BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER	)	**Case No. 21-00017-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant.	)	

RECOMMENDED DECISION ON PNM'S REQUEST FOR APPROVAL OF THE SALE AND ABANDONMENT OF ITS INTEREST IN THE FOUR CORNERS POWER PLANT AND TO RECOVER NON-SECURITIZED COSTS

12 November 2021

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

Acronym/Defined Term	Meaning
2015 Rate Case	Case No. 15-00261-UT
2016 Rate Case	Case No. 16-00276-UT
ABCWUA	Albuquerque Bernalillo County Water Utility Authority
ACC	Arizona Corporation Commission
APS	Arizona Public Service Company
Agreement or PSA	Four Corners Purchase and Sale Agreement between PNM and NTEC dated as of Nov. 1, 2020
Application or App.	Amended Application filed by PNM on March 15, 2021
Attorney General or NMAG	State of New Mexico, *ex rel*. Hector H. Balderas, Attorney General
Avangrid	Avangrid Networks, Inc. and Avangrid, Inc., collectively
Br.	Brief in chief or initial brief
City	City of Albuquerque, New Mexico
County	Bernalillo County, New Mexico
CCAE	Coalition for Clean Affordable Energy
CCN	Certificate of Public Convenience and Necessity
CCR	Coal combustion residuals or coal ash
CCSD	Central Consolidated School District
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFRE	Citizens for Fair Rates and the Environment
CSA	Four Corners Coal Supply Agreement
Certification of Stipulation	Certification of Stipulation in Case No. 16-00276-UT issued Oct. 31, 2017

Acronym/Defined Term	Meaning
CO_2	Carbon dioxide
Commission or NMPRC	New Mexico Public Regulation Commission
Community Groups	SJCA, Diné C.A.R.E., Tó Nizhóní Aní, and NAVAEP
COVID-19	Coronavirus disease
Cumbre	Cumbre Court Reporting Services, L.L.C.
DG	Distributed Generation
Diné C.A.R.E.	Diné Citizens Against Ruining Our Environment
EIA	U.S. Energy Information Administration
EPA	Environmental Protection Agency
EPE	El Paso Electric Company
ETA	Energy Transition Act
ETCs	Energy transition charges
Exh.	Exhibit
FCPP or Four Corners	Four Corners Power Plant
FCPP Assets	PNM's 13% interest in FCPP and associated PNM-owned assets such as the FCPP switchyard, inventory, and fuel inventory)
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
GWh	Gigawatt-hour
IRP	Integrated resource plan
Iberdrola	Iberdrola, S.A., a corporation (*Sociedad Anónima*) organized under the Laws of the Kingdom of Spain and ultimate parent company of Avangrid.
kW	Kilowatt

Acronym/Defined Term	Meaning
Legislature	New Mexico Legislature
LOLE	Loss of Load Event
MWh	Megawatt-hour
Merger case or proceeding	Case No. 20-00222-UT, *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 General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement this Transaction*
Modified Revised Stipulation	Modified Revised Stipulation in Compliance with and Conforming to Commission's Orders Granting Conditional Approval in Case No. 16-00276-UT filed Jan. 23, 2018
NAVAEP	NAVA Education Project
NEE	New Energy Economy
NMAC	New Mexico Administrative Code
NM AREA	New Mexico Affordable Reliable Energy Alliance
NMCA	New Mexico Court of Appeals
NMPSC	New Mexico Public Service Commission
NMPUC	New Mexico Public Utility Commission
NMSA	New Mexico Statutes Annotated
NMSC	New Mexico Supreme Court
NO_x	Nitrogen Oxide
NPV	Net present value
NPVRR	Net present value revenue requirements
NREL	National Renewable Energy Laboratory
NTEC	Navajo Transitional Energy Company, LLC

Acronym/Defined Term	Meaning
NTEC Operating Agreement	Amended and Restated Operating Agreement of the Navajo Transitional Energy Company, LLC.
Nation	Navajo Nation
O&M	Operations and maintenance
OEH or Onward Energy	Onward Energy Holdings, LLC
PSA	Purchase and Sale Agreement between PNM and NTEC
PV	Photovoltaic
Procedural Order	Procedural Order issued in this case by the Hearing Examiner on March 17, 2021
PNM	Public Service Company of New Mexico
PNMR	PNM Resources, Inc., a New Mexico corporation that wholly owns PNMR Services Company, which provides shared services to PNMR and its active subsidiaries, including PNM
PPA	Purchased power agreement
PUA	Public Utility Act
PVGNS	Palo Verde Nuclear Generating Station
RAP	Regulatory Assistance Project
REA	Renewable Energy Act
RECs	Renewable Energy Certificates
Resp.	Response
Revised Final Order	*Revised Order Partially Adopting Certification of Stipulation* in Case No. 16-00276-UT issued Jan. 10, 2018.
ROO	Recommended opinion and order
RPS	Renewable portfolio standard
S.B. 489	Senate Bill 489

Acronym/Defined Term	Meaning
SCR	Selective catalytic reduction pollution control system or "SCR controls"
SJGS	San Juan Generating Station
SJCA	San Juan Citizens Alliance
SPE	Special purpose entity
SPS	Southwestern Public Service Company
SRP	Salt River Project Agricultural Improvement and Power District
STEM	Science, technology, engineering, and mathematics
San Juan County or SJC	Board of County Commissioners of San Juan County, New Mexico
Staff	Commission's Utility Division Staff
TEP	Tucson Electric Power Company
TNA	Tó Nizhóní Aní
Tr.	Transcript of the evidentiary hearings conducted in this case
Vol.	Volume, as in Volumes I-VII of the evidentiary hearings held in this case between Aug. 31 – Sept. 9, 2021
WACC	Weighted average cost of capital
WRA	Western Resource Advocates
Zoom	Zoom videoconferencing platform

Anthony F. Medeiros, Hearing Examiner in this proceeding, submits this Recommended Decision to the New Mexico Public Regulation Commission ("Commission" or NMPRC) pursuant to NMSA 1978, § 8-8-14 and NMPRC Rules of Procedure 1.2.2.29(D)(4) and 1.2.2.37(B) NMAC. The Hearing Examiner recommends that the Commission adopt the following statement of the case, background, discussion, findings of fact, conclusions of law, and ordering paragraphs in an order.

I. STATEMENT OF THE CASE

On January 8, 2021, Public Service Company of New Mexico (PNM or "Company") filed an Application for the Approval of the Abandonment of the Four Corners Power Plant and Issuance of a Securitized Financing Order. PNM sought in the application the Commission's approval to abandon its ownership share in the amount of 200 megawatts (MW) of retail coal-fired generation resources at the Four Corners Power Plant ("Four Corners" or FCPP), transfer the resources to the Navajo Transitional Energy Company, LLC (NTEC), and issue Energy Transition Bonds (ETBs) pursuant to the Energy Transition Act (ETA).[1] PNM's application expressly sought approval for two actions: (1) abandonment of PNM's 200 MW share of Four Corners, representing a minority interest of thirteen percent (13%) of the total generation capacity at the plant, and; (2) securitized financing of plant abandonment and financing costs along with funding for state-administered tribal and community programs.

On January 19, 2021, the Commission issued its Initial Order in this case. The Commission's Order initiated this abandonment proceeding pursuant to Section 62-9-5[2] of the Public

[1] NMSA 1978, §§ 62-18-1 to -23 (2019).

[2] NMSA 1978, § 62-9-5 (1941, as amended through 2005).

Utility Act (PUA);[3] extended the review of PNM's application under NMSA 1978, § 62-18-5 for an additional three months for a total of nine months; and appointed the undersigned as Hearing Examiner to preside over this matter.

On January 26, 2021, Sierra Club filed a Motion for an Order Requiring PNM to File Supplemental Testimony Addressing the Prudence of Four Corners, or, in the alternative, to Dismiss PNM's Application. Relatedly, New Energy Economy (NEE) and Citizens for Fair Rates and the Environment (CFRE) filed on January 28, 2021 their Joint Movant's Motion to Dismiss Application and Supporting Brief.

