust Indenture Act of 1939, as amended.

TRUSTEE'S EXPENSES shall mean any and all liabilities, obligations, costs, compensation, fees, expenses and disbursements (including, without limitation, legal fees and expenses) of any kind and nature whatsoever (other than such amounts as are included in Transaction Expenses) which may be imposed on, incurred by or asserted against the Indenture Trustee or any of its agents, servants or personal representatives, in any way relating to or arising out of the Indenture, the Lease Indenture Estate, the Participation Agreement or the Lease, or any document contemplated thereby, or the performance or enforcement of any of the terms thereof, or in any way relating to or arising out of the administration of such Lease Indenture Estate or the action or inaction of the Indenture Trustee under the Indenture; PROVIDED, HOWEVER, that such amounts shall not include any Taxes or any amount expressly excluded from the Lessee's indemnity obligations pursuant to Section 13(b)(ii) of the Participation Agreement.

UCC OR UNIFORM COMMERCIAL CODE shall mean the Uniform Commercial Code as in effect in the Commonwealth of Massachusetts and the State of New Mexico, respectively.

UNCONTROLLABLE FORCES shall have the meaning set forth in the Operating Agreement.

UNDERLYING EASEMENTS shall mean the easements of right-of-way set forth and described in Parts II and III of Exhibit A to the Easement.

**UNDERWRITER means Salomon Brothers Inc.**

UNDERWRITING AGREEMENT means the Underwriting Agreement dated as of September 2, 1993 among Funding Corp, PNM and the Underwriter.

UNDIVIDED INTEREST shall mean a 60% undivided interest of the Owner Trustee in the Transmission System.

UNIFORM SYSTEM OF ACCOUNTS shall mean the Uniform System of Accounts prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Class A and Class B), 18 CFR 101, as revised from time to time.

USER shall have the meaning set forth in Section 2 of the Operating Agreement.

**Exhibit 99.B-3**

File No. 32-480

File No. \_\_\_\_\_

**AMENDMENT, RESTATEMENT AND CONSOLIDATION OF  
FORMS U-7D  
CERTIFICATE PURSUANT TO RULE 7(d)  
PUBLIC UTILITY HOLDING COMPANY ACT OF 1935**

**FILING**

The undersigned certify that this certificate accurately summarizes, as required in the instructions hereto, the information requested as to the lease identified herein and the transactions for the financing thereof.

**PRELIMINARY NOTE**

This filing relates to the amendment and restatement of the lease referenced below in connection with the refinancing of the loan referenced below. On February 5, 1985, Emerson Leasing Ventures and The First National Bank of Boston filed a Form U-7D relating to their beneficial ownership of a 60% undivided interest (the "Undivided Interest") in the Eastern Interconnection Transmission System located in New Mexico. On March 1, 1991, GATX Capital Corporation succeeded to the rights of Emerson Leasing Ventures and on December 26, 1991, GATX Capital Corporation and The First National Bank of Boston filed a Form U-7D with respect to such transfer. On December 31, 1991, DCC Project Finance Two, Inc. ("DCCTWO") succeeded to the rights of GATX Capital Corporation with respect to the Undivided Interest. On January 23, 1992, DCCTwo and The First National Bank of Boston filed an Amendment No. 1 (the "Amendment") to the certificate filed on December 26, 1991 by GATX Capital Corporation and a separate, original Form U-7D (the "DCCTwo Original Filing"). This filing amends, restates and consolidates the Amendment and the DCCTwo Original Filing. Separate certificates pursuant to Rule 7(d) relating to the transmission system have heretofore been and may hereafter be filed by The First National Bank of Boston, in its capacity as owner trustee for the benefit of equity participants in respect of other undivided interest in the transmission system.

1. Lessee public utility company: Public Service Company of New Mexico, Alvarado Square, Albuquerque, Bernalillo County, New Mexico 87158.
2. Date of execution of lease: February 5, 1985, as amended by Lease Supplement No. 1, dated as of September 30, 1985 and Lease Amendment No. 2, dated as of March 9, 1987, as amended and restated by the Amended and Restated Lease dated as of September 1, 1993.
- 2a. Expected date facility will be placed in service: service on February 5, 1985.

3. Regulatory authority which has acted on transaction:

	NAME ----	DATE OF ORDER/APPROVAL -----
	Federal Energy Regulatory Commission	December 31, 1984
	New Mexico Public Utility Commission	December 31, 1984; March 1, 1993
4.	Initial term of lease:	30 years (term of lease at time of original execution thereof).
4a.	Renewal Options:	One or more renewal periods for not less than three and not more than five years, provided that no renewal term shall extend beyond the expiration of the Support Agreement.
5.	Brief description of facility:	216 mile, 345 kV bulk power transmission line.
6.	Manufacturer or supplier:	Various, principal portion constructed by Brown Boveri Corporation.
7.	Cost of facility:	Aggregate cost of facility: \$73,000,000  Cost of Undivided Interest: \$43,800,000
8.	Basic Rent, Initial term:	\$135,651,698

- 8a. Periodic installment:
- |   |                           |
|---|---------------------------|
| From February 5, 1985 until<br>April 1, 1985:   | \$649,349                 |
| From April 1, 1985 until<br>March 9, 1987:      | \$2,210,411, semiannually |
| From March 9, 1987 until<br>September 14, 1993: | \$2,309,878, semiannually |
| September 14, 1993:                             | \$2,346,989               |
| October 1, 1993:                                | \$0                       |
| April 1, 1994:                                  | \$1,735,761               |
| October 1, 1994:                                | \$2,274,005               |
| From and after April 1, 1995:                   | \$2,243,560, semiannually |
9. Holder of legal title to facility: The First National Bank of  
Boston, as Owner Trustee  
Address: 150 Royall Street  
Canton, Massachusetts 02021

10. Holder\* of beneficial interests:

NAME AND ADDRESS -----	AMOUNT INVESTED -----	PERCENT OF EQUITY -----
DCC Project Finance Two, Inc. 1900 Indian Wood Circle Maumee, Ohio 43537  -----	\$6,975,000	100%

\* Separate certificates have been and may be filed in accordance with Rule 7(d) identifying transactions involving other beneficial interests in the transmission system. See Preliminary Note.

11. If part or all of the financing is supplied by loan on which only principal and interest is payable, state:

**NONRECOURSE PROMISSORY NOTES,  
DUE 1995 AND 2012, REFUNDING SERIES**

Amount borrowed: \$31,096,000

Interest rate: Due 1995: 7.00%  
Due 2012: 10.25%

Number of lenders: At the time of the refinancing, the  
Owner Trustee borrowed from one lender.

Terms of repayment: See attached specimens of the notes,  
which are attached hereto as Exhibits A  
and B, respectively, and incorporated  
herein.

Date of execution: September 14, 1993

*HOLDER OF LEGAL TITLE: THE FIRST NATIONAL BANK OF BOSTON, as  
Owner Trustee*

*By: /s/ Donna Germano*

-----  
*Donna Germano  
Account Manager*

*HOLDER OF BENEFICIAL INTEREST: DCC PROJECT FINANCE TWO, INC.*

*By: /s/ Paul Bishop*

-----  
*Paul Bishop  
Vice President*

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT**

**NONRECOURSE PROMISSORY NOTE, REFUNDING SERIES  
(DUE OCTOBER 1, 1995)**

ISSUED AT: New York, New York

ISSUE DATE: September 14, 1993

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity but solely as Owner Trustee (OWNER TRUSTEE), under a Trust Agreement dated as of January 2, 1985 with DCC Project Finance Two, Inc. (the OWNER PARTICIPANT), hereby promises to pay to EIP REFUNDING CORPORATION, or registered assigns, the principal sum of \$1,342,000 on October 1, 1995 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Refunding Note until due and payable, in arrears, at the rate of 7.00% per annum (the NOTE RATE). Payments of principal installments of this Refunding Note shall be made in the "principal amount payable" and on the "payment dates" specified in Schedule 1 hereto. Payments of accrued interest on this Refunding Note shall be made on April 1 and October 1 in each year, commencing April 1, 1994, to and including the last "payment date" specified in Schedule 1 hereto.

