

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION
OF AVANGRID, INC., AVANGRID NETWORKS,
INC., NM GREEN HOLDINGS, INC.,
PUBLIC SERVICE COMPANY OF NEW MEXICO
AND PNM RESOURCES, INC. FOR APPROVAL OF THE
MERGER OF NM GREEN HOLDINGS, INC.
WITH PNM RESOURCES, INC.; APPROVAL OF A
GENERAL DIVERSIFICATION PLAN; AND ALL
OTHER AUTHORIZATIONS AND APPROVALS
REQUIRED TO CONSUMMATE AND IMPLEMENT
THIS TRANSACTION

AVANGRID, INC., AVANGRID NETWORKS, INC.,
NM GREEN HOLDINGS, INC.,
PUBLIC SERVICE COMPANY OF NEW MEXICO
AND PNM RESOURCES, INC.,

JOINT APPLICANTS.

NEW ENERGY ECONOMY'S MOTION TO COMPEL
OUTSTANDING DISCOVERY REGARDING FOUR CORNERS POWER PLANT

New Energy Economy (NEE), by counsel, moves pursuant to §1.2.2.25 NMAC et seq. to compel Joint Applicants, to produce answers and responsive documents to New Energy Economy's discovery: NEE Interrogatories 9-28 (SIC), 13-1 and all other discovery from all parties regarding the Four Corners Power Plant ("FCPP").

In support of this Motion, NEE states:

1. Pursuant to 1.2.2.35.J(3) NMAC, NEE and PNM attempted to resolve the discovery dispute to no avail.¹ NEE thus requests the Commission find that NEE has discharged its obligation to “meet and confer” with PNM regarding discovery issues.

¹ Please see correspondence between NEE and PNM, attached and incorporated herein as Exhibits A & B.

The Commission’s policy on discovery “favors prompt and complete disclosure and exchange of information.” §1.2.2.25.A NMAC. “The scope of discovery in adjudications before the Commission is broad. Discovery in Commission proceedings is governed by the New Mexico rules of civil procedure for district courts, except where inconsistent with Commission rules. 1.2.2.25(C) NMAC. The scope of discovery, as defined in the civil rules, includes information relevant to the subject matter of the action and information reasonably calculated to lead to the discovery of admissible evidence:

(1) In general. Parties may obtain discovery of any information, not privileged, which is relevant to the subject matter involved in the pending action. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. A party responding to discovery requests shall provide all non- privileged responsive information then known to the party, subject to the limitations in these rules or as ordered by the court.

Rule 1-026(B)(1) NMRA.”

20-00222-UT, *Order Addressing New Energy Economy Motion to Compel Outstanding Discovery*, April 19, 2021, pp. 1-2.²

2. The pretrial discovery rules, including Rule 26, intend a liberal pretrial discovery, to enable the parties to obtain the fullest possible knowledge of the facts before trial. Rule 1-026B(1) NMRA; *Marchiondo v. Brown*, 98 N.M. 394, 649 P. 2d 462, 465, (1982) (the presumption is in favor of discovery). “In light of that policy, Rules 33 and 34 must be liberally construed in order to insure that a litigant's right to discovery is ‘broad and flexible.’”

3. “In construing Rules 33 and 34, we must begin with the notion that discovery is designed to ‘make a trial less a game of blindman’s buff and more a fair contest with the basic

² 20-00222-UT, *Order Addressing ABCWUA Motion to Compel*, April 12, 2021, p. 2.

issues and facts disclosed to the fullest practicable extent.” *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P. 2d 231, 246 (1980)³ citing, *United States v. Procter & Gamble*, 356 U.S. 677, 682, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958) (citation omitted). “In light of that policy, Rules 33 and 34 must be liberally construed in order to insure that a litigant’s right to discovery is ‘broad and flexible.’” *Audiotext Communs. Network v. US Telecom*, 1995 U.S. Dist. LEXIS 15416 (D. Kan. 1995).

