SECURITIES AND EXCHANGE COMMISSION

(Release No. 35-28027; 70-10320)

Order Authorizing the Payment of Dividends and other Transactions

September 12, 2005

PNM Resources, Inc., ("PNM Resources"), a registered holding company under the Public Utility Holding Company Act of 1935, as amended ("Act"); Texas New Mexico Power Company, a Texas corporation and electric public utility company, ("TNMP"); and TNP Enterprises, Inc. a Texas corporation and wholly-owned holding company subsidiary of PNM Resources ("TNP Enterprises"), all of Fort Worth, Texas, have filed a declaration, as amended ("Declaration") with the Securities and Exchange Commission ("Commission") under sections 6(a), 7, and 12(c), of the Act and rules 42, 46 and 54 under the Act. PNM Resources, TNMP and TNP Enterprise are collectively referred to as "Applicants." The Commission issued a notice of the Declaration on August 2, 2005 (HCAR No. 28011).

PNM Resources and its subsidiary TNP Enterprises are registered public utility holding companies. PNM Resources acquired TNP Enterprises on June 6, 2005, and as a result of the acquisition, TNP Enterprises has no employees or active operations, and serves as a financial conduit.

TNP Enterprises has two subsidiaries, TNMP and FCP Enterprises, Inc., a Delaware corporation formed as an intermediate subsidiary to hold businesses that qualify under Rule 58, including First Choice Power, L.P. and First Choice Power Special Purpose, L.P. ("First

Choice").[1] First Choice was organized to act as TNMP's affiliated retail electric provider in accordance with Texas Senate Bill 7, which established retail competition in the Texas electricity market. TNMP is a regulated utility operating in Texas and New Mexico.

Prior to January 1, 2002 when retail competition in the Texas electricity market was established, TNMP operated as an integrated electric utility in Texas, generating, transmitting and distributing electricity to customers in its Texas service territory. As required by Senate Bill 7, and in accordance with a plan approved by the Public Utility Commission of Texas ("PUCT"), TNMP separated its Texas utility operations into three components:

- *Retail Sales Activities*. As mentioned above, First Choice assumed the activities related to the sale of electricity to retail customers in Texas, and, on January 1, 2002, TNMP's customers became customers of First Choice, unless they chose a different retail electric provider.
- *Power Transmission and Distribution*. TNMP continues to operate its regulated transmission and distribution business in Texas.
- *Power Generation.* Texas Generating Company ("TGC") became the unregulated entity performing TNMP's generation activities in Texas. However, in October 2002, TNMP and TGC sold TNP One (TGC's sole generating asset) to Sempra Energy Resources. As a result of the sale, TGC and TGC II neither own property nor engage

[1] First Choice Power Special Purpose, L.P. is a bankruptcy remote special purpose entity certificated retail electric provider ("REP") in Texas to which the original REP certificate of First Choice Power, Inc. and its price to beat customers were transferred pursuant to order of the Public Utility Commission of Texas. A new certificate was granted to First Choice Power, Inc., which is now First Choice Power, L.P., also a direct subsidiary of TNP Enterprises. These entities are collectively referred to as "First Choice." First Choice does not derive material revenue from the public-utility company affiliates.

in any operating activities, and neither TNMP nor any of its affiliates are currently in the power generation business.

TNMP initially sought recovery of $307.6 million of stranded costs pertaining to the generation assets rendered uneconomic by Texas restructuring from its customers, an amount which was later revised to $266.5 million. On July 22, 2004, the PUCT authorized TNMP to recover from its customers $87.3 million instead of the $266.5 million requested. The decision resulted in a loss of $155.2 million before an income tax benefit of $57.3 million ($97.8 million after tax). As a result, TNMP reported on August 9, 2004 a loss applicable to common stock of $97.0 million for the quarter ended June 30, 2004. TNMP recorded the $97.8 million after tax loss as an extraordinary item in accordance with the requirements of Statement of Financial Accounting Standards ("SFAS") 101 – Regulated Enterprises – accounting for the discontinuance of the application of FASB Statement No.71. TNP Enterprises reported a net loss for calendar 2004 of $75,603,000 and negative shareholder equity of $29,680,000.