Capitalized terms used in this Refunding Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest, shall be paid, on demand, from the due date thereof at the rate per annum equal to the Note Rate plus 1% (computed on the basis of a 360-day year of twelve 30-day months) for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Refunding Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Amended and Restated Trust Indenture and Security Agreement dated as of September 1, 1993, as at any time heretofore or hereafter amended or supplemented in accordance with the provisions thereof (the INDENTURE), between the Owner Trustee and Chemical Bank, as Trustee (the INDENTURE TRUSTEE), shall be made only from the Lease Indenture Estate and neither the Trust Estate nor the Indenture Trustee shall have any obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the

Indenture. The Holder hereof, by its acceptance of this Refunding Note, agrees that such Holder will look solely to the Lease Indenture Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Refunding Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Refunding Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Refunding Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Refunding Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Refunding Note unless and until all such notations have been duly made.

This Refunding Note is one of the Refunding Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Refunding Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Refunding Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Refunding Note.

This Refunding Note is subject to prepayment as provided in Sections 5.2 and 5.3 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment.

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Refunding Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior

to the maturity of this Refunding Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Refunding Note when due in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Refunding Note is registrable, as provided in the Indenture, upon surrender of this Refunding Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Refunding Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Refunding Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Refunding Note and for all other purposes whatsoever, whether or not this Refunding Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary; PROVIDED, HOWEVER, that each of the Owner Trustee and the Indenture Trustee (i) acknowledge that EIP Refunding Corporation shall assign and transfer this Refunding Note to Chemical Bank as trustee under the Refunding Collateral Trust Indenture referenced in Appendix A to the Indenture and, (ii) upon such transfer, such Trustee shall be the owner and holder of this Refunding Note for all purposes of the Indenture.

**THIS REFUNDING NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN**

**ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the Owner Trustee has caused this Refunding Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as OWNER TRUSTEE under a Trust Agreement dated as of January 2, 1985 with the within-mentioned Owner Participant

By

Name: Donna Germano Title: Account Manager

This Note is one of the Notes described in the within-mentioned Indenture.

**CHEMICAL BANK,  
as INDENTURE TRUSTEE**

By

**Authorized Officer**

**SCHEDULE 1  
TO THE REFUNDING NOTE  
(DUE OCTOBER 1, 1995)**

**Schedule of Principal Amortization**

**\$1,342,000 PRINCIPAL AMOUNT**

Payment Date -----	Principal Amount Payable -----	Principal Amount Paid -----
October 1, 1994	\$613,000	
April 1, 1995	692,000	
October 1, 1995	37,000	

## **ASSIGNMENT**

Date: September 14, 1993

For value received, EIP REFUNDING CORPORATION (EIP REFUNDING) hereby sells, assigns and transfers to CHEMICAL BANK, as Collateral Trust Trustee pursuant to the Refunding Collateral Trust Indenture dated as of September 1, 1993, as heretofore amended and supplemented, among EIP Refunding, Public Service Company of New Mexico and said Collateral Trust Trustee, without recourse, the Refunding Note to which this Assignment is annexed and all rights thereunder.

**EIP REFUNDING CORPORATION**

By

**PRESIDENT**

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT**

**NONRECOURSE PROMISSORY NOTE, REFUNDING SERIES  
(DUE APRIL 1, 2012)**

ISSUED AT: New York, New York

ISSUE DATE: September 14, 1993

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity but solely as Owner Trustee (OWNER TRUSTEE), under a Trust Agreement dated as of January 2, 1985 with DCC Project Finance Two, Inc. (the OWNER PARTICIPANT), hereby promises to pay to EIP REFUNDING CORPORATION, or registered assigns, the principal sum of \$29,754,000 on April 1, 2012 together with interest (computed on the basis of a 360-day year of twelve 30-day months) on the aggregate amount of such principal sum remaining unpaid from time to time from the date of this Refunding Note until due and payable, in arrears, at the rate of 10.25% per annum (the NOTE RATE). Payments of principal installments of this Refunding Note shall be made in the "principal amount payable" and on the "payment dates" specified in Schedule 1 hereto. Payments of accrued interest on this Refunding Note shall be made on April 1 and October 1 in each year, commencing April 1, 1994, to and including the last "payment date" specified in Schedule 1 hereto.

Capitalized terms used in this Refunding Note which are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture (as hereinafter defined).

Interest on any overdue principal and premium, if any, and (to the extent permitted by applicable law) any overdue interest, shall be paid, on demand, from the due date thereof at the rate per annum equal to the Note Rate plus 1% (computed on the basis of a 360-day year of twelve 30-day months) for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Refunding Note is not a Business Day, then payment thereof may be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

All payments of principal, premium, if any, and interest to be made by the Owner Trustee hereunder and under the Amended and Restated Trust Indenture and Security Agreement dated as of September 1, 1993, as at any time heretofore or hereafter amended or supplemented in accordance with the provisions thereof (the INDENTURE), between the Owner Trustee and Chemical Bank, as Trustee (the INDENTURE TRUSTEE), shall be made only from the Lease Indenture Estate and neither the Trust Estate nor the Indenture Trustee shall have any obligation for the payment thereof

except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Lease Indenture Estate to make such payments in accordance with the terms of Article V of the Indenture. The Holder hereof, by its acceptance of this Refunding Note, agrees that such Holder will look solely to the Lease Indenture Estate and the income and proceeds from the Lease Indenture Estate to the extent available for distribution to the Holder hereof as above provided, and that neither the Owner Participant nor, except as expressly provided in the Indenture, the Owner Trustee nor the Indenture Trustee is or shall be personally liable to the Holder hereof for any amounts payable under this Refunding Note or for any performance to be rendered under the Indenture or any other Transaction Document or for any liability thereunder

Principal, premium, if any, and interest shall be payable, in the manner provided in the Indenture, on presentment of this Refunding Note at the Indenture Trustee Office, or as otherwise provided in the Indenture.

The Holder hereof, by its acceptance of this Refunding Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 3.11 of the Indenture. The Holder of this Refunding Note agrees, by its acceptance hereof, that it will duly note by appropriate means all payments of principal or interest made hereon and that it will not in any event transfer or otherwise dispose of this Refunding Note unless and until all such notations have been duly made.

This Refunding Note is one of the Refunding Notes referred to in the Indenture. The Indenture permits the issuance of additional series of Notes, as provided in Section 3.5 of the Indenture, and the several series may be for varying aggregate principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Trustee included in the Lease Indenture Estate are pledged to the Indenture Trustee to the extent provided in the Indenture as security for the payment of the principal of and premium, if any, and interest on this Refunding Note and all other Notes issued and outstanding from time to time under the Indenture. Reference is hereby made to the Indenture for a statement of the rights of the Holders of, and the nature and extent of the security for, this Refunding Note and of the rights of, and the nature and extent of the security for, the Holders of the other Notes and of certain rights of the Owner Trustee, as well as for a statement of the terms and conditions of the trust created by the Indenture, to all of which terms and conditions the Holder hereof agrees by its acceptance of this Refunding Note.