4. In order to put this issue in context, and without repeating any of the testimony of various intervening parties,⁴ NEE will demonstrate through statements and documents of Joint Applicants that the abandonment, sale and demand for securitized financing for FCPP was and is a precondition of the merger. Everyone, including Wall Street, knows this, but Joint Applicants maintain a fiction that the two cases, 20-00222-UT (the merger) and 21-00017-UT (FCPP) are distinct, and state in their discovery responses in the “general objections” section to most sets of intervenors’ discovery that include a request for information about FCPP, the following language:

Joint Applicants are not seeking any approvals in this proceeding relating to the Four Corners Power Plant, and discovery concerning the proposed early abandonment of the Four Corners Power Plant is outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) NMRA; 1.2.2.25 NMAC. PNM’s request for abandonment of its interest in the Four Corners

³ The requirement of materiality does not ... compel the person seeking discovery definitely to prove materiality before being entitled to a discovery. Such an interpretation of the rule would place upon it a narrow construction which would severely limit the bounds of the discovery procedure. It might compel a party to know what was in the documents before he had seen them. One of the basic purposes of the new Rules is to enable a full disclosure of the facts so that justice might not move blindly. *United Nuclear, supra*, at p.255 citing, *Belser v. Savarona Ship Corporation*, 26 F. Supp. 599 (E.D.N.Y. 1939)

⁴ Sierra Club’s *Direct Testimony of Jeremy Fisher*, 4/2/2021, *passim*; ABCWUA’s *Rebuttal testimony of Mark E. Garrett*, 4/20/2021, pp. 9-14; NEE’s *Direct and Rebuttal Testimony of Christopher Sandberg*, respectively, 4/2/2021 and 4/20/2021, pp. 32-37 and pp. 14-21; and CCAE’s *Direct Testimony of Noah Long*, 4/2/2021, p. 5-6.

Power Plant will be filed in the early 2021 and all interested parties will have an opportunity to address issues and concerns in that proceeding once such a filing is made. However, in an effort to avoid a discovery dispute, the Joint Applicants provide responses to certain of the discovery requests related to the Four Corners Power Plant. By providing responses to these discovery requests, Joint Applicants are not waiving any objections to discovery requests that seek information concerning the Four Corners Power Plant or information and concerning matters outside the scope of these proceedings.⁵

5. Is “the proposed early abandonment of the Four Corners Power Plant [] outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence,” as Joint Applicants claim? No. The singular relevance of the Four Corners “issues” is this: PNM has entered into an agreement to transfer its interest to Navajo Transitional Energy Company, LLC (“NTEC”), which plans to keep Four Corners running to 2031, if not longer.⁶ This merger and Stipulation is in conflict with the Energy Transition Act’s requirement that PNM not sell its interest in coal plants as a way of meeting renewable energy requirements.⁷ According to PNM, “PNM began examining means of exiting Four Corners

⁵ Exhibit C, Case No. 20-00222-UT, Joint Applicants’ Objections and Responses to CCAE-1, December 11, 2020, pp. 2-3 of 16; Exhibit B, Joint Applicants’ Objections and Responses to NEE-13, May 27, 2021, p. 2 of 5.

⁶ Case No. 20-00017-UT, Fenton Dir., pp. 13, 17; Fallgren Dir., pp. 7-10 (also stating that the existing Navajo Nation Land Lease and Supplement Lease for the FCPP requiring decommissioning of that plant does not expire until July 6, 2041) and p.17.

⁷ NMSA § 62-16.4.B(4) (2019), provides that: “[i]n administering the standards required by Paragraphs (5) and (6) of Subsection A of this section, the commission shall prevent carbon dioxide emitting electricity-generating resources from being reassigned, redesignated or sold as a means of complying with the standard.” NMSA § 62-16-4(D) (2019), provides that:

Upon a motion or application by a public utility the commission shall, or upon a motion or application by any other person the commission may, open a docket to develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual renewable portfolio standard set forth in this section; results in reductions in carbon dioxide emissions earlier than required by Subsection A of this section; *or causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.* (emphasis supplied.)

shortly after the resolution of the 2016 Rate Case.”⁸

Along comes Avangrid/Iberdrola, and Avangrid/Iberdrola’s hypocritical requirement is not that PNM abandon and close the plant (FCPP) but that it only “divest” itself of the plant so that, as Avangrid/Iberdrola candidly admits, Avangrid/Iberdrola will not be tarred by the ownership of a coal plant.⁹ *See*, Exhibit D. Environmental groups have made clear their adamant objections to PNM’s plan to sell its interest in Four Corners to NTEC since PNM announced it in Case No. 20-00017-UT, following the filing of Avangrid/Iberdrola/PNMR/PNM deal.

The sale of Four Corners, is, of course, made more complex and difficult, by the fact that PNM renewed its interest in Four Corners imprudently. Even, it must be said, shockingly imprudently. Having renewed its expiring interests in the plant in 2015 on the ground that it was “good for ratepayers”, PNM promptly announced that, oh well, it’s not so good for them after all and we’re going to abandon it. This quick reversal makes PNM’s imprudence even more glaring, if such a thing was even possible.

