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PUBLIC SERVICE CO OF NEW MEXICO

Form S-8

November 19, 2001

As filed with the Securities and Exchange Commission on November 19, 2001

Registration No. 333-\_\_\_\_\_

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM S-8  
REGISTRATION STATEMENT  
Under  
THE SECURITIES ACT OF 1933

PUBLIC SERVICE COMPANY OF NEW MEXICO  
(Exact name of Registrant as specified in its charter)

New Mexico  
(State or other jurisdiction  
incorporation or organization)

85-0019030  
(I.R.S. Employer  
Identification No.)

Alvarado Square  
Albuquerque, New Mexico 87158  
(Address of Principal Executive Offices) (Zip Code)

First Restated and Amended Public Service Company of New Mexico  
Executive Savings Plan  
(Full title of the Plan)

Max Maerki  
Senior Vice President and Chief Financial Officer  
Public Service Company of New Mexico  
Alvarado Square  
Albuquerque, New Mexico 87158  
(505) 241-2700  
(Name, address and telephone number, including area code, of agent for service)

With Copies To:

C.L. Moore  
Keleher & McLeod, P.A.  
414 Silver Avenue, S.W.  
Albuquerque, New Mexico 87103

CALCULATION OF REGISTRATION FEE

Title of securities registered to be registered	Amount to be offering price per	Proposed maximum aggregate offering unit	Proposed maximum registration price(1)	Amount of fee of fee
Amended and Restated Public Service Company of New Mexico Executive Savings Plan Obligations(2)	100%	n/a	\$2,052,000	\$513.00
Common Stock, \$5.00 par value per share	25,000 shares	\$26.40	\$660,000	\$165.00

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(1) Estimated solely for the purpose of calculating the amount of the registration fee, pursuant to Rule 457(h) of the Securities Act of 1933. As to shares of common stock issuable pursuant to the executive savings plan, the offering price is calculated on the basis of the average of the high and low sale price of the Registrant's common stock on the New York Stock Exchange Composite Transaction Tape on November 13, 2001. Pursuant to Rule 416(c) of the Securities Act of 1933, there is also being registered such number of additional shares of common stock that may become available for purchase under the executive savings plan in the event of certain changes in the outstanding shares, including reorganizations, mergers, recapitalizations, restructurings, stock dividends, stock splits, reverse stock splits and reclassifications.

(2) The executive savings plan obligations are unsecured obligations of Public Service Company of New Mexico to pay deferred compensation in the future in accordance with the First Restated and Amended Public Service Company of New Mexico Executive Savings Plan for a select group of eligible employees.

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Part I

Information Required In Section 10(a) Prospectus

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participating employees as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended. These documents and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Part II

Information Required In The Registration Statement

Item 3. Incorporation of Documents by Reference

The following documents, which have been filed with the Securities and Exchange Commission by Public Service Company of New Mexico (File No. 1-6986), are incorporated by reference in this Registration Statement:

1. The Company's Annual Report on Form 10-K for the year ended December 31, 2000, as amended on April 30, 2001 and May 4, 2001.
2. The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2001.
3. The Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, as amended.
4. The Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2001.
5. The Company's Current Reports on Form 8-K dated January 18, 2001, January 23, 2001, January 25, 2001 (two), February 26, 2001, February 28, 2001, March 1, 2001, March 20, 2001, March 27, 2001, April 11, 2001 (two), April 12, 2001, April 16, 2001, April 18, 2001 (two), May, 2, 2001 (two), May 18, 2001, May 25, 2001, June 1, 2001, June 14, 2001, July 3, 2001 (two), July 13, 2001, July 16, 2001, July 18, 2001 (three),

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July 24, 2001, July 30, 2001, August 9, 2001, August 16, 2001, August 17, 2001, September 13, 2001, September 18, 2001, September 19, 2001, October 11, 2001, October 16, 2001, October 23, 2001, October 24, 2001, October 25, 2001, November 2, 2001, November 15, 2001, and November 16, 2001.

6. The description of the Company's Common Stock contained in its Current Report on Form 8-K dated June 1, 2001.
7. All other reports filed by the Company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act on or after December 31, 2000.