On January 28, 2021, the Hearing Examiner held a prehearing conference in this case via a Zoom videoconference. The prehearing conference was attended by representatives of PNM, the Albuquerque Bernalillo County Water Utility Authority (ABCWUA), the City of Albuquerque ("City"), Bernalillo County ("County"), CFRE, Central Consolidated School District (CCSD), Coalition for Clean Affordable Energy (CCAE), Diné C.A.R.E. and San Juan Citizens Alliance (SJCA), Interwest Energy Alliance, NEE, New Mexico Affordable Reliable Energy Alliance (NM AREA), the New Mexico Attorney General ("Attorney General" or NMAG), Onward Energy Holdings, LLC (Onward Energy or OEH), the Board of County Commissioners of San Juan County ("San Juan County" or SJC), Sierra Club (SC), Western Resource Advocates (WRA), and Staff of the Commission's Utility Division ("Staff").

[3] NMSA 1978, §§ 62-1-1 to -7 (1909, as amended through 1993), 62-2-1 to -22 (1887, as amended through 2013), 62-3-1 to -5 (1967, as amended through 2019), 62-4-1 (1998), 62-6-4 to -28 (1941, as amended through 2018), 62-8-1 to -13-16 (1941, as amended through 2021). *See Tri-State Generation and Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013, ¶ 8 n. 1, 347 P.3d 274 (listing the foregoing statutory provisions of the "entire PUA" and noting that § 62-13-1 specifies "the range of articles in Chapter 62 that comprised the PUA in 1993.").

On February 1, 2021, the Hearing Examiner issued an Order Requesting Briefing on Sufficiency of PNM's Application and Scope of Issues in Proceeding. The Order instructed the parties to brief the following issues:

> 1) whether PNM's Application is sufficient as plead (i.e., whether the request for approval of the proposed abandonment can be granted without also requesting approval in the Application of the transfer of PNM's interest in the FCPP pursuant to NMSA 1978, §§ 62-6-12(A)(4) and 62-6-13);
>
> 2) whether, in the absence of a request in the Application for approval of the transfer of PNM's interest in the FCPP pursuant to NMSA 1978, §§ 62-6-12(A)(4) and 62-6-13, PNM's Application for approval of the proposed abandonment can be granted (i.e., or should be dismissed);
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> 3) whether the Commission's consideration of PNM's Application for approval of the proposed abandonment should be conditioned upon its filing of an amended application in which it also requests approval of the transfer of PNM's interest in the FCPP pursuant to NMSA 1978, §§ 62-6-12(A)(4) and 62-6-13;
>
> 4) whether the statutory review period for the Commission's review of PNM's Application for both the abandonment and securitization approvals should start anew upon the filing of an amended application;
>
> 5) whether, in the alternative to starting the statutory review period anew upon the filing of an amended application, the statutory review period should be extended for some specific and reasonable period of time to account for the filing of an amended application to address the deficiencies in the current Application or, at the very minimum, to account for the additional time required to address the matters implicated herein;[4]
>
> 6) address the scope of issues that should be covered in PNM's supplemental testimony inasmuch as a) there was already discussion at the prehearing conference over whether the parties should brief the scope of issues, b) PNM has already broached its interpretation of issues to be addressed, and c) the Commission is set to consider at its February 3, 2021 Open Meeting potential orders addressing Sierra Club's related Motion to Reopen Docket No. 16-00276-UT to Implement the Revised Final Order and NEE's formal complaint against PNM in Case No. 20-00210-UT for the Company's alleged "Continued

[4] The February 1st Order also found, at 8 n. 21, that "given among other things the potential due process considerations inhering, the Hearing Examiner's self-imposed deadline to issue the Notice of Proceeding and Hearing ("Notice") in this case by February 2, 2021 in order to ensure timely publication in six newspapers of general circulation by February 12, 2021 and allow sufficient time for PNM to mail the Notice to its customers has already been compromised."

Reliance on Expensive and Climate-Altering [FCPP] Coal resulting in Unfair, Unreasonable, and Unjust Rates;" and

7) any other comments or concerns regarding PNM's proposed notice in its revised form.[5]

Subsequently, after intervenors and Staff filed briefs and PNM filed a consolidated response to those briefs and the Sierra Club and NEE/CFRE motions, the Hearing Examiner determined in his Order on Sufficiency of PNM's Application and Scope of Issues in Proceeding issued February 26, 2021 that, subject to starting the nine-month statutory review period under the Energy Transition Act to commence anew with its amended filing, PNM should be permitted to file an amended application in this docket by March 15, 2021 supported by direct testimony that, among other things, addressed the statutory standard for approval of the proposed transfer of the Company's interest in the FCPP to NTEC. Further, regarding the scope of issues to be covered in PNM's supplemental testimony, the Order adhered to the Commission's Order on Sierra Club's Motion to Re-open Docket to Implement the Revised Final Order in Case No. 16-00276-UT.[6] In denying Sierra Club's motion to reopen Case No. 16-00276-UT to conduct "the prudence review of certain [FCPP] expenditures that the Commission deferred in its Revised Order Partially Adopting Certification of Stipulation" (*Revised Final Order*) issued in Case No. 16-00276-UT (the 2016 Rate Case) on January 10, 2018,[7] the Commission concluded that its order was not intended

> to reach beyond the immediate request that the Commission order a prudence review to pre-empt PNM's possible recovery of its undepreciated

[5] Feb. 1, 2021 Order, at 7-8.

[6] *In the Matter of the Application of Public Service Company of New Mexico for Revisions of its Retail Electric Rates Pursuant to Advice Notice No. 533*, Case No. 16-00276-UT, Order on Sierra Club's Motion to Re-open Docket to Implement the Revised Final Order ("Order on Motion to Re-open") (Feb 10, 2021).

[7] Order on Motion to Re-open, at 1, ¶ 1. The Commission also noted, at 1, ¶ 2, that Sierra Club had requested, in the alternative, "an order providing 'that the deferred prudence review be conducted, and given effect as appropriate, in [PNM's] Four Corners abandonment filing.'"

> investments in FCPP. Such issues as whether the terms of the ETA may provide an opportunity for consideration of the prudence of undepreciated investments requested to be include in a financing order as energy transition costs or what the effect of the 'black box' rates approved in the Revised Final Order may have on determining energy transition costs are properly raised and considered in Case No. 21-00017-UT consistent with the due process requirements that all parties to that case have full notice and opportunity to be heard on those issues.[8]

Accordingly, in the February 26th Order the Hearing Examiner required PNM to address in supplemental testimony to be filed with the amended application the prudence of undepreciated investments for which PNM seeks inclusion in a financing order as energy transition costs as well as corollary issues such as the effect that the rates authorized by the *Revised Final Order* in Case No. 16-00276-UT may have on determining energy transition costs in this case.[9]

On March 15, 2021, PNM filed its Amended Application for Approval of the Abandonment of through the Sale of Four Corners Power Plant and Issuance of a Financing Order Pursuant to the Energy Transition Act ("Application" or "Amended Application"). The Amended Application is discussed in the next section of this decision. PNM also filed on that date a motion to withdraw its original application filed January 8, 2021 and supplemented its direct testimonies filed January 8, 2021, which PNM expressly incorporated by reference in the Amended Application, with the supplemental testimonies of Mark Fenton, Thomas G. Fallgren, Thomas S. Baker, Michael J. Settlage, and Frank C. Graves.[10]

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[8] Order on Motion to Re-open, at 7-8, ¶ 25.

[9] *See* Feb. 26, 2021 Order, at 22-25 (In sum, the Feb. 26th Order: delineated the scope of supplemental testimony the Hearing Examiner ordered PNM to file; instructed PNM to formally move to withdraw its original application in conformity with 1.2.2.10(E) NMAC; declined to re-institute the remainder of the procedural schedule tentatively set at the January 28, 2021 pre-hearing conference, as suggested by PNM, and indicated a procedural schedule for this case would be developed after consulting with the parties at the prehearing conference, scheduled by separate Order issued on that date, for March 18, 2021.).

[10] *See* App. at 34-35, ¶¶ 58-59. The direct testimonies included those of Mark Fenton, Charles N. Atkins II, Thomas S. Baker, Thomas G. Fallgren, Nicholas L. Phillips, Lauran E. Sanchez, and Michael J. Settlage. PNM (*Cont'd on next page*)

On March 18, 2021, the Hearing Examiner held a second prehearing conference in this case via a Zoom videoconference. The prehearing conference was attended by representatives of PNM, ABCWUA, the City, Bernalillo County, CFRE, CCAE, Diné C.A.R.E., SJCA and Tó Nizhóní Aní, NEE, the Attorney General, Onward Energy, SJCA, San Juan County, Sierra Club, WRA, and Staff. The Hearing Examiner and the prehearing conference participants discussed, among other things, the pending motions to dismiss or for alternative relief,[11] PNM's proposed form of notice filed on March 15, 2021, a procedure for the expedited electronic service of filings and discovery requests and responses, and the development of a procedural schedule.