Now we come to the Avangrid deal, which depends on PNM’s divestment via sale to NTEC, a condition of the deal going forward. PNM and Avangrid must explain, in the context of the pending motion, what Avangrid will do if the merger takes place (presumably after persuading the PRC that the abandonment/sale of FCPP is “a separate matter”), if the PRC later rejects PNM’s abandonment/sale of FCPP and, further, if the PRC tells PNM (perhaps by then, PNM/Avangrid), that it is not entitled to any of the money it wants as ill-deserved “compensation” for Four Corners.

⁸Case No. 20-00017-UT, Consolidated Response of Public Service Company of New Mexico to Joint Movants’ Motion to Dismiss Application and Supporting Brief and CCAE’s Motion to Dismiss Application Pursuant to Commission Rule 1.2.2.12(B), June 1, 2021, p. 19

⁹ *See*, ¶7 below, and Exhibit D, *passim*.

Under the foregoing circumstances, it is difficult to imagine what good-faith basis PNM and Avangrid have for refusing discovery related to FCPP.

6. In Joint Applicants' Direct Testimony and Exhibits of Pedro Azagra Blazquez, Exhibit PAB-3, the PNM/Avangrid Agreement and Plan of Merger, specifically includes the following language: **Four Corners Divestiture. ...PNM, shall (a) enter into definitive agreements providing for exit from all ownership interests in the Four Corners Power Plant ... and (b) make all applicable regulatory filings and take all commercially reasonable actions in order to obtain required approvals from applicable Governmental Entities, all with the objective of having the closing date for such exit to occur as promptly as practicable but in any event no later than December 31, 2024.**) p. 68, § 6.19. (emphasis supplied); Four Corners Divestiture. Each of the Four Corners Divestiture Agreements shall have been duly executed and delivered by each of the parties thereto, and shall be in full force and effect as of the Closing, and PNM shall have made all applicable regulatory filings to obtain required approvals from applicable Governmental Entities, including for abandonment authority and securitization from the NMPRC.) p. 71, § 7.2(g); for the purposes of determining whether a Burdensome Effect exists ... (or could reasonably be expected to exist), in respect of a Specified Required Regulatory Approval only those terms, conditions, liabilities, obligations, commitments, or undertakings related to or arising out of rate concessions (including rate reductions and rate credits) to customers required to obtain such Specified Required Regulatory Approval will be taken into account.) p.57, §6.5(d).

7. As Avangrid/Iberdrola witness, Pedro Azagra Blazquez makes clear in his testimony in support of the PNM/Avangrid Application for merger:

Q. ARE THERE ANY OTHER CONTINGENCIES THAT MUST BE SATISFIED UNDER THE MERGER AGREEMENT?

A. Yes. Avangrid is committed to moving as quickly as possible to the clean generation of power. To that end, the Merger Agreement requires that prior to consummation of the Merger, PNM must execute agreements to divest itself of its ownership interest in the Four Corners Power Plant, and file for the necessary regulatory approvals to abandon that interest. PNM has executed an agreement with the Navajo Transitional Energy Company that will allow PNM to divest its 13% interest in the Four Corners Power Plant in 2024. I understand that PNM is preparing the necessary applications for regulatory approval in a separate proceeding. Joint Applicants are not seeking any approvals in this proceeding with respect to the Four Corners Power Plant.¹⁰

It is unabashedly clear that the PNM/Avangrid merger is dependent on PNM's application for FCPP abandonment, sale, and the securitized financing of \$300 Million, plus interest, amortized over 25+ years in a "non-bypassable" charge on every single residential ratepayers' monthly bill. In response to discovery about contingencies underlying the merger agreement, Mr. Blazquez testified:

Avangrid's internal policies precluded Avangrid from pursuing this transaction with PNMR in the absence of a clear and achievable path for PNM out of its ownership and operation of coal-fired generation. Avangrid determined that the planned imminent retirement of the remaining San Juan Generating units, which has already received abandonment authorization from the Commission was consistent with its internal policies. However, a continued minority interest in the Four Corners Power Plant (even if only for a 200 MW stake) was inconsistent with Avangrid's policies. Accordingly, Avangrid made it clear to PNMR that it would not agree to the Merger in the absence of PNM having a clear and achievable plan to exit the Four Corners Plant by no later than 2024.