On the day of its acquisition by PNM Resources, TNP Enterprises refunded the balance of its outstanding term loan and issued irrevocable notices to redeem its outstanding high coupon senior subordinated notes and preferred stock effective July 6, 2005. Such securities were redeemed on that date. See HCAR No. 27979 (June 1, 2005).

The acquisition of TNP Enterprises was accounted for using the "purchase method" under SFAS 141, *Business Combinations*, with associated intangible assets and goodwill recorded on the balance sheets in accordance with SFAS 142, *Goodwill and Other Intangible Assets*. Since PNM Resources acquired all of the stock of TNP Enterprises, the "push-down

basis of accounting" was used.[2] Under this method, the costs of the acquisition were allocated to the acquired company's assets and liabilities, which are recorded on the balance sheet at fair market value. Even though Commission accounting rules require PNM Resources to use push-down accounting and to value the acquisition at fair value, resulting in the recording of goodwill and intangible assets on TNMP's balance sheet, the goodwill and intangible assets will not be included in rate base or amortized as a component of cost of service in any state rate proceedings.

Currently, as a result of purchase accounting and the push-down of the amount paid in excess of book value for the TNP Enterprises system, the Shareholder Equity account of TNMP increased by $466 million, from $196 million to $653 million, and the retained earnings account of TNMP was reset upwards to zero.

The manner in which PNM Resources acquired TNP Enterprises, and thereby TNMP, was designed to improve TNMP's credit ratings from BB+/Ba2 prior to the acquisition announcement to investment grade, BBB-/Baa3, and to maintain them at that level in order to provide consistent access to the capital markets at reasonable rates, which allows TNMP to fund necessary utility system improvements. Also, the acquisition was structured so as not to damage PNM Resources' credit ratings. Through the financial models provided to the rating agencies in advance of the acquisition of TNP Enterprises, both major agencies were aware of the plan to dividend and distribute cash from TNMP and First Choice to PNM Resources following the acquisition of TNP Enterprises.

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[2] Because PNM Resources acquired all of the stock of TNP Enterprises, S.E.C. Codification of Staff Accounting Bulletins ("SAB") Topic 5J, Miscellaneous Accounting, provides that the "push down basis of accounting" be used for financial reporting purposes. The Commission has found "push-down" accounting appropriate on these circumstances. See HCAR No. 27896 (Sept. 27, 2004) at 18.

The acquisition of TNP Enterprises improved the credit ratings of TNP Enterprises and its subsidiaries, including TNMP. Standard & Poor's raised the rating of TNMP following the acquisition to BBB from BB+, and Moody's increased its credit rating to Baa3.[3]

A. Requested Authorizations

Applicants request four related authorizations in this filing. First, TNMP requests authorization though December 31, 2005 to redeem $62 million of its common stock held by TNP Enterprises, its parent.

Second, PNM Resources and TNP Enterprises seek authority for their nonutility subsidiaries to distribute surplus, retire or redeem securities or pay dividends from capital through January 31, 2006.

Third, TNP Enterprises requests authority through January 31, 2006 to pay dividends (or to redeem capital stock) so as to distribute the proceeds received from its subsidiaries to PNM Resources pursuant to this filing. Applicants state that the need for the requested authorizations results from (i) the extraordinary effect of Texas restructuring on the book value of generation and the disallowance of stranded cost recovery; (ii) the application of push-down accounting for the recent acquisition by PNM Resources, and (iii) the short-term debt incurred by PNM Resources to effectuate the acquisition of TNP Enterprises.