On March 19, 2021, the Hearing Examiner issued a Procedural Order for this proceeding. The Procedural Order established, *inter alia*, the following schedule and requirements: (i) PNM was required to publish the Notice of Proceeding and Hearing ("Notice") appended to the Procedural Order in the *Alamogordo Daily News*, *Albuquerque Journal*, *Farmington Daily Times*, *Las Cruces Sun News*, *Navajo Times, Santa Fe New Mexican*, *Silver City Sun News*, and *Union County Leader* by April 5, 2021; (ii) PNM was required to post a copy of the Notice on its public website (http://www.PNM.com/regulatory) by April 5, 2021; (iii) PNM was instructed to send , the Notice by certified mailing to the Navajo Nation Tribal authorities listed in Attachment 2 to the Procedural Order by April 5, 2021; (iv) PNM was ordered to mail to its customers (by bill stuffer or separately) a copy of the Notice by no later than May 10, 2021; (v) made motions to intervene

(*Cont'd from previous page*)

subsequently filed errata to the Baker and Fallgren direct testimonies on July 1, 2021 and the Phillips direct testimony on July 27, 2021.

[11] Regarding the pending motions, during the March 18th prehearing conference Counsel for Sierra Club concurred that its January 26, 2021 motion was rendered moot by virtue of the Hearing Examiner's February 26, 2021 Order and PNM's subsequent filing of supplemental testimony. For their part, NEE acknowledged that the NEE/CFRE joint motion to dismiss had been superseded by PNM's filing of the Amended Application. The Hearing Examiner therefore suggested that if NEE and CFRE decided to file a motion to dismiss the Amended Application, they should also file a motion to withdraw the joint motion to dismiss pursuant to 1.2.2.10(E) NMAC.

due by May 17, 2021; (vi) made all dispositive motions and supporting legal briefs due by May 17, 2021, and responses to such motions due by May 31, 2021; (vii) required that Staff and intervenor testimony be filed by July 12, 2021; (viii) required parties requesting that administrative notice[12] be taken of parts of the evidentiary record in Case 16-00276-UT in direct testimony or otherwise to file by July 12, 2021 a pleading designating those particular portions of the record for which administrative notice is requested;[13] (ix) provided for the filing of rebuttal testimony by August 12, 2021 and, again, required that any party requesting that administrative notice be taken of parts of the evidentiary record in Case 16-00276-UT in rebuttal testimony file such designation by August 2, 2021; (x) set a prehearing conference via the Zoom videoconference platform ("Zoom") for August 26, 2021; (xi) set an oral comment hearing on August 30, 2021 to be conducted, due to the ongoing COVID-19 pandemic, via the Zoom and simultaneously livestreamed through YouTube; and (xi) set the evidentiary hearings in this matter conducted via Zoom (and also livestreamed on YouTube) beginning on August 31, 2021 and continuing, as necessary, through September 14, 2021.

The following 16 parties intervened in this proceeding:

ABCWUA
Attorney General
Bernalillo County
CCAE
CFRE
City of Albuquerque

[12] *See* 1.2.2.35(D) NMAC.

[13] The Hearing Examiner noted that "particular portions" meant that each respective designation in the pleading shall pinpoint the page and line numbers of the Case 16-00276-UT transcript or testimony or the page numbers of identified testimony or freestanding exhibits. The Hearing Examiner also provided by way of example "and illustrated . . . strictly for proper format: Tr. (9/8/2017) 322:15-325:8 (Ortiz); PNM Exh. 12 (O'Connell Reb.) at 1:2-27:9; PNM Exh. 12 (O'Connell Reb.), Exh. PJO-4, pp. 1-14; PNM Exh. 21 (Olson Stip. Dir.), Exh. CMO-3 Stip., p. 1 of 1; NEE Exh. 21 (PNM Resp. to 12th Interrogs. and RFPs), p. 2 of 2; NEE Exh. 31 ("Investor Meetings" June 2017), pp. 6, 7, 16, 46." Procedural Order at 7, ¶ A(4), and n. 10.

New Energy Economy
NM AREA
Onward Energy Holdings
San Juan Citizens Alliance, Diné C.A.R.E, NAVA Education Project, and Tó Nizhóní Aní (referenced as the "Community Groups")
San Juan County
Sierra Club
WRA

On February 2, 2021 the Hearing Examiner issued an Order granting PNM's Motion for Entry of Protective Order. The Protective Order issued was identical in substance to the Protective Order issued previously in Case No. 20-00222-UT.[14]

The Hearing Examiner issued an Order Establishing the Official Service List for this proceeding on May 18, 2021. That order was revised five times during this proceeding, i.e., on June 14, 2021, July 13, 2021, August 2, 2021, August 16, 2021, and November 12, 2021.

On June 14, 2021, the Hearing Examiner issued an Order denying the motions to dismiss PNM's Amended Application filed by CCAE and Joint Movants NEE and CFRE.[15] The Hearing Examiner also issued on this date an Order granting PNM's motion to withdraw its original application in this case.

On July 12, 2021, PNM and NEE filed pleadings designating portions of the record in Case No. 16-00276-UT for which they respectively proposed administrative notice be taken.

[14] *See* Case No. 20-00222-UT, *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 General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement this Transaction*, Protective Order (Jan. 14, 2021) ("Avangrid/PNMR merger" case or proceeding).

[15] The Order also granted Joint Movants' motion to withdraw their Jan. 28, 2021 motion to dismiss PNM's original application.

On July 12-13, 2021, the following individuals filed direct testimony on behalf of the respective parties: Andrea C. Crane for the Attorney General; Brendon J. Baatz for WRA;[16] Jeremy I. Fisher for Sierra Club; Christopher K. Sandberg for NEE; Craig N. Johnston, Jessica Keetso, and Carol Davis for Community Groups; James R. Dauphinais for NM AREA; and Gabriella Dasheno, Marc A. Tupler, and Eli LaSalle on behalf of Staff.

On July 15, 2021, PNM filed a Request for Confidential Treatment of PNM discover exhibits SC-3-2, SC-4-2, SC-4-4, and SC-5-2. Sierra Club and WRA filed responses in opposition on July 21 and 22, 2021 respectively. The Hearing Examiner issued an Order denying PNM's request for confidential treatment on July 29, 2021. PNM filed unredacted copies of the documents pursuant to the July 29th Order on August 3, 2021.

On August 2, 2021, the following individuals filed rebuttal testimony on behalf of the respective parties: Elisabeth Eden, Thomas G. Fallgren, Laura E. Sanchez, Thomas S. Baker, and Frank C. Graves for PNM;[17] Christopher K. Sandberg for NEE; and Brendon J. Baatz for WRA.

On August 11, 2021, Sierra Club filed a motion to take administrative notice of a recommended opinion and order (ROO) of an administrative law judge of the Arizona Corporation Commission finding, *inter alia*, that Arizona Public Service Company's (APS) decision to install a selective catalytic reduction pollution control system on the FCPP and order APS to investigate early retirement of the plant.

On August 12, 2021, Sierra Club filed a motion to strike the rebuttal testimony of PNM witness Laura Sanchez. Community Groups also filed on this date a motion to strike certain

[16] WRA filed a notice of errata to the direct testimony of Brendon Baatz on July 15, 2021.

[17] PNM filed errata to the rebuttal testimonies of Frank Graves and Michael Settlage on August 18 and 25, 2021 respectively.

exhibits from, and portions of, the rebuttal testimony of PNM witness Thomas Fallgren. NEE filed responses in support of the motions to strike and PNM filed a response opposing the motions on August 19 and 20, 2021.

On August 16, 2021, Sierra Club filed an untimely, but nevertheless accepted, motion for leave to file surrebuttal testimony in response to the rebuttal testimony of PNM witness Frank Graves. PNM filed a response opposing the motion for surrebuttal on August 20, 2021.

The Hearing Examiner issued an Order addressing the foregoing August 12 and 16, 2021 prehearing motions of Sierra Club and Community Groups on August 24, 2021.

On August 16, 2021, the Hearing Examiner issued an Order regarding prehearing memoranda and the August 26, 2021 prehearing conference.