There are a number of conditions to closing in the Merger Agreement, including the conditions in Section 7.2(g) that "Each of the Four Corners Divestiture Agreements shall have been duly executed and delivered by each of the parties thereto, and shall be in full force and effect as of the Closing, and PNM shall have made all applicable regulatory filings to obtain required approvals from applicable Governmental Entities, including for abandonment authority and securitization from the NMPRC." While Section 7.2(g) is the only contingency provision in the Merger Agreement specific to the Four Corners Power Plant, Avangrid notes that there are also other conditions, including that all Required Regulatory Approvals are obtained without a Burdensome Effect and that no Material Adverse Effect on PNMR shall have occurred.

¹⁰ Direct Testimony of Pedro Azagra Blazquez, 11/23/2020, p. 14. *See, also*, Exhibits A-D.

Avangrid believes that abandonment authorization is a critically important part of the divestiture process, as divestiture cannot occur without abandonment authorization. Avangrid cannot speculate on the impacts of a hypothetical denial of abandonment authorization on the Merger Agreement. However, denial of abandonment would be inimical to the publicly stated intent of both Avangrid and PNMR to have PNM exit coal by divesting from the Four Corners Power Plant earlier than originally planned.¹¹ (emphasis supplied.)

8. According to PNM’s Definitive Proxy Statement, filed on 1/5/2021, with the U.S. Securities & Exchange Commission, <https://sec.report/Document/0001140361-21-000193/>¹²:

Q31: What are the conditions to completion of the merger?

A31: In addition to the approval of the merger agreement by PNMR shareholders as described above, completion of the merger is subject to the satisfaction of a number of other conditions, including the absence of any material adverse effect on [PNMR](#), the receipt of required regulatory approvals and entry into agreements regarding the Four Corners divestiture (as described in the merger agreement), as well as holders of no more than 15% of the outstanding shares of PNMR common stock validly exercising their dissenters’ rights. For a more complete summary of the conditions that must be satisfied or waived prior to completion of the merger, see the section entitled “The Merger Agreement—Conditions That Must Be Satisfied or Waived for the Merger to Occur” beginning on page [98](#) of this proxy statement.¹³

In early November 2019, Mr. Azagra Blazquez inquired of Mr. Eldred as to the amount of electric power generation PNMR owns that is based on coal usage and indicated that this could be a significant transaction concern for Iberdrola and Avangrid.

On November 8, 2019, the PNMR board met telephonically in executive session, with Mr. Eldred, representatives of Troutman Pepper and Evercore participating. PNMR management updated the PNMR board on recent discussions with Mr. Azagra Blazquez, including its request

¹¹ Joint Applicants’ Objections and Responses to CCAE1-1, December 11, 2020 Exhibit C.

¹² “The failure is also significant, given that Avangrid, Inc. has considered the issues to be sufficiently important to include them in its reports filed with the SEC [U.S. Securities and Exchange Commission] but then seek to withhold it from the PRC. 20-00222-UT, *Order Regarding Avangrid Service Quality Issues and Management Audits and Suspension of the Filing Date for Statements in Opposition to the May 7, 2021 Stipulation*, May 11, 2021, at 3.

¹³ <https://sec.report/Document/0001140361-21-000193/>, p. 23.

for information about PNMR's coal usage. The PNMR board reviewed possible benefits of a combination with Avangrid for PNMR's shareholders and other PNMR constituencies but expressed concern about Mr. Azagra Blazquez's raising a new issue concerning PNMR's coal-fired generation at this point in the negotiations. The PNMR board also expressed its concern with the delay in discussing merger agreement terms since terms were last discussed on October 22, 2019. On November 20, 2019, Mr. Eldred and a representative of Evercore met in New York City with Mr. Azagra Blazquez and a representative of BNP Paribas. They discussed questions about PNMR's coal-fired generation and transaction valuation matters.¹⁴

On December 2, 2019, Mr. Eldred and PNMR's General Counsel and a representative of Evercore participated in a conference call with Mr. Azagra Blazquez and representatives of BNP Paribas and Latham & Watkins in which they discussed PNMR's coal-fired generation. Following the call, PNMR provided Iberdrola with additional information regarding ongoing activities related to its existing strategy for exiting from Four Corners and transitioning to clean energy.

On December 4, 2019, Mr. Eldred and a representative of Evercore had a follow-up call with Mr. Azagra Blazquez and representatives of BNP Paribas. They discussed the additional information PNMR provided regarding its clean energy strategy. Mr. Azagra Blazquez stated that he would review these matters internally and then arrange for a follow-up discussion with PNMR but did not commit to a time frame for resolving outstanding transaction matters.