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[3] Applicants project that the financing of the debt and preferred securities at the TNP Enterprises level will result in debt and preferred securities representing less than 40% (approximately 37.3%) of the consolidated capitalization of TNP Enterprises at the close of 2005. As of June 30, 2005 (reflecting a pro-forma adjustment for debt and preferred securities redeemed on July 6, 2005, as part of the acquisition of TNP Enterprises by PNM Resources), the common equity component of the consolidated capitalization of TNP Enterprises was 66.3% and the common equity component of the consolidated capitalization of TNMP was 61.1%. The transactions proposed in this filing are expected to result, as of December 31, 2005 (based upon earnings as of June 30, 2005), in TNP Enterprises having a common equity ratio of 63% and TNMP 58.7%.

Applicants represent that (i) all dividends, redemptions of stock and other distributions authorized in this filing will be made in compliance with all applicable laws, (ii) no nonutility subsidiary that derives any material part of its revenues from the sale of goods, services or electricity to any public utility subsidiary shall declare or pay any dividend out of capital or unearned surplus, and (iii) no nonutility subsidiary shall declare or pay any dividend out of capital or unearned surplus unless it: (a) has received excess cash as a result of the sale of its assets, (b) has engaged in a restructuring or reorganization, and/or (c) is returning capital to an associate company.

Fourth, TNMP requests authority, through February 8, 2006, to issue up to $100 million of securities pursuant to a note, with a five-year maturity and two additional one-year extension options (if approved by the banking institutions) , through August 15, 2010, and through August 15, 2012, in the event extensions are exercised,[4] under an existing credit facility agreement among PNM Resources, Inc. and Bank of America, N.A. (as Administrative Agent for Lenders) and Wachovia National Bank National Association (as Syndication Agent), originally dated November 15, 2004, as amended and restated August 15, 2006 ("Revolving Credit Facility") maintained by PNM Resources.[5]

Borrowings made by PNM Resources pursuant to the Revolving Credit Facility are pursuant to and subject to authority conferred in PNM Resources, Inc., HCAR No. 27934 (December 30, 2004). TNMP proposes that the same conditions apply to its borrowings under the Revolving Credit Facility. Borrowings by the individual borrowers under the Revolving

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[4] In light the Energy Policy Act of 2005, Applicants acknowledge that any authorization granted pursuant to this application will not apply to borrowings made after February 8, 2006.

[5] Section 2.6 of the Revolving Credit Facility specifically provides for First Choice and TNMP borrowing in accordance with its terms following the acquisition completed on June 6, 2005.

Credit Facility occur on a several, not joint, obligation basis. Borrowings will be evidenced by "transactional" promissory notes to be dated the date of such borrowings and to mature not more than five years after the date, subject to optional extension. Any such note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment.[6] TNMP proposes to use the revolving credit facility to provide funds for its authorized operations.

B. Parameters for Authorizations

The following general terms will be applicable, as appropriate, to the transactions requested to be authorized in the Declaration:

(1) Common Equity Ratio. Applicants state that each will at all times maintain common equity (as reflected in its most recent Form 10-K or Form 10-Q filed with the Commission) of at least 30% of its consolidated capitalization. The term "consolidated capitalization" is defined to include, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss and/or treasury stock), minority interests, preferred stock, preferred securities, equity linked securities, long-term debt, short-term debt and current maturities.[7]

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[6] On behalf of PNM Resources, TNMP notes that, at any given time, some or all of PNM Resources' available credit under the Revolving Credit Facility will be used as back-up credit facilities pursuant to PNM Resources' commercial paper program but that such credit facilities will not be drawn upon and no borrowings will occur except in certain limited circumstances at which time obligations under the related commercial paper will be paid. Thus, short-term notes issued in connection with the establishment of commercial paper back-up facilities backstop and duplicate commercial paper issuances and should not be deemed to be borrowings under TNMP or PNM Resources' financing authorization unless and until an actual borrowing occurs under the related credit facility. Any other result would "double count" PNM Resources' actual financial obligation.

[7] As of June 30, 2005, the common equity component of the consolidated capitalization of PNM Resources was 51%. As shown in footnote 3, *supra*, the common equity component of the consolidated capitalization of TNP Enterprises and TNMP as of June 30, 2005, was 63% and 58.7%, respectively.