On August 17, 2021, NEE filed an application requesting the issuance of a subpoena to Charles Eldred, Executive Vice President, Corporate Development and Finance for PNM Resources, Inc. (PNMR). On August 24, 2021, responses in support of NEE's Application were filed by ABCWUA and Sierra Club and in opposition to the application by PNM. The Hearing Examiner issued an Orde denying NEE's application on August 27, 2021.

On August 26, 2021, the Hearing Examiner conducted a prehearing conference with counsel for the parties over Zoom.

On August 27, 2021, the Hearing Examiner issued a Prehearing Order.

On August 30, 2021, Sierra Club filed the surrebuttal testimony of Jeremy I. Fisher. PNM filed the sur-surrebuttal testimony of Frank C. Graves on September 3, 2021.

The Commission held a public comment hearing in this case on August 30, 2021. Sixteen people provided oral comment during this hearing, which was conducted via Zoom and livestreamed on YouTube. The transcript of the August 30, 2021 public comment hearing was filed

by Cumbre Court Reporting Services, L.L.C. ("Cumbre") on September 2, 2021. Written comments were filed by 8 individuals and several entities of the Navajo Nation as of the date of this decision.[18]

The evidentiary hearings were conducted in this case over seven days from August 31, 2021 to September 3, 2021 and September 7-9, 2021. The Commission received testimony from the following twenty witnesses:

PNM
Mark Fenton
Thomas G. Fallgren
Laura E. Sanchez
Nicholas L. Phillips
Charles N. Atkins
Thomas S. Baker
Michael J. Settlage
Elisabeth A. Eden
Frank C. Graves

Attorney General
Andrea C. Crane

Community Groups
Carol Davis
Craig N. Johnston
Jessica Keetso

New Energy Economy
Christopher K. Sandberg

NM AREA
James R. Dauphinais

Sierra Club
Jeremy L. Fisher

WRA
Brendon J. Baatz

[18] Specifically, letters or resolutions were filed by the Navajo Nation President and Vice President, the 24th Navajo Nation Council, the Northern Navajo Agency Council, the District 13 Council, and the Nenahnezad Chapter.

Staff
Eli LaSalle
Marc A. Tupler
Gabriella Dasheno

The transcripts of the evidentiary hearings presented in seven volumes were filed by Cumbre between September 2-10, 2021.[19]

On September 13, 2021, the Hearing Examiner issued a Briefing Order. The Order set forth a series of ten issues, several with subparts, that the parties were directed to address. The Order also confirmed the schedule for post-hearing briefs and other submissions established at the end of the hearings. The schedule, which acknowledged the parties' participation in other proceedings such as the Avangrid/PNMR merger proceeding pending in Case No. 20-00222-UT and additional PNM proceedings such as Case Nos. 21-00083-UT and 21-00143-UT, required briefs in chief and suggested transcript corrections by October 1, 2021 and response briefs by October 13, 2021.[20]

On October 1, 2021, PNM filed a pleading containing suggested corrections to the transcript of proceedings. The Hearing Examiner issued an Order Partially Approving PNM's Suggested Corrections to the Transcript of Proceedings on November 12, 2021.

Parties filed posting briefs in chief or initial briefs ("Br.") on October 1, 2021.[21] Response briefs ("Resp.") were filed on October 13, 2021.

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[19] E.g., Volume ("Vol.") I of the transcripts reflects day 1 of the evidentiary hearings through Vol. VII, which reflects the final day of hearings, Sept. 9, 2021.

[20] Tr. (Vol. VII) 1789-94.

[21] The Attorney General filed its initial brief on October 4, 2021 and on that date also filed a motion for leave to file its brief out of time. The motion should be deemed granted. In addition, it should be noted that Community Groups brief-in-chief is misnumbered, starting with page 1 as the cover page and then beginning again with page 1 ("II. Legal Standards to be Applied") on what would be page 2 of the body text of the brief; thus, in citing to that brief this decision uses Community Groups' pagination. The pagination glitch is not repeated in Community Groups' response brief, however.

On November 19, 2021, NEE filed a "Motion for Limited Reply to Refute PNM's Claims in its Response Brief." NEE's reply should be deemed accepted into the record.

II. BACKGROUND AND LEGAL FRAMEWORK

A. PNM's Proposed Sale and Abandonment of the Four Corners Power Plant

Pursuant to its Amended Application, PNM requests that the Commissioner approve the following actions:

(1) Abandonment of PNM's 200 MW share of the Four Corners Power Plant, representing a minority interest of thirteen percent (13%) of the total generation capacity of the plant;

(2) Sale and transfer of PNM's ownership interest in the FCPP to the Navajo Transitional Energy Company, LLC (NTEC) pursuant to the Purchase and Sale Agreement ("Agreement" or PSA);

(3) Securitized financing of abandonment and financing costs along with funding for state-administered tribal and community programs.

Unlike the abandonment of the San Juan Generating Station (SJGS) approved in Case No. 19-00018-UT, PNM is not requesting approval of replacement resources in this proceeding along the lines of the replacement resources for the SJGS subsequently approved by the Commission in Case Nos. 19-00195-UT[22] and 20-00182-UT.[23] PNM's claims that it has demonstrated with sufficient certainty that replacement resources can be deployed prior to abandonment of Four Corners.[24] That claim, contested by some parties, is addressed below.

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[22] *See In the Matter of Public Serv. Co. of New Mexico's Consolidated Application for Approvals of the Abandonment, Financing, and Replacement for San Juan Generating Station Pursuant to the Energy Transition Act*, Case No. 19-00915-UT, Recommended Decision on Replacement Resources – Part II (June 24, 2020), *adopted by* Final Order (July 29, 2020).

[23] *See In the Matter of the Application of Public Serv. Co. of New Mexico for Approval of Renewable Power Agreements and Energy Storage Agreements and Proposal for Demand Response Plan Pursuant to Final Order in Case No. 19-00195-UT*, Case No. 20-00182-UT, Recommended Decision (Nov. 13, 2020), *adopted by* Order Adopting Recommended Decision (Dec. 2, 2020).

[24] PNM Br. 32.

1. The Four Corners Power Plant

The Four Corners plant is a coal-fired generation facility located near Fruitland, New Mexico within the Navajo Nation. The plant is comprised of two 770-MW units, Units 4 and 5, which came on-line in 1969 and 1970.[25] The plant formerly consisted of five coal-fired generation units. Units 1, 2 and 3 – in which PNM had no ownership interest – were retired in 2010 for purposes of compliance with the Environmental Protection Agency's (EPA) Regional Haze Rule.[26] Since it began operating in 1963, FCPP has been and continues to be a major source of revenue as well as employment for the Navajo Nation and its members.[27]

Four Corners has been serving PNM customers since PNM acquired a 200 MW share in Units 4 and 5 in 1969 and 1970, respectively, which represents a current 13% share.[28] Arizona Public Service Company (APS) is the majority owner and operator of Four Corners. The other owners in Units 4 and 5 are APS, the Salt River Project Agricultural Improvement and Power District (SRP), Tucson Electric Power Company (TEP), and NTEC. Four Corners obtains coal exclusively from the adjacent Navajo Mine in what is referred to as a "mine mouth" configuration. The Navajo Mine has no other customers for this coal other than Four Corners.[29]

From its inception, the Four Corners project has been set up as a tenancy in common ownership. The current plant ownership is as follows: APS (63%); NTEC (7%); SRP (10%); TEP (7%); and PNM (13%). Each of the participants holds an individual undivided interest in their

[25] PNM Exh. 4 (Fallgren Dir.) 4, PNM Exh. TGF-5, p. 1 of 2.

[26] Fallgren Dir. 5; Amended Application 9.

[27] Fallgren Dir. 4.

[28] *Id*.