On December 5-6, 2019, the PNMR board met at a regularly scheduled meeting. Following review of management's recent discussions with Mr. Azagra Blazquez, the PNMR board discussed terminating discussions with Iberdrola and Avangrid. The PNMR board expressed its belief that Avangrid's continued delay in making progress in negotiations by raising new concerns with PNMR's coal-fired generation and by not providing a new draft of the merger agreement responding to Troutman Pepper's October 7, 2019 draft made the transaction highly uncertain and that PNMR should instead focus on pursuing its business plan, which included funding investment growth and maintaining credit metrics.¹⁵

Mr. Azagra Blazquez confirmed Iberdrola/Avangrid's interest in again pursuing a transaction, but indicated that PNMR's exposure to coal remained an issue for Iberdrola and Avangrid. They discussed how the issue could be resolved in light of PNMR's ongoing initiative to pursue a strategy to exit from its interest in Four Corners early, by 2024.¹⁶

On June 5, 2020, the PNMR board met telephonically in executive session, with Mr. Eldred and PNMR's General Counsel and representatives of Troutman Pepper participating. Management provided the PNMR board with an update on New Mexico operational matters, including plans to exit Four Corners.¹⁷

The draft letter [in August 2020] stressed the importance to Iberdrola and Avangrid of having definitive documentation in place for PNMR's exit from Four Corners.¹⁸

On September 8, 2020, representatives of Iberdrola/Avangrid, Latham & Watkins and BNP Paribas held a conference call with representatives of PNMR, Troutman Pepper and

¹⁴ *Id.*, p. 39.

¹⁵ *Id.*, p. 40.

¹⁶ *Id.*

¹⁷ *Id.*, p. 44.

¹⁸ *Id.*, p. 45.

Evercore. During this call, the PNMR representatives reviewed the next steps in the Four Corners exit process.

[O]n September 14, 2020, Latham & Watkins sent a new draft of the merger agreement and a draft of the Avangrid Shareholder Agreement to Troutman Pepper. The merger agreement contained a revised covenant and a closing condition providing for PNMR's entering into definitive agreements providing for the exit from Four Corners.¹⁹

On September 19, 2020, Mr. Azagra Blazquez discussed with Mr. Eldred how he was concerned that the divergence in stock prices might cause Avangrid to reconsider the proposed exchange ratio. He also referred to the importance of PNMR's having agreements in place to exit from Four Corners. Mr. Eldred updated Mr. Azagra Blazquez on the already ongoing initiatives by PNMR to exit Four Corners.²⁰

Assumptions Regarding PNMR Forecasts

The forecasts set forth above assume:

divestment of Four Corners as previously disclosed²¹

Other Covenants and Agreements

Avangrid and PNMR have made certain other covenants to and agreements with each other regarding various other matters including:

PNMR will (a) enter into definitive agreements providing for exit from all ownership interests in Four Corners.²²

Conditions to Obligations of Avangrid and Merger Sub

... each of the definitive agreements related to the divestiture of Four Corners having been duly executed and delivered by each of the parties thereto and remaining in full force and effect as of the effective time of the merger, and PNM having made all applicable regulatory filings to obtain required approvals from applicable governmental entities, including for abandonment authority and securitization from the NMPRC.²³

¹⁹ *Id.*, p. 46.

²⁰ *Id.*

²¹ *Id.*, p. 53

²² *Id.*, pp. 80-81.

²³ *Id.*, p. 99.

9. When PNM was courting Iberdrola/Avangrid the internal documents demonstrate Iberdrola/Avangrid's refusal to entertain ownership of a company that had interests in coal;²⁴ PNM explicitly referenced more than half a dozen times in clear terms that it was in the process of trying to sell FCPP, that the ETA was going to provide for securitized financing and that failure to divest from FCPP was a deal breaker for Iberdrola/Avangrid. How was going PNM/PNMR going to sell this merger to large institutional investors? Included in Exhibit D is an investor Q&A preparation document that offers potential questions and PNMR senior management responses. Question 18, on page 133 of 139, offers a question specifically about FCPP and whether it is a condition to the closing of the merger.

10. CONFIDENTIAL PNM NEE Exhibit 4-11, currently under review by the Hearing Examiner (to determine if the confidential designation is appropriate) is another example of evidence confirming that from the very beginning of the Iberdrola/Avangrid and PNMR/PNM relationship that Four Corners divestiture was/is a requirement.