In addition, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which removes from registration all such securities then remaining unsold shall be deemed to be incorporated herein by reference and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

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### Item 4. Description of Securities

The deferred compensation obligations being registered represent obligations (the "Obligations") of the Company to make future payments to the participants in the Public Service Company of New Mexico Executive Savings Plan (the "Plan"). The Obligations consist of the Company's commitment under the Plan to deliver at a future date any of the following:

- o matching credits to participants' Plan accounts made by the Company or its affiliates,
- o non-elective credits to participants' Plan accounts made by the Company or its affiliates, and
- o earnings on the foregoing amounts based on a notional investment measurement.

The amount of compensation to be deferred by each participant will be determined in accordance with the Plan based on the elections of the participant, and will be credited to a separate bookkeeping account in the name of the participant. The participant's account will reflect units of an investment fund intended to mirror substantially an investment in the Company's Common Stock and other hypothetical investment media selected pursuant to the Plan. The participant's account will be credited, or debited, as the case may be, based on the returns on the Company's Stock fund and the other hypothetical investment media established pursuant to the Plan, or based upon earnings or losses incurred, pursuant to established procedures under the Plan. The Company Stock fund and other investment media will be used only for the purpose of calculating hypothetical returns, and the amounts in participants' Plan accounts

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will not actually be invested in the selected investment media. Dividends paid on the Company's Common Stock fund will be reflected in the participant's account by crediting to the Company Stock fund the amount of units of the Common Stock fund equal to the value of the dividends. The participant's account will also be adjusted periodically to reflect any stock splits or other adjustments to the Common Stock. All amounts in a participant's account will be vested immediately.

The Obligations are generally payable in a cash lump-sum distribution upon a participant's death or termination of employment with the Company and all of its affiliates. Under certain circumstances, at the participant's election, an interest in the Common Stock fund is distributable in the form of whole shares of Common Stock. There is no trading market for the Obligations.

The Obligations are unsecured general obligations of the Company to make future payments to participants in accordance with the terms of the Plan. Obligations will rank without preference with other unsecured and unsubordinated indebtedness of the Company from time to time outstanding and are, therefore, subject to the risks of the Company's insolvency. No trustee has been appointed to take action with respect to the Obligations and each participant in the Plan will be responsible for acting independently with respect to, among other things, the giving of notices, responding to requests for consents, waivers or amendments pertaining to the Obligations, enforcing covenants and taking action upon default.

A participant's rights to any amounts credited to his accounts may not be alienated, sold, transferred, assigned, pledged, attached or otherwise encumbered by the participant and may only pass upon the participant's death pursuant to a beneficiary designation made by a participant in accordance with the terms of the Plan. The Obligations are not convertible into any other security of the Company. All or a portion of the Obligations are payable in shares of Common Stock of the Company, as described above. The Company reserves the right to amend, merge, consolidate or terminate the Plan at any time or from time to time, except that no such action may, without the consent of the affected participant, affect any of the participant's rights with respect to the amount then credited to the participant's account.

Obligations in an aggregate principal amount of \$2,052,000 are being registered under the Plan. Further amounts may be registered and issued as new or existing Plan participants elect to defer portions of their compensation in subsequent years.

A copy of the Plan is filed as Exhibit 4 hereto and is incorporated herein by reference.

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Item 5. Interests of Named Experts and Counsel

None.

Item 6. Indemnification of Directors and Officers

Section 7 of Article II of the Company's By-Laws contains the following provisions with respect to indemnification of directors and officers.

Each person who shall have served as a director or an officer of the Company, or, at the request of the Company, as a director or an officer of any other corporation, partnership or joint venture, whether profit or not profit, in which the Company (a) owns shares of capital stock, (b) has an ownership

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interest, (c) is a member, or (d) is a creditor, and regardless of whether or not such person is then in office, and the heirs, executors, administrators and personal representatives of any such person shall be indemnified by the Company to the full extent of the authority of the Company to so indemnify as authorized by the law of New Mexico.