[29] Fallgren Dir. 4-5.

separate shares of Four Corners. The current planned operating life of the plant is through 2031, concurrent with the coal supply agreement with NTEC.[30]

Four Corners is governed pursuant to the following main agreements: (1) Co-Tenancy Agreement, which establishes the terms and conditions relating to ownership and operation of FCPP; (2) Operating Agreement, which sets the terms, covenants, and conditions that govern the operating work of FCPP; (3) Coal Supply Agreement (CSA), which provides for NTEC to be the exclusive coal supplier until July 6, 2031; and (4) Navajo Nation Lease Agreement, which grants rights-of-way and easements within the Navajo Nation that allowed for the construction and operation of FCPP and its associated transmission system and expires on July 6, 2041.[31]

2. Proposed sale of PNM's ownership interest to NTEC

In PNM's 2016 Rate Case (Case No. 16-00276-UT), PNM along with eleven intervenors and Staff entered into a Modified Revised Stipulation in Compliance with and Conforming to Commission's Orders Granting Conditional Approval ("Modified Revised Stipulation") filed in conformity with the Commission's January 17, 2018 *Order on Notice of Acceptance* and the Hearing Examiners' *Certification of Stipulation*.[32] In regard to the Four Corners plant, the Modified Revised Stipulation included the following requirement:

> PNM shall perform a cost-benefit analysis as part of its 2020 Integrated Resource Plan, on the impact of an early exit from Four Corners as a

[30] Fallgren Dir. 7.

[31] *See* Fallgren Dir. 7-10 (providing a brief description of each agreement).

[32] Case No. 16-00276-UT, Modified Revised Stipulation in Compliance with and Conforming to Commission's Orders Granting Conditional Approval, at 9, ¶ 10 (Jan. 23, 2018). The cover letter to the Modified Revised Stipulation states that "[i]n compliance with the [*Order on Notice of Acceptance*] and Paragraph B of the Certification of Revised Stipulation [which stated, "B. If the Revised Stipulation is modified in the form of Attachment B within seven days after issuance of the Order, the Modified Stipulation is approved."], PNM is submitting a *Modified Revised Stipulation in Compliance with and Conforming to Commission's Order Granting Conditional Approval*." (emphasis in original).

> participating owner, as of 1) 2024, and 2) 2028, that includes an analysis of the cost recovery of and return on PNM's undepreciated investments in Four Corners together with full recovery of all existing contractual obligations, including default payments and penalties.[33]

PNM maintains that, in accordance with the Modified Revised Stipulation, the Company sought an opportunity to accomplish an early exit from Four Corners in 2024. An early closure and permanent shut down of Four Corners plant require unanimous agreement of participants without an interest in the coal mine. Because the stated intent of other participants is to continue operating the plant, absent a transfer of its interest, PNM would be subject to default payments and penalties if PNM attempted to unilaterally cease its participation in Four Corners.[34] Under the current agreements, PNM would be obligated to pay for its share of operating and fuel costs through 2031.[35] PNM claims that if it defaulted in this way and ceased using Four Corners, replacing it with other resources, customers would be responsible for unavoidable ongoing costs, as well as the costs of the new resources, a result which PNM contends would be an uneconomic outcome. PNM thus asserts that without a potential alternative such as the transfer of ownership to NTEC, it would not have been feasible for PNM to exit Four Corners in 2024. According to PNM's Vice President of Generation, Thomas G. Fallgren, the same is true for a 2028 exit. Without an agreement like the sale and transfer to NTEC, Mr. Fallgren stated at hearing, "[i]n 2028, there was not a credible exit plan."[36] As will also be seen below, PNM's claims regarding the origin and basis for the proposed sale to NTEC is contested by several parties, some of whom allege the impetus for and timing of the proposed Four Corners sale and abandonment is being driven by PNMR's proposed merger with Avangrid pending in Case No. 20-00222-UT.

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[33] Modified Revised Stipulation, at 9, ¶ 10.

[34] Fallgren Dir. 11.

[35] PNM Exh. 8 (Fallgren Reb.) 25.

[36] Tr. Vol. II (Fallgren) 409.

In any event, PNM asserts that "with the negotiation of the sale and transfer of PNM's interests to NTEC and the avoidance of contractual default payments and penalties, the 2024 exit from Four Corners is more beneficial for customers than remaining a plant participant until 2031. These benefits are solidified with the agreement that PNM's shareholders will absorb the costs of the $75 million payment to NTEC related to obligations under the CSA."[37]

3. The proposed transferee: Navajo Transitional Energy Company, LLC

"NTEC was created," according to PNM witness Fallgren's testimony, "in a pioneering effort by the Navajo Nation to achieve sovereignty over its natural resources. NTEC was established under Navajo Nation law and operates as an autonomous commercial entity with an independent board of directors."[38] NTEC's operations are determined by a board of directors with a fiduciary responsibility to its sole shareholder, the Navajo Nation.[39] NTEC owns the Navajo Mine and currently holds a 7% interest in Four Corners. It also owns and operates mines in Montana and Wyoming.[40] Mr. Fallgren described NTEC's mission as being

> to serve as a reliable, safe producer of coal while diversifying the Navajo Nation's energy resources to create economic and environmental sustainability for the Navajo people, and to develop and operate an energy company that values the Navajo Nation, its people and its resources, now and in the future. NTEC's operation currently provides approximately 1,300 jobs; supports numerous community benefit initiatives including vital free

[37] PNM Br. 5. *See also* Fallgren Supp. 14.

[38] Fallgren Dir. 12.

[39] *See* PNM Exh. 39 (NTEC Amended and Restated Operating Agreement) 13, Art. III, Sec. D ("The Management Committee shall have all the authorities and responsibilities of general management, and oversight over the Company, as a Board of Directors has over a Corporation.") and 16, Sec. D.ii.b (stating that the Management Committee and its Members shall "[h]ave the rights and responsibilities of directors of similar for-profit companies pursuant to general corporate law or policy …"); Tr. Vol. II (Fallgren) 420-21 ("It would be my understanding that the Management Committee operates much like a Board of Directors that establishes the day-to-day operations of the facilities. The Navajo Nation is a shareholder or the single shareholder of NTEC. However, the Navajo – the Management Committee would have a fiduciary responsibility, obviously, as the Board of Directors – [to] act in the best interests of their shareholder, which is the Navajo Nation.").

[40] Fallgren Dir. 12.

> coal distribution to the Navajo and Hopi Nation for home heating; and promotes STEM fields (science, technology, engineering, and mathematics) in education and vocational training for Navajo Nation students.[41]

4. The Four Corners Purchase and Sale Agreement

Under the terms of the Four Corners Purchase and Sale Agreement dated November 1, 2020, NTEC will assume all of PNM's operating and capital ownership interests and obligations in Four Corners effective January 1, 2025.[42] PNM thereafter will not be a purchaser under any long-term energy contracts with NTEC for power from Four Corners. PNM is selling its entire 13% (200 MW) share of Four Corners to NTEC for $1, with NTEC thereafter assuming all ongoing plant operating and capital requirements with that transfer.[43] For a payment of $75 million, NTEC will assume all of PNM's obligations under the Four Corners CSA pursuant to the Coal Supply Agreement Assignment, in the form attached as Exhibit H to the PSA.[44] As indicated in the quote above, PNMR shareholders are paying the entire $75 million.[45]

Pursuant the PSA, PNM will retain its current plant decommissioning and coal mine reclamation obligations. Other assets are being transferred as part of the PSA. Specifically, the limited portion of the associated FCPP switchyard equipment necessary to transport the energy from the plant across the 500kV and 345kV switchyards is also included in this transfer.[46] Fallgren assured

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[41] *Id.*

[42] Fallgren Dir., PNM Exh. TGF-2.

[43] Fallgren Dir. 12, 13.

[44] PNM Exh. 5 (Fallgren Supp.) 14. Mr. Fallgren notes that under Section 3.3 of the PSA, PNM paid NTEC a refundable payment of $15 million at the time of execution of the Agreement and will pay the balance of $60 million following the receipt of Commission approval in this case. NTEC will also release PNM from further obligations under the coal supply agreement pursuant to the Coal Supply Release attached as Exhibit G to the Agreement.

[45] PNM Supp. 14.

[46] *See* Fallgren Dir., Exh. A ("Acquired Interests") to PSA (PNM Exh. TGF-2) for a list of the assets and corresponding percentages proposed for transfer to NTEC, as such assets are defined in the Facilities Co-Tenancy Agreement.

that the switchyard assets as part of the proposed transfer "are associated with PNM's share of Four Corners and do not impact PNM's ability to deliver PNM or other market resources used to serve PNM customers."[47]

5. Four Corners seasonal operations agreements

According to agreements the Four Corners co-owners entered into during this proceeding, only a single FCPP unit will operate on a year-round basis beginning in the fall of 2023.[48] Both Units 4 and 5 will operate during the summer peak season from June through October when customer needs are the highest. Mr. Fallgren stated that seasonal operations afford APS, SRP, and TEP more flexibility in operating the plant, while allowing NTEC access to its ownership share year-round. PNM has estimated that carbon emissions from Four Corners will be reduced by 20-25%.[49] The finalized agreements facilitating seasonal operations are incorporated as amendments to the Four Corners operating, co-tenancy, and coal supply agreements and they are attached to PNM witness Fallgren's rebuttal testimony.[50]

As part of the agreements for seasonal operations, the Four Corners co-owners have agreed to increase the notice period for possible early shutdown of Four Corners from two years to four years, with the opportunity to reduce the notice period upon payment for the shortened notice period.[51] The agreements for seasonal operation amend Section 20 of the Four Corners CSA so the

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[47] Fallgren Dir. 13-14.