(2) Investment Grade Ratings. With respect to the securities issuance authority proposed in this Declaration: (i) within four business days after the occurrence of a Ratings Event,[8] Applicants will notify the Commission of its occurrence (by means of a letter, via fax, email or overnight mail to the Office of Public Utility Regulation); and (ii) within 30 days after the occurrence of a Ratings Event, Applicants will submit a post-effective amendment to the Declaration explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Applicant(s) to issue the securities for which authorization has been requested in this Declaration, so long as Applicant(s) continue to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this filing). Furthermore, no securities authorized as a result of this Declaration will be issued following the 60th day after a Ratings Event (other than common stock, commercial paper and short-term debt) by any Applicant if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction through the remainder of the period authorized in this filling over the issuance of any securities (other than common stock, commercial paper and short-term notes) that Applicants are prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

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[8] A "Ratings Event" will occur if, during the effective period of this authorization, (i) any security issued by any Applicant upon original issuance, if rated, is rated below investment grade, or (ii) any outstanding security of any Applicant that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the 1934 Act.

(3) Effective Cost of Money on Financings. The effective cost of capital will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital exceed 500 basis points over comparable term U.S. Treasury securities ("Treasury Security").

(4) Maturity. The final maturity of any securities issued under the Revolving Credit Facility will not exceed five years, (subject to the two one year extensions described above).

(5) Issuance Expenses. The fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Declaration will not exceed the competitive market rates which are consistent with similar securities of comparable credit quality and maturities issued by other companies, provided that in no event will such fees and expenses exceed 500 basis points of the principal or face amount of the securities being issued or the gross proceeds of the financing.

(6) Use of Proceeds. The proceeds from the borrowing will be used for general corporate purposes including (i) the financing of working capital requirements of the PNM Resources system, (ii) cash management activities, and (iii) other lawful purposes.

Applicants state, for purposes of rule 54, that neither PNM Resources nor its subsidiaries own an interest in an EWG or FUCO.

It is proposed that, with respect to TNMP, the reporting systems of the Securities Exchange Act of 1934, as amended, and the Securities Act of 1933, as amended, be integrated with the reporting system of PNM Resources under the Act. This will eliminate duplication of filings with the Commission that cover similar subject matters, resulting in a reduction of expense for both the Commission and PNM Resources. Except as modified by the Declaration,

Applicants will file Rule 24 certificates as required by, and with all the information specified in, HCAR No. 27934 (December 30, 2004). In addition, Applicants will provide in their Rule 24 certificates the amount and date of any stock redemptions, or any dividends paid of capital or unearned surplus.

Applicants state that the fees, commission and expenses incurred or to be incurred in connection with the authority sought in this filing will not exceed $10,000. Applicants state that the approval of the New Mexico Public Regulation Commission is required for TNMP to execute the notes associated with the Revolving Credit Facility, which approval was received on July 19, 2005. Applicants maintain that no state or federal regulatory agency, other than the New Mexico Public Regulation Commission, as stated above, and the Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of this Declaration has been given in the manner prescribed in rule 23 under the Act, and no hearing has been requested of ordered by the Commission. Based on the facts in the record, the Commission finds that, except as to that matter over which jurisdiction as been reserved, the applicable standards of the Act and rules are satisfied and that no adverse findings are necessary.

IT IS ORDERED, under the applicable provisions of the Act and the rules under the Act, that, except as to that matter over which jurisdiction has been reserved, the Declaration, as amended, be permitted to become effective**,** subject to the terms and conditions prescribed in rule 24 under the Act.

IT IS FURTHER ORDERED, that jurisdiction is reserved over, through the remainder of the period authorized in this filling, over the issuance of any securities (other than common stock, commercial paper and short-term notes) that Applicants are prohibited from issuing as a result of the occurrence of a Ratings Event, if no revised rating reflecting an investment grade rating has been issued.

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

Jonathan G. Katz
Secretary