This Refunding Note is subject to prepayment as provided in Sections 5.2 and 5.3 of the Indenture, such prepayment being without premium but including accrued interest to the date of prepayment.

In the event that the Lease referenced in Appendix A to the Indenture shall be terminated pursuant to Section 14 thereof as a result of the exercise by the Lessee of its option to purchase the Undivided Interest, this Refunding Note shall be prepaid in full on the date of such

purchase at the following prepayment prices, plus accrued interest to the date of such prepayment:

Date	Prepayment Price	Date	Prepayment Price
----	-----	----	-----
April 1, 2000.....	106.63%	October 1, 2006....	102.41%
October 1, 2000.....	106.03	April 1, 2007.....	102.41
April 1, 2001.....	106.03	October 1, 2007....	101.81
October 1, 2001.....	105.43	April 1, 2008.....	101.81
April 1, 2002.....	105.43	October 1, 2008....	101.21
October 1, 2002.....	104.82	April 1, 2009.....	101.21
April 1, 2003.....	104.82	October 1, 2009....	100.60
October 1, 2003.....	104.22	April 1, 2010.....	100.60
April 1, 2004.....	104.22	October 1, 2010....	100.00
October 1, 2004.....	103.62	April 1, 2011.....	100.00
April 1, 2005.....	103.62	October 1, 2011....	100.00
October 1, 2005.....	103.01	April 1, 2012.....	100.00
April 1, 2006.....	103.01		

In case an Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Refunding Note and any other Notes, together with all accrued but unpaid interest thereon, may, subject to certain rights of the Owner Trustee or the Owner Participant contained or referred to in the Indenture, be declared or may become due and payable in the manner and with the effect provided in the Indenture.

The lien upon the Lease Indenture Estate is subject to being legally discharged prior to the maturity of this Refunding Note upon the deposit with the Indenture Trustee of cash or certain securities sufficient to pay this Refunding Note when due in accordance with the terms of the Indenture.

There shall be maintained at the Indenture Trustee Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Indenture. The transfer of this Refunding Note is registrable, as provided in the Indenture, upon surrender of this Refunding Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered Holder hereof, together with the amount of any applicable transfer taxes. Prior to due presentment for registration of transfer of this Refunding Note, the Owner Trustee and the Indenture Trustee may treat the person in whose name this Refunding Note is registered as the owner hereof for the purpose of receiving payments of principal of and premium, if any, and interest on this Refunding Note and for all other purposes whatsoever, whether or not this Refunding Note be overdue, and neither the Owner Trustee nor the Indenture Trustee shall be affected by notice to the contrary; PROVIDED, HOWEVER, that each of the Owner Trustee and the Indenture Trustee acknowledge that (i) EIP Refunding Corporation shall assign and

transfer this Refunding Note to Chemical Bank as trustee under the Refunding Collateral Trust Indenture referenced in Appendix A to the Indenture and, (ii) upon such transfer, such Trustee shall be the owner of this Refunding Note for all purposes of the Indenture.

**THIS REFUNDING NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE  
WITH, THE LAWS OF THE STATE OF NEW YORK.**

IN WITNESS WHEREOF, the Owner Trustee has caused this Refunding Note to be duly executed as of the date hereof.

THE FIRST NATIONAL BANK OF BOSTON, not in its individual capacity, but solely as OWNER TRUSTEE under a Trust Agreement dated as of January 2, 1985 with the within-mentioned Owner Participant

By  
Name:

Title:

This Note is one of the Notes described in the within-mentioned Indenture.

**CHEMICAL BANK,  
as INDENTURE TRUSTEE**

By

**Authorized Officer**

**SCHEDULE 1  
TO THE REFUNDING NOTE  
(DUE APRIL 1, 2012)**

**Schedule of Principal Amortization**

**\$29,754,000 PRINCIPAL AMOUNT**

Payment Date -----	Principal Amount Payable -----	Principal Amount Paid -----
October 1, 1995	\$ 0	
April 1, 1996	0	
October 1, 1996	0	
April 1, 1997	0	
October 1, 1997	0	
April 1, 1998	0	
October 1, 1998	0	
April 1, 1999	0	
October 1, 1999	0	
April 1, 2000	0	
October 1, 2000	410,000	
April 1, 2001	739,000	
October 1, 2001	777,000	
April 1, 2002	817,000	
October 1, 2002	859,000	
April 1, 2003	903,000	
October 1, 2003	949,000	
April 1, 2004	998,000	
October 1, 2004	1,049,000	
April 1, 2005	1,102,000	
October 1, 2005	1,159,000	
April 1, 2006	1,218,000	
October 1, 2006	1,281,000	
April 1, 2007	1,346,000	
October 1, 2007	1,415,000	
April 1, 2008	1,488,000	
October 1, 2008	1,564,000	
April 1, 2009	1,644,000	
October 1, 2009	1,729,000	
April 1, 2010	1,817,000	
October 1, 2010	1,910,000	

April 1, 2011	2,008,000
October 1, 2011	2,111,000
April 1, 2012	461,000

**ASSIGNMENT**

Date: September 14, 1993

For value received, EIP REFUNDING CORPORATION (EIP REFUNDING) hereby sells, assigns and transfers to CHEMICAL BANK, as Collateral Trust Trustee pursuant to the Refunding Collateral Trust Indenture dated as of September 1, 1993, as heretofore amended and supplemented, among EIP Refunding, Public Service Company of New Mexico and said Collateral Trust Trustee, without recourse, the Refunding Note to which this Assignment is annexed and all rights thereunder.

**EIP REFUNDING CORPORATION**

By

**PRESIDENT**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

Exhibit 99.D-1

APPLICATION OF PUBLIC SERVICE COMPANY )  
 OF NEW MEXICO FOR APPROVALS )  
 RELATING TO ITS PURCHASE OF 100% )  
 OF THE ISSUED AND OUTSTANDING STOCK )  
 OF DCC PROJECT FINANCE TWO, INC., THE )  
 OWNER PARTICIPANT WITH RESPECT TO A )  
 60% UNDIVIDED INTEREST IN THE EASTERN )  
 INTERCONNECTION PROJECT, INCLUDING )  
 APPROVAL OF A GENERAL DIVERSIFICATION )  
 PLAN AND OTHER REQUIRED APPROVALS, )  
 )  
 PUBLIC SERVICE COMPANY OF NEW MEXICO, )  
 )  
 APPLICANT. )

UTILITY CASE NO. \_\_\_\_\_

**APPLICATION**

Public Service Company of New Mexico ("PNM"), through its undersigned counsel, hereby requests that the Commission (i) approve the General Diversification Plan submitted with this Application pursuant to NMAC 17.6.450.10; (ii) approve PNM's request to purchase 100% of the issued and outstanding stock of DCC Project Finance Two, Inc. ("DCC II"), the owner participant of a 60% undivided interest in the Eastern Interconnection Project ("EIP"); (iii) approve PNM's request to amend the DCC II lease to allow PNM to shorten the Early Buyout Option ("EBO") notice period in the lease to as little as two days and to eliminate the requirement that fair market value be considered in setting the price for the exercise of the EBO; (iv) approve PNM's request to allow it to exercise the EBO and acquire legal title to the EIP assets beneficially owned by DCC II; (v) approve PNM's proposed accounting and ratemaking treatment of this transaction; (vi) consider this Application on an expedited basis, such that a decision would be rendered on this Application on or before March 12, 2002; and (vii) grant such other approvals as the Commission deems necessary and appropriate.