[48] Fallgren Supp. 2.

[49] Fallgren Supp. 28.

[50] *See* Fallgren Reb., PNM Reb. Exhs. TGF-2, TGF-3, TGF-4, TGF-5, TGF-6, and TGF-7. PNM also filed the agreements in the docket in compliance with the Hearing Examiner's order denying the documents confidential treatment.

[51] NTEC is restricted from voting on early plant closure and termination of the CSA under section 9.15 of the Four Corners co-tenancy agreement. "This restriction is based," according to Mr. Fallgren "on an understanding that NTEC would have a conflict of interest because it also serves as the supplier of fuel for the plant. Fallgren Supp. 26.

owners would not vote for a closure of Four Corners to be effective prior to January 1, 2027. While the Four Corners owners agreed to provide four years notice for an early closure, they retain the right to give a two-year notice of early closure (the current length of the notice period) on or after January 1, 2027 by paying $200 million, and a three-year notice of early closure on or after January 1, 2028 upon payment of $100 million.[52] PNM claims the four-year notice is in alignment with the request of the Navajo Nation for adequate notice as outlined in Navajo Nation President Jonathan Nez's January 24, 2020 letter to the Arizona Corporation Commission (ACC) regarding the TEP rate case. President Nez's letter states: "The Nation recommends the ACC require utilities to provide a five-year advanced notice of any planned power plant closure."[53]

Mr. Fallgren asserted at hearing that it is highly unlikely that any agreement to operate Four Corners seasonally can be accomplished without the sale of PNM's interest to NTEC.[54] PNM maintains that the PSA between PNM and NTEC is a condition precedent to the agreements on seasonal operations, meaning that the parties to the agreements on seasonal operations believe that the changes that will occur as part of PNM's sale to NTEC are necessary to facilitate operations on a seasonal basis.[55] Fallgren explained that the negotiations on seasonal operations were delicate and contentious with five different parties negotiating their interests. Yet, despite the parties' differences, the combination of PNM's and NTEC's interests achieves the minimum load requirements of a single unit, thereby facilitating seasonal operations.[56] PNM submits that while the

[52] Fallgren Supp. 31; Fallgren Reb., PNM Reb. Exh. TGF-7, pp. 12-13 (CSA "2022/2025 Amendment," Art. III, "Early Termination for Plant Shut Down," Sec. 20.2).

[53] Fallgren Supp. 31 (citing https://docket.images.azcc.gov/E000004596.pdf).

[54] Tr. Vol. II (Fallgren) 477 ("Seasonal Operation[s] cannot stand on its own" without the Purchase and Sale Agreement to NTEC moving forward.); *id.* 478.

[55] PNM Br. 8. However, in a footnote addressing the matter in his rebuttal testimony, Mr. Fallgren calls the PSA "a condition *subsequent* to the seasonal operations agreement.") Fallgren Reb. 29, n. 29 (emphasis added).

[56] Tr. Vol. II (Fallgren) 478-81.

Commission is not required to approve the agreements encompassing seasonal operations, the Commission's approval of the PSA, which facilitates the transition to seasonal operations,[57] will result in net benefits to New Mexico and the public at large by reducing Four Corners emissions as of 2023.[58]

B. Legal Standards Applicable to Sale and Abandonment of the FCPP

1. Energy Transition Act

The Energy Transition Act was enacted into law as part of Senate Bill (S.B.) 489 in 2019. In passing Senate Bill 489, which is also entitled "Energy Transition Act,"[59] the Legislature devised a comprehensive policy to transition the State of New Mexico away from fossil fuel burning generation sources to renewable energy and other zero-carbon resources.[60] The Energy Transition Act being applied in this proceeding establishes mechanisms to facilitate the abandonment of PNM's interests in two coal-fired generating plants – the remaining Units 1 and 4 of the San Juan Generating Station (SJGS) in 2022 and PNM's interests in the FCPP in 2031. The San Juan station and Four Corners plant are the only facilities in New Mexico that satisfy the ETA's definition of "qualifying generating facility."[61] The ETA provides for the use of bonds, i.e., securitization, to recover for PNM (i) the undepreciated costs of its interests in the two plants; (ii) the estimated

[57] Fallgren Reb. 25.

[58] PNM Br. 8-9.

[59] S.B. 489 (2019 N.M. Laws, ch. 65) and the ETA are often considered one and the same piece of legislation. However, the ETA is only one part of Senate Bill 489. S.B. 489 consists of 82 pages of double-spaced provisions. It contains primarily a new 49-page chapter of the PUA (i.e., the ETA proper), major revisions to the REA, an amendment to the Air Quality Control Act, NMSA 1978, § 74-2-5 (1967, as amended through 2019), and several other related amendments to the PUA.

[60] NMSA 1978, §§ 62-16-4(A)(2)-(6) (amending the renewable portfolio standard (RPS) to requiring that renewable energy comprise the following minimum percentages of each public utility's total retail sales to New Mexico customers: (i) 20% by Jan. 1, 2020; (ii) 40% by Jan. 1, 2025; (iii) 50% by Jan. 1, 2030; and (iv) 80% by Jan. 1, 2040; and (iv) by Jan. 1, 2045, "zero carbon resources shall supply" 100% of all retail sales of electricity in New Mexico).

[61] NMSA 1978, § 62-18-2(S).

costs of decommissioning and reclamation; (iii) the estimated costs of severance and job training for affected employees at the plants and mines; (iv) financing costs associated with the securitization; and (v) payments required to the state-administered funds for Indian affairs, energy transition economic development, and the assistance of displaced workers. The bonds would be issued by a wholly owned subsidiary of PNM newly created as a special-purpose entity (SPE).

The ETA then provides for the establishment of non-bypassable charges, i.e., energy transition charges (ETCs),[62] to be paid by PNM customers to cover the bonds' debt service costs over the estimated 25-year life of the bonds. The ETA also provides for ratemaking mechanisms designed (1) to eliminate the costs of the abandoned facilities at the time the ETC rates are first collected (upon the abandonment of the units), (2) to recover for PNM, separately from the ETCs, the difference between the estimated costs recovered through the bonds and PNM's future actual costs, and (3) to adjust the ETCs throughout the life of the bonds to ensure the full and timely payment of the bonds' debt service payments.

Pursuant to the ETA, to obtain a financing order that authorizes the issuance of energy transition bonds and other actions,[63] a qualifying utility must obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 of the Public Utility Act.[64] In addition, because this matter involves both a proposed abandonment and divestment of utility plant through sale and transfer, two provisions of the Public Utility Act with different but congruous standards of

[62] NMSA 1978, § 62-18-2(G) (defining "energy transition charge" as a "non-bypassable charge paid by all customers of a qualifying utility for the recovery of energy transition costs."). "Non-bypassable," in turn, "means that the payment of any energy transition charge may not be avoided by an electric service customer located within a utility service area and shall be paid by the customer that receives electric utility service from the qualifying utility imposing the charge for as long as the energy transition bonds secured by the charge are outstanding and the related financing costs have not been recovered in full." NMSA 1978, § 62-18-2(P).

[63] A "financing order," as defined in the ETA, "means an order of the commission that authorizes the issuance of energy transition bonds, authorizes the imposition, collection and periodic adjustments of the energy transition charge and creates energy transition property.") NMSA 1978, § 62-18-2(L).

[64] NMSA 1978, § 62-18-4(A).

proof apply in this case, the "net public benefit" standard under Section 62-9-5 and the "no net detriment" test applicable to the transfer of utility plant or property pursuant to Sections 62-6-12 and -13 of the PUA.[65] The standards for abandonment and the sale and transfer of utility plant are addressed in the next subsection.

