guarantees on behalf of their subsidiaries, the Intermediate Holding Companies are not used for external financing purposes, to make acquisitions, or to perform service, sales or construction contracts.[21]

The continued existence of these holding companies also will help to preserve favorable tax attributes that would be lost if they were eliminated. In particular, the Intermediate Holding Companies provide flexibility with respect to the filing of state tax returns.[22]

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4404 Filed 8–12–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28011]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

August 2, 2005.

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 under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 26, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303 and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 26, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PNM Resources, Inc., et al. (70–10320)

PNM Resources, Inc., (''PNM Resources''), a registered holding company; 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 4100 International Plaza, P.O. Box 2943, Fort Worth, Texas 76113, have filed a declaration, as amended (''Declaration'') under sections 6(a), 7, and 12(c), of the Act and rules 42 and 46, under the Act. PNM Resources, TNMP and TNP Enterprise are collectively referred to as ''Applicants.''

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 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

[21] CMP Group does not issue securities to parties outside of the Energy East group to finance its subsidiaries.

[22] In addition to these structural and regulatory benefits, the continued existence of CTG Resources will also preserve the benefits associated with certain existing financing arrangements. Specifically, Ten Companies currently has approximately $40 million of private placement bonds outstanding that are supported by CTG Resources under the terms of a Forward Equity Purchase Agreement. The elimination of CTG Resources would constitute an event of default under the notes and the holders would have the right to ''put'' the bonds to the issuer at a large (approximately $5 million) make-whole premium.

[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.

the balance of its outstanding term loans 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 will be 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 has acquired all of the stock of TNP Enterprises, the ''push-down basis of accounting'' will be used.[2] Under this method, the cost of the acquisition will be 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 will be increased by $429 million, from $194 million to $623 million, and the retained earnings account of TNMP will be 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+/Baa3 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.

The acquisition of TNP Enterprises has, in fact, improved the credit ratings of TNP Enterprises and its subsidiaries, including TNMP. All rating agencies referenced in their reports the stronger credit profile of PNM Resources, as well as the TNP Enterprises debt reduction resulting from the acquisition. Standard & Poor's raised the rating of TNMP following the acquisition to BBB from BB+. In addition, Moody's increased its credit rating to Baa3, as Applicants anticipated.[3]

A. Requested Authorizations

Applicants request four related authorizations in this filing. First, TNMP requests authorization through 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 December 31, 2007. Third, TNP Enterprises requests authority 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.

Applicants represent that (i) all dividends, redemptions of stock and other distributions authorized in this filing would 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 to be added to a $400,000,000 Credit Facility Agreement among PNM Resources, Inc. and Bank of America, N.A. (as Administrative Agent for Lenders) dated November 15, 2004, as amended (''Revolving Credit Facility'') maintained by PNM Resources,[4] under which it would be eligible to borrow up to $100 million pursuant to a note with a five-year maturity and two additional one-year extension options (if approved by the banking institutions) through August 1, 2012. 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 Credit Facility occur on a several, not joint, obligation basis. Such borrowings would 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. Any such note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment.[5] TNMP proposes to use the revolving credit facility to provide funds for its authorized operations.

B. Parameters for Financing Authorization

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

(1) *Common Equity Ratio.* Applicants state that each would at all times maintain common equity (as reflected in its most recent Form 10–K or Form 10–

[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.

[3] The refinancing of the debt and preferred securities at the TNP Enterprises level has resulted in debt and preferred securities representing less than 40% (approximately 37.3%) of the consolidated capitalization of TNP Enterprises at the close of 2005, opposed to in excess of 100% in the absence of the acquisition and the relief sought in this filing.

[4] 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.

[5] On behalf of PNM Resources, TNMP notes that, at any given time, some or all of its outstanding short-term notes will be issuable in connection with the establishment of back-up credit facilities 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.

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.

(2) *Investment Grade Ratings.* With respect to the securities issuance authority proposed in this Declaration: (a) Within four business days after the occurrence of a Ratings Event,[6] Applicants would 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 (b) within 30 days after the occurrence of a Ratings Event, Applicants would 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 would 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.

(3) *Effective Cost of Money on Financings.* The effective cost of capital would 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 would 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 long-term debt securities would not exceed five years. Short-term debt incurred under the Revolver would have a maturity of not to exceed one year.

(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 would 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 would 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 would 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.

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

Jill M. Peterson,

Assistant Secretary.

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[6] A ''Ratings Event'' would occur if, during the authorization period requested in this filing, (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 would 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52224; File No. SR–NSX–2005–03]

Self-Regulatory Organizations; National Stock Exchange; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Ongoing Qualification of the Members of NSX's Board of Directors

August 8, 2005.

On May 13, 2005, the National Stock Exchange (the ''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its By-Laws to implement procedures for replacing a Director on its Board of Directors (''Board'') in the event that such Director fails to maintain the qualifications of his or her designated category. On June 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On June 21, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 30, 2005.[5] The Commission received no comments on the proposal.

The Exchange proposed to amend Article V, Section 3 of its By-Laws to provide that: (A) If a Director fails to maintain the necessary qualifications of his or her respective category, such Director would cease to be a Director upon a determination by the Board that the Director is no longer qualified, and his or her office would be deemed vacant for all purposes; (B) a Director who fails to maintain his or her necessary qualifications would have a grace period of the later of 45 days or until the next regular Board meeting to re-qualify for his or her respective category; and (C) a Director (other than an Independent Director) whose membership has been suspended does not lose his or her qualification by reason of such suspension during the period of suspension, but rather, such Director may remain a Director during the suspension unless he or she is removed.[6]

Under the proposal, the Board is the sole judge of whether a Director is no longer qualified for his designated category and whether a Director has re-qualified. Effective upon the expiration of the grace period for re-qualification, the Board may fill any resulting vacancy with a person who qualifies for the category in which the vacancy exists.

The Commission finds that the proposed rule change, as amended, is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified certain language in Section 3(a) of the proposed rule change, made conforming changes to Exhibit 1 to the proposed rule change and corrected page numbering errors in the initial filing.

[4] In Amendment No. 2, the Exchange revised the proposed rule text, as well as, the proposed rule change's statutory basis section.

[5] *See* Securities Exchange Act Release No. 51912 (June 23, 2005), 70 FR 37889.

[6] A Director may be removed with cause by a majority vote of those individuals or entities entitled to vote to elect such Director. *See* Article V, Section 4 of the NSX By-Laws.