11. On March 15, 2021, PNM filed Supplemental Testimony in the FCPP abandonment, sale and securitization case, 21-00017-UT. In order to try and prove that its abandonment and sale of FCPP to NTEC is "in the public interest" and will not produce a "net public detriment" even though the sale would continue to allow, and may actually increase FCPP coal burning, hence climate-altering carbon emissions, PNM's Thomas Fallgren testified that: "PNM's exit provides for the implementation of seasonal operation starting in 2023 with an estimated overall plant emission reduction of 20-25%."²⁵ PNM did not include the seasonal operation agreement in its filing, but did include a press release about the seasonal operation

²⁴ See, Exhibit D, excerpts from CONFIDENTIAL PNM Exhibit NEE 1-57 (1-29-21 Supplemental)

²⁵ Case No. 21-00017-UT, Supplemental Testimony of Thomas G. Fallgren, March 15, 2021, p. 28.

agreement. See Exhibit E.

In Case No. 21-00017-UT, there is no testimony about the PNM/Avangrid merger whatsoever in PNM's Amended Application and supplemental testimony. Yet, in the press release about the seasonal operation agreement at Four Corners, PNM Resources includes the information about the Avangrid merger and the "risks and uncertainties in connection with the proposed acquisition of us by AVANGRID" if "conditions of any *required* governmental and *regulatory approvals* of the pending Merger" are not met in its press announcement about the "seasonal operations" at FCPP, in its *Safe Harbor Statement under the Private Securities Litigation Reform Act of 1995*, because failure to disclose to the Securities and Exchange Commission may include criminal and civil penalties. (emphasis supplied.)

12. On April 12, 2021 NEE filed its Ninth set of Discovery to Joint Applicant's. On April 22, 2021 filed Joint Applicants' Objections and Responses to NEE's Ninth Set²⁶ as follows:

NEE INTERROGATORY 9-28 (SIC):

PLEASE PROVIDE ANY AND ALL DOCUMENTS REGARDING THE IMPLEMENTATION OF SEASONAL OPERATION STARTING IN 2023 WITH AN ESTIMATED OVERALL PLANT EMISSION REDUCTION OF 20-25% AT FCPP.

A) PLEASE ALSO STATE IF AVANGRID AND/OR IBERDROLA HAD ANYTHING TO DO WITH THESE NEGOTIATIONS AND IF SO PLEASE INDICATE THE PERSON(S) WHO ASSISTED IN NEGOTIATIONS EMPLOYED BY AVANGRID AND/OR IBERDROLA AND ON WHICH DATE(S).

OBJECTION:

While no specific facility is identified, for purposes of this response, Joint Applicants interpret this request to apply to the Four Corners Power Plant (Four Corners).

²⁶ The footer that is meant to describe the set of discovery, date, and case number incorrectly states that Joint Applicants were answering "NEE-1" but in fact were Objecting and Responding to "NEE-9."

Accordingly, Joint Applicants object to this discovery request as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) NMRA; 1.2.2.25 NMAC. See also, General Objection No. 5 above. Joint Applicants are not seeking any approvals or rate recovery in this proceeding relating to Four Corners, and discovery concerning the plant's potential operation following approval of PNM's proposed early abandonment of Four Corners or any seasonal operation of the plant is not germane to any issues presently before the Commission. PNM's request for abandonment of its interest in Four Corners is the subject of an abandonment in Case No. 21-00017-UT and interested parties can conduct discovery concerning the proposed abandonment of Four Corners in that proceeding. Joint Applicants further object to this request on the grounds that it seeks discovery of confidential communications exchanged during confidential dispute resolution efforts among the owners of Four Corners. Joint Applicants object to this discovery request on the grounds that it seeks privileged and inadmissible communications. The request for these communications is not reasonably calculated to lead to the discovery of admissible evidence because such communications are inadmissible pursuant to Rule 11-408 NMRA of the New Mexico Rules of Evidence. This is consistent with the Commission's procedural rules which provide that offers of settlement and statements made in furtherance of settlement are privileged. *See, e.g.,* 1.2.2.16 (C) and (D) NMAC. *See also,* Case No. 12- 00007- UT, *Order Denying CCAE's Motion to Compel*, pp. 3-4) (April 12, 2012) (Hearing Examiner held that under Commission rules, settlement communications are "privileged" and that privileged information is not admissible. *Accord, Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 979-982 (6th Cir. 2003) (Communications made in furtherance of settlement negotiations are privileged and protected from third-party discovery. Nor are these communications relevant or likely to lead to the discovery of admissible evidence. Rule 1-026 (B)(1) and (2) NMRA; 1.2.2.25 NMAC.

See, Exhibit A.