In support of its Application, PNM states as follows:

1. The EIP is a 216-mile, 345kV transmission line with related facilities interconnecting PNM's transmission facilities with those of Southwestern Public Service Company. The transmission line connects PNM's bulk power switching station north of Bernalillo, New Mexico with a high voltage DC converter station, called the Blackwater Station, located in the Clovis-Portales area of eastern New Mexico. The EIP also includes associated switching equipment and the Blackwater Station DC converter facilities.
2. In 1984 in Docket No. 1930, the Commission approved PNM's entry into a series of sale and leaseback transactions relating to the EIP. Pursuant to that grant of authority, PNM sold the EIP to certain institutional investors (Emerson Leasing Ventures, Inc. with a 60% undivided interest and General Foods Credit Corporation with a 40% undivided interest).(1) The institutional investors formed two separate trusts for the purpose of holding title to each of their undivided interests in the EIP.(2) In order to finance the purchase of the EIP, the owner trustee executed notes payable to EIP Refunding Corporation, which issued publicly offered secured facility bonds.
3. PNM and the owner trustee also entered into two 30-year leases, where PNM is the operator of the transmission assets and pays periodic lease payments to the owner trustee. The periodic lease payments cover debt service on the notes between the owner trustee and EIP Refunding Corporation and provide an equity return to the owner participants.
4. PNM has entered into a Purchase Agreement with Dana Commercial Credit Corporation ("DCCC"), the parent company of DCC II, effective January 15, 2002, to purchase 100% of the issued and outstanding stock of DCC II, the current owner participant of a 60%

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(1) Dana Commercial Credit Corporation has subsequently acquired the Emerson Leasing Ventures, Inc. interest, and holds that interest through its stock ownership of DCC II, which is the current owner participant.

(2) The current trustee of both of the owner trusts is State Street Bank and Trust.

undivided interest in the EIP, for a total cash purchase price of \$5.672 million. In addition, although PNM, as the shareholder of DCC II, will not be directly liable on the owner trustee notes after the transfer of shares to PNM. Those notes will still constitute obligations totaling \$27.828 million, which are secured by the EIP assets. The Purchase Agreement is contingent on the timely receipt of certain regulatory approvals, including this Commission's, enabling closing of the transaction on or before March 20, 2002. A copy of the Purchase Agreement is attached to the Direct Testimony of W. Kirk Meyer as Exhibit \_\_\_ (WKM-3), filed with this Application.

5. As well as resulting in the acquisition by PNM of 100% of the shares in DCC II, which is a Class II transaction as defined in NMSA 1978, Section 62-3-3(K)(2) (1998), the proposed transaction would result in PNM indirectly acquiring 100% of DCC II's Beneficial Interests in the owner trust that holds title to an undivided 60% interest in the leased assets.
6. The lease also provides that PNM may acquire the legal title to the EIP transmission assets through the exercise of the EBO. PNM intends to exercise the EBO by April 1, 2002, or in any event, no later than a year after acquiring the stock of DCC II. Exercise of the EBO would result in PNM holding legal title to the 60% undivided interest in the EIP assets now held in trust for DCC II.
7. Currently, the lease between the owner trust and PNM provides for a two-year notice period prior to exercise of the EBO. Because PNM intends to exercise the EBO as soon as possible, PNM seeks authority from the Commission to modify the lease agreement after PNM's acquisition of the DCC II stock to provide for a shortened notice period for the exercise of the EBO. PNM seeks to shorten the notification period to a period of as little as two days.
8. The original lease also provides that upon the exercise of the EBO, the purchase price for the underlying assets will be the greater of fair market value or an amount determined

according to a schedule set out in the lease. PNM seeks to eliminate the requirement that fair market value of the underlying assets be determined in order to exercise the EBO. Since PNM will be the holder of all shares in DCC II at that point in time, there is no real benefit in requiring PNM to pay DCC II the fair market value of the underlying assets in order to exercise the EBO.

9. PNM currently treats the lease as an operating lease for accounting purposes. The debt relating to the lease has therefore been off balance sheet. However, for financial reporting purposes and for financial rating purposes, PNM has always disclosed the existence of the leases, and they have been considered by financial rating agencies. The acquisition of the DCC II shares will not result in any change to PNM's financial position with respect to financial ratings.

10. As a result of the purchase of the stock of DCC II by PNM, GAAP will require that the related lease debt, in the approximate amount of \$28 million, as well as the trust assets, be carried on PNM's consolidated balance sheet. Because of the prior disclosure of this transaction, as described above, the stock acquisition is not expected to affect PNM's financial ratings.

11. Upon exercise of the EBO, the debt shown on PNM's balance sheet as a result of this proposed transaction will be cancelled.

12. PNM submits its General Diversification Plan ("GDP"), attached to the Direct Testimony of W. Kirk Meyer as Exhibit \_\_\_\_ (WKM-4), for the Commission's approval pursuant to NMAC 17.6.450.10. The GDP reflects the proposed transactions.

13. From an accounting standpoint, PNM's acquisition of DCC II's interest in the EIP assets will result in an acquisition adjustment of approximately \$11.855 million, the difference between the net book value of the EIP assets (approximately \$22.295 million) and the amount

paid for the DCC II stock, including the lessor debt and transaction costs (a total of \$34.15 million).

14. For ratemaking purposes, PNM requests that the Commission approve reclassification of the acquisition adjustment amount as a regulatory asset, the cost of which would be recovered through rates, but not as a result of directly including the capital costs of ownership of the 60% of the EIP that PNM will acquire in the transaction in rate base.

15. Upon approval by the Commission of such treatment, PNM would reclassify the acquisition adjustment to a regulatory asset, according to Federal Energy Regulatory ("FERC") accounting principles. This reclassification would not impact the economics of the transaction, as described in greater detail in the Direct Testimony of Thomas G. Sategna, filed with this Application.

16. PNM proposes to impute the value of the lease for ratemaking purposes and will not include the capital costs associated with owning the asset in cost of service. Therefore, there would be no impact on ratepayers associated with this transaction.

17. No write-down of the regulatory asset would be required pursuant to the Financial Accounting Standards Board's Statement of Financial Accounting Standards No. 90, so long as PNM is assured that it is not probable that part of the cost of the plant will be disallowed for ratemaking purposes. PNM's proposal to impute the value of the lease for ratemaking purposes would not result in a write-down.

18. The Purchase Agreement between PNM and DCC II includes a number of closing conditions, including Commission and other regulatory approvals of the proposed transaction described in this Application before March 20, 2002. Furthermore, DCCC, the current holder of the shares of DCC II that PNM proposes to acquire, is now in the process of divesting its lease

portfolio. DCCC has indicated that it is unwilling to extend the date for closing of the proposed stock acquisition, because it has another ready buyer for the EIP lease interest. If PNM is unable to meet DCCC's schedule, PNM may never have another opportunity to acquire title to the EIP assets at such an advantageous price. Therefore, PNM requests that the Commission issue its decision on or before March 12, 2002.

19. In Case No. 2444, the Commission indicated under what conditions expedited approval of this type of Application could be justified. In the Final Order Approving Recommended Decision, the Commission suggested that in requesting expedited approval, PNM should give an explanation of why such treatment is necessary, PNM's desired schedule, and any consequences of failing to meet that schedule. PNM has set forth that information in para. 18, above, and in the Direct Testimony of W. Kirk Meyer, filed with this Application.

20. PNM requests that the Commission consider this Application on an expedited basis and approve the proposed transactions in order to enable PNM to close the proposed transaction no later than March 20, 2002. PNM commits to work with other interested parties to assist in an expedited process for this Application.