As already indicated, the Commission approved the abandonment of the SJGS in Case No. 19-00018-UT in its Final Order issued April 1, 2020.[66] The Commission simultaneously issued that case its Final Order approving PNM's request for issuance of a financing order to facilitate PNM's abandonment of the SJGS.[67]

2. Standards governing abandonment and sale and transfer of PNM's interest in FCPP

Since this case involves both a proposed abandonment and disposition of utility plant through sale and transfer, two provisions of the Public Utility Act with different standards of proof apply in this case.[68]

First, a utility must receive Commission approval before abandoning all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities pursuant to Section 62-9-5. That section of the PUA provides that

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[65] NMSA 1978, §§ 62-6-12 and -13.

[66] *In the Matter of Public Service. Co. of New Mexico's Abandonment of San Juan Generating Station Units 1 and 4*, Case No. 19-00018-UT, Recommended Decision on PNM's Request for Authority to Abandon its Interest in San Juan Units 1 and 4 and to Recover Non-Securitized Costs (Feb. 21, 2020) (*Recommended Decision on SJGS Abandonment*), *adopted by* Final Order on Request of Public Service Company of New Mexico for Authority to Abandon its Interests in San Juan Generating Station Units 1 and 4 and to Recover Non-Securitized Costs (April 1, 2020).

[67] Case No. 19-00018-UT, Recommended Decision on PNM's Request for Issuance of a Financing Order (Feb. 1, 2020) (*Recommended Decision on SJGS Financing Order*), *adopted by* Final Order on Request for Issuance of a Financing Order (Apr. 1, 2020).

[68] *Application of the Fort Selden Water Company to Abandon All Regulated Utility Service and to Transfer Assets and Operation to Dona Ana Mutual Domestic Water Consumers Association*, *Recommended Decision*, Case No. 10-00226-UT, at 14 (July 5, 2011), adopted by *Final Order* (Aug. 4, 2011) ("*Fort Selden Order*").

> The commission shall grant such permission and approval, after notice and hearing, upon finding that the continuation of service is unwarranted or that the present and future public convenience and necessity do not otherwise require the continuation of the service or use of the facility; . . . In considering the present and future public convenience and necessity, the commission shall specifically consider the impact of the proposed abandonment of service on all consumers served in this state, directly or indirectly, by the facilities sought to be abandoned.[69]

A denial of abandonment therefore means the Commission has concluded that continuation of service is warranted, or that the present and future public convenience and necessity require the continuation of service or use of the facility. Additionally, "[t]he Commission has found that its 'touchstone' in abandonment proceedings is to advance the 'public convenience and necessity, *i.e.*, the public interest.'"[70] In so finding, the Commission stressed that the public interest is to be given paramount consideration; desires of the utility are secondary."[71] Public utility requests for abandonment thus are measured against a "net benefit to the public," or net public benefit, standard.[72]

The Commission has applied the four factors used in *Commuters' Committee v. Pennsylvania Pub. Util. Comm'n*[73] in determining whether the proposed abandonment is consistent with the public convenience and necessity. The Commission's consideration of the *Commuters*

[69] NMSA 1978, § 62-9-5.

[70] *Fort Selden Order* at 16 (citations omitted).

[71] Case No. 2296, Final Order (Aug. 3, 1990), at 2 (citing Matter of Rule Radiophone Service, Inc., 621 P.2d, 241, 246 (Wyo. 1980)).

[72] *In the Matter of the Application of Central New Mexico Electric Cooperative, Inc. (CNMEC) for Approval of the Transfer and Sale of Certain Assets to Tri-State Generation and Transmission Association, Inc. (Tri-Sate) and for CNMEC's Abandonment of Such Assets and Service in Favor of Tri-State's Continued Wholesale Service to CNMEC from such Assets*, Case No. 18-00251-UT, Recommended Decision (Dec. 3, 2018), at 3, adopted by Final Order (Jan. 23, 2019) (citing Case No. 3577, Corrected Recommended Decision, at 6 (Oct. 16, 2001), adopted by Final Order (Jan. 15, 2002).

[73] 88 A.2d 420, 424 (Pa. Super. Ct. 1952).

Committee factors in Case No. 2296 was upheld by the New Mexico Supreme Court in *Public Service Co. v. N.M. Public Serv. Comm'n*.[74] The factors consist of:

> (1) the extent of the carrier's loss on the particular branch or portion of the service, and the relation of that loss to the carrier's operation as a whole;
>
> (2) the use of the service by the public and prospects for future use;
>
> (3) a balancing of the carrier's loss with the inconvenience and hardship to the public upon discontinuance of service; and
>
> (4) the availability and adequacy of substitute service.[75]

More recently, the Commission found and concluded in Case No. 19-00018-UT that the "abandonment of San Juan Units 1 and 4 will produce a net public benefit, is consistent with the *Commuters' Committee* standards and should be approved as in the public interest, subject to the Commission's approval of sufficient replacement resources in Case No. 19-00195-UT."[76] The Commission therefore applies the *Commuters' Committee* standards to abandonment proceedings, to the extent applicable.[77]

Second, before selling or divesting utility assets, a public utility must receive Commission approval pursuant to NMSA 1978, §§ 62-6-12 and -13. Section 62-6-12 provides, in pertinent part,

> A. With the prior express authorization of the commission, but not otherwise:
>
> (4) any public utility may sell, lease, rent, purchase or acquire any public utility plant or property constituting an operating unit or system or

[74] 1991-NMSC-083, 112 N.M. 379, 815 P.2d 1169.

[75] *In the Matter of the Application of Public Service Co. of New Mexico for Regulatory Abandonment and for Decertification of its 26.10% Undivided Interest in San Juan Unit Generating Station Unit 4, and in Certain Related Common Facilities*, Case No. 2296, Final Order (Aug. 3, 1990), at 6.

[76] Case No. 19-00018-UT, Recommended Decision on Abandonment and Non-Securitized Costs, at 34, ¶ 1.

[77] In Case No. 18-00251-UT, the Commission declined to apply the *Commuters' Committee* factors consistent with Commission precedent declining to apply the factors cited in the Recommended Decision, at 4, and "because the factors mostly bear no relevance to the facts of this case." *Id*.

> any substantial part thereof; provided, however, that this paragraph shall not be construed to require authorization for transactions in the ordinary course of business.[78]

Section 62-6-13, in turn, provides:

> Application shall be made by the interested public utility by written petition containing a concise statement of the proposed transaction, the reason therefor and such other information as may reasonably be required by the .commission. Upon the filing of such application, the commission shall promptly investigate the same, with such hearing and upon such notice as the commission may prescribe, and unless the commission shall find that the proposed transaction is unlawful or is inconsistent with the public interest, it shall give its consent and approval in writing.[79]

As stated in the *Fort Selden Order*, Section 62-6-13 requires the Commission "to give its consent and approval for the transfer of utility plant or property, unless it finds the proposed transaction is unlawful or inconsistent with the public interest."[80] This "not inconsistent with the public interest" standard was established by the Commission in its Final Order in consolidated Case Nos. 1891 and 1892, where the Commission observed:

> The 'not inconsistent with the public interest' standard is applicable to commission approvals of transfers of utility property . . .. This standard requires that we find that there is likely to be a net detriment to the public interest before we may withhold our approval of proposed transfers of utility property . . . under our jurisdiction. If the sale of assets . . . is merely neutral, or equally balanced as to the benefit and detriment to the public interest, we are compelled to approve such requests.[81]

In addressing this standard, this Hearing Examiner found in the *Fort Selden Order* that the "no net detriment" test, where the Commission must find a "net public detriment if [it is] to

[78] NMSA 1978, § 62-6-12(A)(4).

[79] NMSA 1978, § 62-6-13.

[80] *Fort Selden Order* at 15.

[81] *Fort Selden Order* at 15-16 (quoting *In re Southern Union Co.*, N.M. Pub. Serv. Comm'n, Case Nos. 1891/1892, Final Order, at 15-16 (Dec. 12, 1984).

withhold [its] approval," is different and less stringent[82] than the standard applicable to abandonments under Section 62-9-5.[83] Nevertheless, judged together, the sale and abandonment should result in a net public benefit. The Commission has defined the net public benefit standard in cost-benefit terms: "'We believe that the proper review is an overall assessment of whether, upon a balancing of the benefits and costs to the public of the proposed transactions there is a net benefit to the public likely to be realized' if the abandonment is granted."[84] This cost-benefit analysis also has been stated as "one of 'net benefit' to the public interest, where quantifiable and unquantifiable benefits must outweigh the costs of the action."[85] An application for approval of an abandonment must make a factual showing that a net benefit to the public is likely to be realized by the proposed abandonment.[86]

Accordingly, in considering applications for combined approvals for transfer and abandonment, the Commission applies the same standard applicable to abandonments: "If the applicant

[82] The Commission explained the difference in *In Re Southern Union Co*.: "Again, [like the abandonment standard], a balancing of benefit and cost or detriment to the public is required, but the result of that *balancing is tested against* a *different standard*. For the abandonment of service . . ., we must *find the affirmative existence of a net public benefit before giving the transaction our approval*. For the sale of assets . . ., we must *find a net public detriment if we are to withhold our approval*." (emphasis added). Final Order, at 16 (emphasis added).