Section 53-11-4.1 of the Business Corporation Act of the State of New Mexico provides that a corporation shall have power to indemnify any person made (or threatened to be made) a party to any proceeding (whether threatened, pending or completed) by reason of the fact that the person is or was a director (or, while a director, is or was serving in any of certain other capacities) if: (1) the person acted in good faith; (2) the person reasonably believed: (a) in the case of conduct in the person's official capacity with the corporation, that the person's conduct was in its best interests; and (b) in all other cases, that the person's conduct was at least not opposed to its best interests; and (3) in the case of any criminal proceeding, the person had no reasonable cause to believe the person's conduct was unlawful. Indemnification may be made against judgments, penalties, fines, settlements and reasonable expenses actually incurred by the person in connection with the proceeding, but may be limited or unavailable with respect to certain proceedings. In some instances, indemnification of a director may be mandatory or, upon the application of a director, may be ordered by a court. Reasonable expenses incurred by a director may, under certain circumstances, be paid or reimbursed in advance of a final disposition of a proceeding. Unless limited by its articles of incorporation, a corporation may (or, as the case may be, shall) indemnify and advance expenses to an officer of the corporation to the same extent as to a director under Section 53-11-4.1. Also, unless limited by its articles of incorporation, a corporation has (1) the power to indemnify and to advance expenses to an employee or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under the statute and (2) additional power to indemnify and to advance reasonable expenses to an officer, employee or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its Board of Directors, or contract.

Section 53-11-4.1 was amended in 1987 to provide that the indemnification authorized thereunder shall not be deemed exclusive of any rights to which those seeking indemnification may be entitled under the articles of incorporation, the by-laws, an agreement, a resolution of shareholders or directors or otherwise. At the Company's 1987 Annual Meeting of Stockholders, the stockholders approved certain agreements with the Company's directors and officers relating to indemnification of directors and officers. Such agreements have been entered into with each director and officer. The agreements provide for indemnification of directors and officers to the fullest extent permitted by law, including advancement of litigation expenses where appropriate. The agreements provide for the appointment of a reviewing party by the Board of Directors to make a determination whether claimed indemnification is permitted under applicable law.

Insurance is maintained on a regular basis (and not specifically in connection with this offering) against liabilities arising on the part of directors and officers out of their performance in such capacities or arising on the part of the Company out of its foregoing indemnification provisions, subject to certain exclusions and to the policy limits.

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Not Applicable.

### Item 8. Exhibits

A list of exhibits is set forth on the Exhibit Index.

### Item 9. Undertakings

(a) The undersigned Company hereby undertakes:

(1) To file, during any period in which offers or sales are being made of the securities registered hereby, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Company pursuant to Section 13 or Section 15(d) of the Securities Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Company hereby further undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act (and, where applicable, each filing of the annual report of the employee benefit plan pursuant to Section 15(d) of the Securities Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons

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of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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Signatures

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Albuquerque, State of New Mexico, on November 16, 2001.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: /s/ J. E. Sterba

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J. E. Sterba, Chairman, President  
and Chief Executive Officer

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below, hereby constitutes and appoints Jeffry Sterba, Max Maerki, and John Loyack and each of them, either one of whom may act without joinder of the other, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all pre- and post-effective amendments to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and conforming all that said attorneys-in-fact and agents, and each of them, or the substitute or substitutes of any or all of them, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in their capacities and on the dates indicated.

Signatures

Capacity

Date

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/s/ J. E. Sterba Chairman, President and Chief November 16, 2001  
----- Executive Officer (Principal  
J.E. Sterba Executive Officer); Director

/s/ M. H. Maerki Senior Vice President and Chief November 16, 2001  
----- Financial Officer (Principal  
M. H. Maerki Financial Officer)

/s/ J. Loyack Vice President Corporate Controller November 16, 2001  
----- and Chief Accounting Officer  
J. Loyack (Principal Accounting Officer)

-----  
J. T. Ackerman Director

/s/ R. G. Armstrong Director November 16, 2001  
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R. G. Armstrong

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R. M. Chavez Director

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/s/ J. A. Godwin Director November 16, 2001  
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J. A. Godwin

/s/ B. F. Montoya Director November 16, 2001  
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B. F. Montoya

/s/ T. F. Patlovitch Director November 16, 2001  
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T. F. Patlovitch

/s/ R. M. Price Director November 16, 2001  
-----  
R. M. Price

/s/ P. F. Roth Director November 16, 2001  
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P. F. Roth

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Exhibit Index

Exhibit No.	Description
4	Amended and Restated Public Service Company of New Mexico Executive Savings Plan
5	Opinion of Keleher & McLeod, P.A.
15	Letter Regarding Unaudited Interim Financial Information
23.1	Consent of Keleher & McLeod, P.A. (included in Exhibit 5)
23.2	Consent of Arthur Andersen LLP
24	Power of Attorney (included on signature page of this Registration Statement)