13. On May 11, 2021, NEE wrote a discovery dispute letter pursuant to Rule 1.2.2.25(J)(1) to Joint Applicants. On May 19, 2021, Mr. Richard Alvidrez, attorney for PNM wrote (in relevant part):

Mariel:

Thank you for conferring with Brian Haverly and me yesterday with respect to the discovery issues set out in your letters of May 11 and May 14, 2021. The purpose of this letter is to memorialize our agreements reached with respect to the resolution of the disputes concerning the subject discovery requests and responses.

NEE Interrogatory No. 9-28 [SIC]:

As discussed, PNM stands on its objection with respect to the seasonal operations at the Four Corners Power Plant. The agreement among the Four Corners Power Plant owners concerning seasonal operation is not addressed in any respect in the merger agreement and is not relevant to the matters at issue in this case. In addition, to the extent that this information would somehow be relevant to the merger case, the reference materials would be privileged.

Notwithstanding the foregoing, Avangrid agrees to supplement its response to sub-paragraph A of this interrogatory.²⁷

See, Exhibit A.

14. On May 17, 2021 NEE filed its Thirteenth set of Discovery to Joint Applicant's. On May 27, 2021 filed Joint Applicants' Objections and Responses to NEE's Thirteenth Set as follows:

INTERROGATORY NEE 13-1:

PLEASE PROVIDE ANY AND ALL DOCUMENTS RELEVANT TO THE "FOUR CORNERS DIVESTITURE AGREEMENTS," AS REFERRED TO IN CONFIDENTIAL NEE 4-11.

OBJECTION

PNM objects to NEE Interrogatory 13-1 as outside the scope of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) NMRA; 1.2.2.25 NMAC. *See also*, General Objection No. 5 above. Joint Applicants are not seeking any approvals in this proceeding relating to the Four Corners Power Plant, including divestiture agreements, and discovery concerning these matters is not germane to any issues presently before the Commission beyond whether PNM has entered into an agreement to sell its interest in the Four Corners Power Plant, and whether PNM has filed an application with the Commission for the proposed abandonment of the plant. PNM's request for abandonment of its interest in the Four Corners Power Plant is subject to the NMPRC Case No. 21-00017-UT and interested parties have the opportunity to conduct discovery concerning the proposed abandonment and any related agreements for the Four Corners Power Plant in that proceeding.

See, Exhibit B.

²⁷ Despite what Mr. Haverly said in our discovery dispute resolution call and Mr. Alvidrez's correct memorialization of that call, and specifically about the interrogatory at issue, Avangrid has not "supplement[ed] its response to sub-paragraph A of this interrogatory".

15. On May 28, 2021, NEE sent a discovery dispute letter pursuant to Rule 1.2.2.25(J)(1) to Joint Applicants and Joint Applicants, through Mr. Richard Alvidrez, responded on June 1, 2021, and stated that they “will stand on its objections.” *See*, Exhibit B.

16. The lack of transparency and candor regarding FCPP, which we submit is a lynchpin issue in the merger case is critical because as NEE argued more fully in *New Energy Economy’s Statement of Opposition to Initial and Amended Stipulation*, filed on May 25, 2021, without a resolution to Four Corners no quantifiable assessment of the merger can actually be assessed and therefore the public interest cannot be evaluated.

17. All of the above-requested information is exclusively in the control of Joint Applicants and failure to produce this information has not been made in good faith.

18. NEE respectfully insists on its right to discovery responses for all interrogatories presented and requests that the Hearing Examiner make a finding about the relevance of FCPP to this merger to resolve other discovery disputes. NEE requires this information to make its case, and the information should be before the PRC to allow a full record, transparency, and oversight.

19. It is within the Hearing Examiner’s authority to order PNM to comply with the outstanding discovery requests. In deciding whether a request comes within the discovery rules, a decision maker is not required to blind itself to the purpose for which a party seeks information. NEE seeks to demonstrate that the actions of PNM/PNMR and Avangrid/Iberdrola are not in the interest of the public. Additionally, NEE continues to seek all this information for impeachment in cross-examination.

20. New Energy Economy seeks a shortened response time to discovery requests. Testimony in opposition to the Stipulation is due on July 16, 2021 and the hearing in this matter commences in mid August. Given that the discovery requests at issue pertain to both these needs,

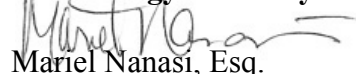
NEE requests that expedited responses be filed by Friday, June 11, 2021, and that responsive documents be produced in their entirety by close of business three days after a successful ruling, if this Motion is granted.