21. PNM's requests in this Application are not without precedent. The stock transaction proposed by PNM in this Application is similar to the transaction approved by the Commission in Case No. 2444, PNM's acquisition of the Burnham Leasing Corporation ("BLC") beneficial interest in the Palo Verde Nuclear Generating Station ("PVNGS") leases. Further, in Commission Case No. 2700, PNM was authorized to acquire lease debt related to its PVNGS and EIP sale and leaseback transactions. That approval expired in 1999.

22. PNM is simultaneously seeking appropriate approvals from the Federal Energy Regulatory Commission and from the Securities and Exchange Commission in order to

consummate the proposed transactions. Copies of the relevant applications are attached as Exhibits A and B.

23. PNM submits the Direct Testimonies of W. Kirk Meyer and Thomas G. Sategna in support of this Application.

24. PNM's exact name and address is:

Public Service Company of New Mexico Alvarado Square  
Albuquerque, New Mexico 87158

25. The name and address of PNM's attorney and other representative are:

Carol Smith Rising  
Regulatory Counsel  
Public Service Company of  
New Mexico  
Alvarado Square, MS 0806  
Albuquerque, New Mexico 87158

Charles Gunter  
Regulatory Project Manager  
Public Service Company of  
New Mexico  
Alvarado Square, MS 0910  
Albuquerque, New Mexico 87158

Therefore, PNM requests that the Commission:

- a. Consider this Application on an expedited basis, such that a decision is rendered by the Commission by March 12, 2002;
- b. Approve the General Diversification Plan, attached to the Direct Testimony of W. Kirk Meyer as Exhibit \_\_\_\_ (WKM-4), pursuant to NMAC 17.6.450.10;
- c. Approve PNM's request to purchase 100% of the issued and outstanding stock of DCC II;
- d. Approve PNM's request to amend the DCC II lease to allow PNM to shorten the notice period for the exercise of the EBO to as little as two days and to remove the requirement that fair market value be considered in setting the price for exercise of the EBO;

e. Approve PNM's request to allow it to exercise the EBO and acquire the assets held by DCC II, pursuant to NMSA 1978, Section 62-6-12(A) (4) (1989);

f. Approve PNM's proposed accounting and ratemaking treatment of this transaction in a form which does not result in a write-off for PNM under SFAS-90; and

g. Grant such other necessary and appropriate approvals, as the Commission deems appropriate.

Respectfully submitted this 22nd day of January 2002.

**PUBLIC SERVICE COMPANY OF  
NEW MEXICO**

*By: /s/ Carol Smith Rising*

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*Carol Smith Rising  
Regulatory Counsel  
Public Service Company of  
New Mexico  
Alvarado Square, MS 0806  
Albuquerque, New Mexico 87158  
(505) 241-4910  
(505) 241-6268 (facsimile)*

Attorney for Applicant Public Service Company of New Mexico

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of ) Docket No. EC02-\_\_\_\_-000 New Mexico

**APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO  
FOR APPROVAL OF ACQUISITION OF  
JURISDICTIONAL FACILITIES**

Pursuant to Section 203 of the Federal Power Act ("FPA"), 16 U.S.C. Section 824b (1994), and Part 33 of the Regulations of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. Part 33 (2001), Public Service Company of New Mexico ("PNM") hereby requests Commission approval for the reacquisition by PNM of legal title to a portion of the Eastern Interconnection Project ("EIP"), a 216 mile, 345 kV transmission line and related facilities interconnecting PNM's transmission facilities with those of Southwestern Public Service Company ("SPS"). In 1985, at the time of the construction of the EIP by PNM, PNM entered into sale and lease-back transactions with Emerson Leasing Ventures, Inc. ("Emerson") and General Foods Credit Corporation ("GF"). PNM has operated the EIP facilities as lessee under leases with a trustee, which holds legal title on behalf of Emerson and GF, since the date of commercial operation of the facilities in 1985. PNM now seeks to reacquire title to a portion of these transmission facilities and to terminate the lease relating to that portion of the facilities in accordance with its terms through a transaction fully described in Exhibit H (the "Proposed Transaction"). For the reasons set forth below, PNM requests that the Commission find the Proposed Transaction to be consistent with the public interest. Because the Proposed Transaction will not involve any consolidation of separate companies and does not involve a merger of any new facilities with those already operated by PNM, PNM requests a shortened notice

period of less than 60 days to enable the Commission to issue an order by March 12, 2002 so that the Proposed Transaction can be consummated in accordance with the terms agreed upon by the owner/lessor and PNM. Moreover, prompt approval is required in order for PNM to engage in this beneficial transaction, which will not be available to PNM after the proposed closing date.

## I. INTRODUCTION AND OVERVIEW OF TRANSACTION

The present application requests approval, to the extent required, for a reacquisition by PNM of legal title to a portion of the EIP facilities and the termination of the lease for that portion of the facilities. The EIP consists of a 216 mile, 345 kV transmission line between PNM's bulk power switching station north of Bernalillo, New Mexico and a high voltage DC converter station, called the Blackwater Station, located in the Clovis-Portales area of eastern New Mexico, plus associated switching equipment and the Blackwater Station D.C. converter facilities. The EIP was constructed in 1984-1985 to interconnect PNM's transmission system to that of SPS. Prior to commercial operation of the EIP in 1985, PNM entered into leveraged lease financing of the EIP. PNM sold the EIP to certain institutional investors, Emerson and GF (the "Owner Participants"),(1) which formed two separate trusts with The First National Bank of Boston (the "Owner Trustee")(2) for the purpose of holding title to each of their undivided interests in the EIP. The Owner Trustee thereafter entered into two 30 year lease agreements with PNM wherein PNM makes two semiannual payments that cover the debt service on the amount borrowed to finance the Owner Participants' purchase of the EIP from

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(1) Emerson acquired a 60 percent interest in the EIP and GF acquired the remaining 40 percent interest. DCC Project Finance Two, Inc. ("DPFT") is the successor in interest to Emerson.

(2) State Street Bank and Trust Company subsequently has replaced The First National Bank of Boston as the Owner Trustee.

PNM and an equity return to the Owner Participants.(3) These sale and lease-back transactions were approved by the Commission in PUBLIC SERVICE COMPANY OF NEW MEXICO, 29 FERC Paragraph 61,387 (1984).

As part of the approval of the sale and lease-back transactions, the Commission found that neither the Owner Participants nor the Owner Trustee would constitute "public utilities," as defined in section 201(e) of the FPA as a consequence of holding title to the EIP because they would not operate or have a voice in the operation of the EIP and are not entities in the business of producing, selling or transmitting electric power. 29 FERC at 61,825-26.

Since 1985, PNM has operated the EIP and treated the EIP as part of its integrated transmission system. However, the 60 percent ownership interest formerly held by Emerson was acquired by and is now held by DPFT and DPFT's parent now desires to sell its ownership interests in the EIP to PNM. As applied to DPFT's portion of the EIP, after acquisition of DPFT, PNM will exercise its EBO and terminate the lease.