21. NEE sought the position of parties: Joint Applicants oppose the motion. Albuquerque Bernalillo County Water Utility Authority PRC Staff, and Bernalillo County support the motion. No other party responded in the time allotted.

WHEREFORE, New Energy Economy respectfully moves this Commission to compel Joint Applicants to answer interrogatories and produce responsive documents to NEE's Discovery Requests 9-28 (SIC) and 13-1, for a shortened response time, and for a shortened time to produce answers and responsive material, an affirmative finding by the Hearing Examiner that discovery regarding the Four Corners Power Plant is relevant, and any other relief that the Hearing Examiner deems just and reasonable.

Respectfully submitted this 4th day of June, 2021.

New Energy Economy



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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF)
AVANGRID, INC., AVANGRID NETWORKS, INC., NM)
GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY)
OF NEW MEXICO AND PNM RESOURCES, INC. FOR)
APPROVAL OF THE MERGER OF NM GREEN)
HOLDINGS, INC. WITH PNM RESOURCES, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND APPROVALS)
REQUIRED TO CONSUMMATE AND IMPLEMENT THIS)
TRANSACTION)**

Case No. 20-00222-UT

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email to the parties and individuals listed below a true and correct copy of:

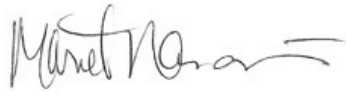
**NEW ENERGY ECONOMY’S MOTION TO COMPEL
OUTSTANDING DISCOVERY REGARDING FOUR CORNERS POWER PLANT,
EXHIBITS A-E, AND THE AFFIDAVIT OF MARIEL NANASI**

Stacey Goodwin Ryan Jerman Richard Alvidrez Mark Fenton Carey Salaz Steven Schwebke Patrick V. Apodaca Mariel Nanasi Christopher Sandberg Joan Drake Lisa Tormoen Hickey Nann M. Winter Keith Herrmann Dahl Harris Peter Auh Andrew Harriger Jody García Steven S. Michel April Elliott Cydney Beadles Pat O’Connell Douglas J. Howe Cholla Khoury Gideon Elliot Robert F. Lundin	Stacey.Goodwin@pnmresources.com; Ryan.Jerman@pnmresources.com; Ralvidrez@mstlaw.com; Mark.Fenton@pnm.com; Carey.salaz@pnm.com; Steven.Schwebke@pnm.com; Patrick.Apodaca@pnmresources.com; Mariel@seedsbeneaththesnow.com; cksandberg@me.com; jdrake@modrall.com; lisahickey@newlawgroup.com; nwinter@stelznerlaw.com; kherrmann@stelznerlaw.com; dahlharris@hotmail.com; pauh@abcwua.org; akharriger@sawvel.com; JGarcia@stelznerlaw.com; smichel@westernresources.org; April.elliott@westernresources.org; Cydney.Beadles@westernresources.org; pat.oconnell@westernresources.org; dhowe@highrocknm.com; ckhoury@nmag.gov; gelliott@nmag.gov; rlundin@nmag.gov;	Kyle J. Tisdell Ally Beasley Ahtza Dawn Chavez Joseph Hernandez Nicole Horseherder Jessica Keetso Thomas Singer Mike Eisenfeld Robyn Jackson Jane L. Yee Larry Blank, Ph.D. Saif Ismail Peter J. Gould Kelly Gould Jim Dauphinais Michael Gorman Justin Lesky Stephanie Dzur Ramona Blaber Don Hancock April Elliott Brian J. Haverly Jason Marks Matthew Gerhart R. Scott Mahoney	tisdell@westernlaw.org; beasley@westernlaw.org; ahtza@navaeducationproject.org; joseph@navaeducationproject.org; nhorseherder@gmail.com; jkeetso@yahoo.com; Singer@westernlaw.org; mike@sanjuancitizens.org; Robyn.jackson@dine-care.org; jyee@cabq.gov; lb@tahoeconomics.com; sismail@cabq.gov; peter@thegouldlawfirm.com; Kelly@thegouldlawfirm.com; jdauphinais@consultbai.com; mgorman@consultbai.com; jlesky@leskylawoffice.com; Stephanie@Dzur-law.com; Ramona.blaber@sierraclub.org; sriedon@earthlink.net; ccae@elliottanalytics.com; bjh@keleher-law.com; lawoffice@jasonmarks.com; matt.gerhart@sierraclub.org; Scott.Mahoney@avangrid.com;
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DATED this 4th day of June 2021.

New Energy Economy,



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