## II. APPLICATION FOR APPROVAL OF ACQUISITION OF FACILITIES

Section 203 of the FPA and part 33.1 of the Commission's regulations require that an application for approval be made to the Commission before a public utility may "merge or consolidate, directly or indirectly, facilities subject to Commission jurisdiction with those of any other person, if such facilities are of a value in excess of \$50,000, including the acquisition of electric facilities used for the transmission or sale at wholesale of electric energy in interstate commerce which,

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(3) As part of the lease transaction, PNM retained an option to renew the lease at 50 percent of the original rent as well as an option to purchase the EIP at its fair market value at the end of the original lease or any renewal period. In addition, the lease permitted PNM, with two years' notice, to exercise an Early Buyout Option ("EBO") after thirty semiannual payments have been made under the lease. PNM intends to exercise this EBO pursuant to the terms of the DPFT lease. After PNM has acquired all of the outstanding shares of DPFT in the Proposed Transaction, PNM also intends to shorten the notice period for consummation of the EBO to as little as two days. The Commission determined that the lease between PNM and the Owner Trustee was not jurisdictional because neither the Owner Participants nor the Owner Trustee were public utilities. PUBLIC SERVICE COMPANY OF NEW MEXICO, 29 FERC Paragraph 61,387 (1984).

except for ownership, would be subject to the Commission's jurisdiction." 18 C.F.R. Section 33.1(a) (2001). As stated in Part I, PNM has operated the facilities concerned as part of its integrated transmission system since 1985 under the lease agreement, and thus there will be no effective change of control over the facilities concerned as a result of the Proposed Transaction. However, the reacquisition of legal title to the EIP may constitute an "acquisition of electric facilities used for the transmission . . . of electric energy in interstate commerce, which except for ownership, would be subject to the Commission's jurisdiction." Id. Further, upon termination of the lease applied to the portion of the EIP held by DPFT, two different legal estates in the assets will be merged. The EIP facilities are valued at more than \$50,000, and thus fall within the size requirement of section 203. Accordingly, to the extent required by the Commission's regulations and statutory requirements of the FPA, PNM requests Commission approval for the Proposed Transaction.

### III. INFORMATION REQUIRED BY 18 C.F.R. PART 33 JUSTIFYING THE PROPOSED REORGANIZATION

#### A. INFORMATION REQUIRED BY SECTION 33.2 OF THE COMMISSION'S REGULATIONS

##### 1. THE EXACT BUSINESS NAMES AND ADDRESSES OF PRINCIPAL BUSINESS OFFICES. (18 C.F.R. SECTION 33.2(a))

The exact name and principal business address of the applicant is:

Public Service Company of New Mexico Alvarado Square -- MS-0920 Albuquerque, NM 87158

##### 2. PERSONS AUTHORIZED TO RECEIVE NOTICES AND COMMUNICATIONS. (18 C.F.R. SECTION 33.2(b))

Notices and communications in respect to this application may be sent to:

For PNM:

Mr. Roger D. Eklund  
Public Service Company of New Mexico  
Alvarado Square (MS-0920)  
Albuquerque, New Mexico 87158  
Telephone: (505) 241-2808  
Facsimile: (505) 241-2386  
E-mail: reklund@pnm.com

Counsel:

John T. Stough, Jr.  
Geo. F. Hobday, Jr.  
Hogan & Hartson LLP  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 637-5765  
Facsimile: (202) 637-5910  
E-mail: jtstough@hhlaw.com

3. DESCRIPTION OF THE APPLICANT. (18 C.F.R. SECTION 33.2(c))

See Exhibits A through F attached hereto. The Proposed Transaction will not affect the corporate structure of PNM or any affiliate of PNM. Neither DPFT nor its parent is a public utility. Accordingly, PNM requests waiver of the requirement in section 33.2(c)(3) of the Commission's Regulations to submit organizational charts showing the applicant's current and proposed post-transaction corporate structures. Because the authorization sought by this application relates to a single discrete transmission facility, PNM requests waiver of that part of Section 33.2(c)(4) of the regulations requiring a description of joint ventures, strategic alliances, tolling arrangements, or other business arrangements as specified for Exhibit D.

4. DESCRIPTION OF JURISDICTIONAL FACILITIES OWNED, OPERATED, OR CONTROLLED BY THE APPLICANT, ITS PARENT COMPANIES, SUBSIDIARIES, AFFILIATES, AND ASSOCIATE COMPANIES. (18 C.F.R. SECTION 33.2(d))

See Exhibit G attached hereto.

5. NARRATIVE DESCRIPTION OF THE PROPOSED TRANSACTION FOR WHICH COMMISSION AUTHORIZATION IS REQUESTED. (18 C.F.R. SECTION 33.2(e))

See Exhibit H attached hereto.

6. ALL CONTRACTS RELATED TO THE PROPOSED TRANSACTION TOGETHER WITH COPIES OF ALL OTHER WRITTEN INSTRUMENTS ENTERED INTO OR PROPOSED TO BE ENTERED INTO BY THE PARTIES TO THE TRANSACTION. (18 C.F.R. SECTION 33.2(f))

See Exhibit I attached hereto. Certain of the contracts contained in Exhibit I are not in final form and are therefore not executed. PNM represents, however, that to the best of its knowledge, the final agreements will reflect the terms and conditions contained in the draft agreements in all material respects.

7. STATEMENT EXPLAINING THE FACTS RELIED UPON TO DEMONSTRATE THAT THE PROPOSED TRANSACTION IS CONSISTENT WITH THE PUBLIC INTEREST. (18 C.F.R. SECTION 33.2(g))

Section 203 requires the Commission to approve the disposition of jurisdictional facilities if the disposition is "consistent with the public interest." In its MERGER POLICY STATEMENT,<sup>(4)</sup> the Commission established a three-part test for evaluating whether a proposed merger or acquisition is consistent with the public interest. This test subsequently has been used to measure the public interest in other dispositions of jurisdictional assets as well. Under this test, the Commission examines the effects of the transaction on competition, on wholesale rates, and on the effectiveness of regulation by state and federal agencies.

Under the Commission's test, PNM submits that the Proposed Transaction is consistent with the public interest. The proposed change in the ownership of the EIP and associated equipment presents no market power or other competitive concerns. Because PNM already leases these facilities and exercises complete control over their operation, the change in title will not result in any change in market power. No generation market share is affected as a result of the transfer. A generation market power analysis is unduly burdensome and

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(4) Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act, Order No. 592, III FERC Stats. & Regs. [Regs. Preambles] Paragraph 31,044 (1996), order on reconsideration, 79 FERC Paragraph 61,321 (1997) ("Merger Policy Statement").

unnecessary where as here there is no generation associated with a transfer of title to transmission facilities.

In addition, as a result of the Proposed Transaction there will be no effect on potential transmission market power that PNM could exercise. The EIP will continue to be used in the same way both before and after the Proposed Transaction, with the only change being transfer of legal title to a portion of the facilities to a lessee that already operates and controls the facilities concerned and the termination of the lease with respect to the transferred portion. All of the facilities, before and after the Proposed Transaction, will be subject to PNM's open access transmission tariff ("OATT") or the OATT of a regional transmission organization ("RTO") to which PNM in the future may transfer operational control.

The transfer of ownership will not affect adversely the rates paid by PNM's transmission service customers or PNM's retail customers that purchase electricity at rates subject to the jurisdiction of the NMPRC. The cost of leasing these facilities already is included in PNM's transmission rates, which were established as part of a settlement agreement that occurred prior to the transfer of these facilities. PNM's transmission rates will not change as a result of the Proposed Transaction, and in any event, would change only in a rate case or in a proceeding relating to an RTO where the Commission would have jurisdiction.(5)

The transfer of control will not impair effective regulation because PNM will continue to be subject to the jurisdiction of the Commission after the

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(5) As discussed in Exhibit J attached hereto, in order to assure there is no adverse impact to ratepayers or PNM's owners, PNM proposes to calculate revenue requirements for its 60% ownership interest of EIP in any future rate case at FERC or before the NMPRC based upon imputing costs that PNM would have incurred under the lease had PNM not completed the Proposed Transaction. That is, PNM will impute the costs that would have been incurred under the lease in its cost of service calculation and will not include the capital cost associated with the 60% ownership interest in EIP. As shown in Exhibit J, the net present value of the revenue requirements under ownership is slightly higher than under the lease. Because revenue requirements associated with the cost of ownership is higher than lease costs in the early years (until 2011) and lower than lease costs in later years, PNM is requesting assurance from the NMPRC that PNM will be permitted to use this method over the remaining life of the assets, so that customers do not receive the benefit of lower lease costs in the early years, and lower capital costs in later years. By the same token, investors would not be required to forego recovery of ownership costs when they were higher than lease costs, but recover only the lower costs of ownership after the cross-over point.

transfer of ownership in the same manner as it was before the transfer of ownership. In addition, there will be no effect on state commission regulation of PNM.

8. MAP OF APPLICANT'S PROPERTY. (18 C.F.R. SECTION 33.2(h))

See Exhibit K attached hereto.

9. IDENTIFICATION OF OTHER REGULATORY APPROVALS NECESSARY AND RELATED ORDERS. (18 C.F.R. SECTION 33.2(i))

See Exhibit L attached hereto.

B. INFORMATION REQUIRED BY SECTIONS 33.3 AND 33.4 OF THE COMMISSION'S REGULATIONS. (18 C.F.R. SECTIONS 33.3 AND 33.4)

The instant application involves legal title to a portion of certain limited transmission facilities and the termination of a lease covering that portion of those facilities. No generating facilities of previously unaffiliated entities are being combined in a single entity as a result of the Proposed Transaction. Moreover, the Proposed Transaction does not involve a single corporate entity obtaining control over one or more merging entities that provide inputs to electricity production. The present application does not raise horizontal or vertical market power issues. Thus, the requirements of Sections 33.3 and 33.4 are inapplicable.

C. PROPOSED ACCOUNTING ENTRIES. (18 C.F.R. SECTION 33.5)

PNM is and will continue to be required to maintain its books in accordance with the Commission's Uniform System of Accounts. PNM completed a similar transaction involving leased facilities in September 1992, wherein PNM purchased Burnham Leasing Corporation's equity interests in Palo Verde Nuclear Generating Station Units 1 and 2, of which PNM was the lessee. PNM submitted the specific journal entries associated with that transaction to FERC by letter dated February 24, 1993. PNM received a reply letter dated July 23, 1993, from the (then) FERC Chief Accountant accepting PNM's proposed journal entries in FERC

Docket No. AC93-68-000. PNM proposes to use the same basic accounting methodology as was utilized in Docket No. AC93-68-000 for the Proposed Transaction, but has in addition included the accounting steps necessary to exercise the early buy out of the lease and the respective removal of this portion of the debt from PNM's books and records. PNM has included the proposed accounting entries for the Proposed Transaction in Exhibit M attached hereto.

D. FORM OF NOTICE. (18 C.F.R. SECTION 33.6)

Attached hereto is a form of notice suitable for publication in the Federal Register and a copy of the notice on 3.5" diskette.

E. VERIFICATION

A Verification signed by Terry R. Horn, Vice President and Treasurer of PNM is attached hereto.

IV. CONCLUSION

WHEREFORE, PNM respectfully requests that the Commission approve PNM's proposed acquisition of ownership in the EIP by March 12, 2002.

Respectfully submitted,

*/s/ John T. Stough, Jr.*

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*John T. Stough, Jr.*

*Attorney for*

*Public Service Company of New Mexico*

*Dated: January 22, 2002*

**VERIFICATION**

STATE OF NEW MEXICO )  
 ) SS.  
COUNTY OF Bernalillo )

Terry R. Horn, being duly sworn on oath, deposes and says that he is the Vice President and Treasurer of Public Service Company of New Mexico, that he has read the foregoing Application and attached Exhibits and knows the contents thereof, and that the same are true and correct to the best of his knowledge, information and belief.

**Dated this 18TH day of January, 2002.**

**Terry R. Horn**

Terry R. Horn Vice President and Treasurer Public Service Company of New Mexico

IN WITNESS whereof, I have hereunto set my hand and official seal the day and year last above written.

*/s/ Cindy C. Pennington*  
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*Notary Public*

*My commission expires:*

*June 1, 2002*

**EXHIBIT 99.F-1**

**Letterhead of Keleher & McLeod, P.A.**

January 23, 2002

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: PNM Resources, Inc. and Public Service Company of New Mexico's Acquisition of Securities of an Electric Utility Company, File 070-  
[ ]

Dear Sir or Madam:

We have acted as New Mexico counsel to PNM Resources, Inc., a New Mexico corporation ("PNM Resources"), and Public Service Company of New Mexico, a New Mexico corporation ("PNM"; together with PNM Resources, the "Applicants"), with respect to the application (the "Application") on Form U-1 to the Securities and Exchange Commission (the "Commission") in File No. 070-[ ]. We are furnishing this opinion to you in connection with the Application and consent to its use as an exhibit to the Application.

DCC Project Finance Two, Inc., a Delaware corporation and wholly owned subsidiary of Dana Commercial Credit Corporation, a Delaware corporation, has a 60% ownership interest in the Eastern Interconnection Project (the "EIP"). PNM leases DCC Project Finance Two, Inc.'s 60% interest in the EIP in a leveraged lease transaction. In the Application, the Applicants seek authority under the Public Utility Holding Company Act of 1935, as amended (the "1935 Act"), to purchase 100% of the issued and outstanding stock of DCC Project Finance Two, Inc.

We are familiar with the nature and character of the transaction proposed in the Application. We are members of the bar of the State of New Mexico, the state in which PNM Resources and PNM are incorporated.

In connection with this opinion, we have examined or caused to be examined the Application and the various exhibits thereto, the minutes of various meetings of the Boards of Directors of the Applicants, applicable state law, the articles of incorporation and bylaws of the Applicants and such other documents as we deemed necessary for the purpose of this opinion.

In our examination of the documents referred to above, we have assumed

(i) the genuineness of the signatures not witnessed, the authenticity of documents submitted to us as originals, and the conformity to originals of documents submitted to us as copies; and (ii) the legal capacity of all natural persons executing such documents.

Based upon the foregoing and subject to the assumptions, qualifications, limitations, conditions and exceptions set forth herein, we are of the opinion that, in the event the transaction proposed in the Application is consummated in accordance with the Application:

- (a) all laws of the State of New Mexico applicable to the proposed transaction will have been complied with;
- (b) the Applicants are each duly incorporated under the laws of the State of New Mexico;
- (c) the Applicants each will legally acquire any securities or assets subject to this Application; and

(d) the consummation of the transaction proposed in the Application will not violate the legal rights of the holder of any securities issued by the Applicants or by any "associate company", as defined in the 1935 Act, thereof.

The opinions expressed above are subject to the following assumptions and conditions:

(a) The transaction proposed in the Application will be authorized by the Commission. The Commission will duly enter an appropriate order or orders with respect to the transaction proposed in the Application, granting and permitting the Application to become effective under the 1935 Act and the rules and regulations thereunder and the transaction will be consummated in accordance with the Application.

(b) The transaction proposed in the Application will be duly authorized and approved, to the extent required by the governing documents and applicable federal and state laws, by the boards of directors of the Applicants, and such authorizations and approvals remain in full force and effect.

(c) All required approvals, authorizations, consents, certificates, and orders of, and all filings and registrations with, all applicable federal and state commissions and regulatory authorities with respect to the transaction proposed in the Application will be obtained or made, as the case may be,

and remain in effect (including the approval and authorization of the Commission under the 1935 Act, the Federal Energy Regulatory Commission under the Federal Power Act, as amended, and the rules and regulations thereunder, and the New Mexico Public Regulation Commission under the applicable laws of the State of New Mexico), and the transaction will be accomplished in accordance with all such approvals, authorizations, consents, certificates, orders, filings and registrations.

(d) No act or event other than as described herein shall have occurred subsequent to the date hereof that would change the opinions expressed herein.

(e) The transaction will be consummated as described in the Application or with such changes as we have approved, and all legal matters incident thereto will be satisfactory to us.

The opinions expressed herein are based upon the law in effect on the date hereof, and we assume no obligation to revise or supplement this opinion should such law be changed by legislative action, judicial decision, or in any other manner, or otherwise to notify you of any changes in law or fact relevant to the opinions expressed herein. This opinion letter is rendered solely for your benefit in connection with the transaction described above, and this opinion letter is not to be used, circulated, quoted, or otherwise referred to for any other purpose.

Very truly yours,

**KELEHER & McLEOD, P.A.**

*By: /s/ Charles L. Moore*

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*Charles L. Moore*

**EXHIBIT 99.F-2**

**Letterhead of Pillsbury Winthrop LLP**

January 23, 2002

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

Re: PNM Resources, Inc. and Public Service Company of New Mexico: Acquisition of Securities of an Electric Utility Company, File 070-\_\_\_\_

Dear Sir or Madam:

We have acted as counsel to PNM Resources, Inc., a New Mexico corporation ("PNM Resources"), and Public Service Company of New Mexico, a New Mexico corporation ("PNM"; together with PNM Resources, the "Applicants"), with respect to the application (the "Application") on Form U-1 to the Securities and Exchange Commission (the "Commission") in File No. 070-\_\_\_\_. We are furnishing this opinion to you in connection with the Application and consent to its use as an exhibit to the Application.

DCC Project Finance Two, Inc., a Delaware corporation ("DCC Project Finance") and wholly owned subsidiary of Dana Commercial Credit Corporation, a Delaware corporation ("DCCC"), has a 60% ownership interest in the Eastern Interconnection Project (the "EIP"). PNM leases DCC Project Finance's 60% interest in the EIP in a leveraged lease transaction. In the Application, the Applicants seek authority under the Public Utility Holding Company Act of 1935, as amended (the "1935 Act"), to purchase 100% of the issued and outstanding stock of DCC Project Finance.

We are familiar with the nature and character of the transaction proposed in the Application. We are members of the bar of the State of New York. We are not members of the bar of the State of Delaware or the State of New Mexico and do not hold ourselves out as an expert in the laws of the State of New Mexico or the laws generally of the State of Delaware. Our opinion is limited to Delaware General Corporation Law and the federal law of the United States of America, in each case as in effect on the date hereof.

In connection with this opinion, we have examined or caused to be examined the Application and the various exhibits thereto, the minutes of various meetings of the Board of Directors of DCC Project Finance, applicable state law, the articles of incorporation and bylaws of DCC Project Finance and such other documents as we deemed necessary for the purpose of this opinion. We assume the accuracy and completeness of the corporate books and records of DCC Project Finance, including minutes of various meetings of the Board of Directors of DCC Project Finance. We assume that the Boards of Directors of DCCC and DCC Project Finance and the officers and other representatives of DCCC and DCC Project Finance will take all future

corporate action necessary to authorize and implement the transaction proposed in the Application. We also assume that the Commission will issue a valid order under the 1935 Act authorizing the transaction proposed in the Application.

Based upon the foregoing and subject to the assumptions, qualifications, limitations, conditions and exceptions set forth herein, we are of the opinion that, in the event the transaction proposed in the Application is consummated in accordance with the Application:

- (a) the Delaware General Corporation Law as applicable to the proposed transaction will have been complied with;
- (b) DCC Project Finance is validly organized and duly existing; and
- (c) the Subject Stock will be validly issued, fully paid and nonassessable, and the holders thereof will be entitled to the rights and privileges appertaining thereto as set forth in the certificate of incorporation of DCC Project Finance and in the Delaware General Corporation Law.

Very truly yours,

*/s/ Pillsbury Winthrop LLP*

**Exhibit 99.G-1**

**FORM OF NOTICE**

SECURITIES AND EXCHANGE COMMISSION (the "Commission") (Release No. 35-\_\_\_\_\_) Filings under the Public Utility Holding Company Act of 1935, as amended (the "Act"), \_\_\_\_\_, 2002

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. 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 amendments thereto is/are available for public inspection through the Commission's Office 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 \_\_\_\_\_, 2002 to the Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) as specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact 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 \_\_\_\_\_, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

\* \* \*

**PNM RESOURCES, INC.**

PNM Resources, Inc. ("PNM Resources") is a public-utility holding company claiming exemption from all provisions of the Act except Section 9(a)(2) under Section 3(a)(1) pursuant to Rule 2 of the Act. PNM Resources owns all of the issued and outstanding voting securities of its operating subsidiary, Public Service Company of New Mexico ("PNM"). PNM Resources does not own directly any utility properties or perform any utility operations.

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

PNM is a public-utility company within the meaning of Section 2(a)(5) of the Act. PNM is an integrated public-utility primarily engaged in the generation, transmission, distribution and sale of electricity and in the transmission, distribution and sale of natural gas within the State of New Mexico.

PNM is party to a leveraged lease transaction under which it leases a 60% undivided interest in certain electric transmission facilities. An institutional equity investor is the sole beneficiary of the grantor trust which holds legal title to the 60% interest and, as such, leases such interest to PNM. Both the grantor trust and the trust company that serves as trustee of the grantor trust are excluded from status as a public-utility company under Sections 2(a)(3) and

2(a)(5) of the Act by virtue of having complied with Rule 7(d) promulgated under the Act (17 C.F.R. Section 250.7(d) (2001)).

The institutional investor in question (the "Investor") maintains its investment in the leased assets through a wholly-owned, single-purpose Delaware corporation (the "OP Company"). The OP Company has claimed and maintains the exclusion under Rule 7(d) promulgated under the Act because all of the equity interest in the OP Company is owned by a company that is otherwise primarily engaged in one or more businesses other than the business of a public-utility company (17 C.F.R. Section 250.7(d)(1)(ii) (2001)).

The Investor has determined to dispose of its investment in the leased assets and the Applicants have agreed to acquire such investment. PNM Resources and PNM are seeking authority to purchase 100% of the issued and outstanding stock of the OP Company. Upon the acquisition by the Applicants of the OP Company, the OP Company would no longer meet the requirements of Rule 7(d)(1)(ii) promulgated under the Act and would, therefore, have become a public-utility company under the Act. Accordingly, the Applicants are seeking authority under Section 9(a)(2) of the Act in order to acquire the equity interest in the OP Company.

Exhibit 99.FS-8

**DCC PROJECT FINANCE TWO - 0042  
BALANCE SHEET  
AS OF DECEMBER 31, 2001**

**ASSETS**

Lease Financing		\$ 8,087,653.38
Federal Income Tax Receivable		55,206.28
DCC Intercompany		3,210,557.91
		-----
TOTAL ASSETS		\$11,353,417.57
		=====
LIABILITIES		
Federal Income Tax Deferred		\$ 6,900,405.04
		-----
TOTAL LIABILITIES		\$ 6,900,405.04
STOCKHOLDERS' EQUITY		
Common Stock		500.00
Retained Earnings:		
Balance at Beginning of Year	\$4,355,323.58	
Current Year Earnings	97,188.95	
		-----
Balance at Period End		4,452,512.53
TOTAL STOCKHOLDERS' EQUITY		\$ 4,453,012.53
		-----
TOTAL LIABILITIES and STOCKHOLDERS' EQUITY		\$11,353,417.57
		=====

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End of Filing

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