[83] *Fort Selden Order* at 16. So, while it acknowledges that the net public benefit test applies to the entirety of the Amended Application, PNM nevertheless emphasizes that "it is important to acknowledge the applicable legal standard for transfers of utility assets in light of the PSA with NTEC." PNM Resp. 37.

[84] *Fort Selden Order* at 16-17 (quoting *In re Southern Union Co.*, at 15).

[85] *Application of Northern Rio Arriba Electric Coop., Inc. (NORA) for Approval of the Sale of Certain Assets to Jicarilla Apache National and for NORA's Abandonment of Such Assets and Service Therefrom upon Sale, Final Order*, Case No. 13-00395-UT, Final Order (Feb. 26, 2014), at 11, ¶ 21 ("*NORA Order*") (citing *Application of Thunder Mountain Water Company and EPCOR Water New Mexico Inc. for Abandonment of CCN, Issuance of CCN, and Approval of EPCOR to Charge Existing Thunder Mountain Rate*s, Case No. 13-00285-UT, (Nov. 20, 2013).

[86] *NORA Order* at 11-12, ¶ 21.

demonstrates that there is a net public benefit, the Commission should approve the proposed sale and abandonment of public utility property."[87]

3. Order on Sale and Abandonment of PNM's Interest in the FCPP and costs ineligible for securitization

The issues addressed in this decision involve PNM's request for approval to transfer and abandon its interest in the Four Corners plant to NTEC and corollary issues raised by the parties that pertain, in varying degrees, to the proposed abandonment and transfer. The ETA, however, requires the Commission to address the securitization issues and all other issues in separate orders. It thereby avoids delaying the implementation of a financing order waiting for the appellate resolution of issues unrelated to the securitization.[88]

Accordingly, the Hearing Examiner is issuing today a separate Recommended Decision on PNM's request for a Four Corners financing order pursuant to the ETA issued contemporaneous with this decision. It is referred to as the *Recommended Decision on FCPP Financing Order.*[89] This Recommended Decision concerns PNM's requests to approve the abandonment and sale and transfer of its interest in the Four Corners Power Plant and the recovery of costs ineligible for securitization that are subject to traditional ratemaking treatment.

4. Evidentiary Standards

As the applicant in this administrative adjudication, the PNM's burden of proof is established as a matter of law.[90] The rule in administrative proceedings in general, and adjudica-

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[87] Case No. 18-00251-UT, Recommended Decision, at 3.

[88] NMSA 1978, § 62-18-8(A).

[89] *See* Case No. 21-00017-UT, Recommended Decision on PNM's Request for Issuance of a Financing Order (Nov. 12, 2021) (*Recommended Decision on FCPP Financing Order*).

[90] *See, e.g., Southwestern Public Service Company's Application Requesting: (1) Acceptance of its 2014 Annual Energy Efficiency and Load Management Report; (2) Approval of its 2016 EE/LM Plan and Associated Programs; (3) Approval of its Cost Recovery Tariff Rider; and (4) a Determination Whether a Separate Process*

(*Cont'd on next page*)

tions before this Commission in particular, is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof.[91] The burden of proof is two-pronged: it includes both the *prima facie* burden of adducing sufficient evidence to go forward with a claim and the burden of ultimate persuasion. The quantum of proof in administrative adjudications is, again unless expressly provided otherwise, a preponderance of record evidence.[92]

III. INTRODUCTION

A. Summary of Parties' Positions

Because the record of this case is relatively large and the numerous parties to this case are far from uniformly aligned on the merits of PNM's Amended Application and make myriad arguments for and against particular aspects the relief requested, this introductory section memorializes, for the record, the general positions of each party on the merits.[93]

(*Cont'd from previous page*)

Should be Established to Analyze a Smart-Meter Pilot Program, Case No. 15-00119-UT, Certification of Stipulation, at 16 (Dec. 18, 2015) (*citing Gray v. State ex rel. Wyoming Workers' Safety and Compensation Div.,* 193 P.3d 246, 251 (Wyo. 2008)). *See also* NMSA 1978 § 62-8-7(A) ("At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.").

[91] 3 Davis, Kenneth Culp, Administrative Law Treatise § 16.9 at 255-57 (2d ed. 1980). *See Int'l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm'n*, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) ("Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.").

[92] *See* Davis, *supra,* § 16.9 at 256 ("One can *never* prove a fact by something less than a preponderance of the evidence") (emphasis in original). *See El Paso Electric Co. et al. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, ¶ 12 ("This Court, however, does express its deep concern regarding the reasonableness of this heightened standard of proof ['clear and convincing evidence'], especially *since a 'preponderance of evidence' standard is customary in administrative and other civil proceedings*.") (emphasis added); *Re Southwestern Public Service Co.,* Case No. 2678, Recommended Decision (Nov. 15, 1996) ("No matter how the Commission describes its standard of review, SPS bears the burden of proof in this case. SPS must demonstrate that a preponderance of evidence exists in the record on which to base approval of the requested authorizations surrounding the merger.").

[93] If a particular argument is not addressed in this decision or the *Recommended Decision on FCPP Financing Order*, it should be deemed resolved or disposed of consistent with the Hearing Examiners' findings, conclusions, and recommendations in the companion decisions.

1. PNM

PNM, naturally, urges the Commission to grant the Amended Application without modification. PNM states that the exit from Four Corners six-and-a-half years earlier than expected is a result of the New Mexico Legislature's efforts to entirely decarbonize New Mexico's delivery of electric energy through the ETA, which provides a framework for utilities to exit aging coal-fired generation facilities by giving the Commission "the tools to accelerate the state's transition away from coal plants to a significantly cleaner and more diverse energy mix for customers."[94] PNM submits that approval of the Amended Application not only will significantly reduce PNM's carbon footprint associated with serving its customers, but will also reduce emissions more broadly for the state as a whole. PNM states that the ETA also gives the Commission authority to directly address the resulting impact on tribal and local communities in the Four Corners area through "Just Transition" funding not otherwise contemplated by the Public Utility Act.[95] PNM asserts that the "transformational" Energy Transition Act "paves the way for New Mexico to more quickly and responsibly transition out of coal generation completely, while supporting the communities that have contributed to PNM's provision of reliable resources for many years by working at and providing fuel for the coal-fired generation plants."[96]

PNM observes that while this case may signal the end for PNM's coal portfolio, at its core, the approvals sought in the Amended Application are about saving customers money. PNM maintains that abandonment of PNM's interest in the FCPP and replacement with more flexible

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[94] PNM Br. 1.

[95] *Id*. Explaining the so-called "Just Transition," PNM notes that "[w]hile the ETA does not characterize the funding for tribal and local communities as "Just Transition" funding, this term is used by several parties in this proceeding to refer the various tenants for the Navajo Nation to transition away from coal. Navajo Nation President Nez set forth the tenents [*sic*] of a "Just Transition" in a letter to the Arizona Corporation Commission regarding a recent Tucson Electric Power Company rate case." *See* https://docket.images.azcc.gov/E000004596.pdf.

[96] PNM Br. 1-2.

and clean energy resources is expected to result in customer savings of $30 million to $300 million on a net present value basis. Therefore, "approval of each of the components of the Amended Application," PNM concludes, "results in net benefits to PNM's customers, New Mexico residents, and the communities detrimentally affected by the transition away from coal-fired generation."[97]

Addressing the challenges to the claimed public benefits of the sale and abandonment discussed in detail below, PNM characterizes the intervenor and Staff criticisms as ranging from "pure speculation as to the future of Four Corners and the financial condition of the purchaser to adoption of a narrow view of the facts that is not supported by the record in this case."[98] While PNM acknowledges the environmental benefits that would result from an earlier retirement and shutdown of the Four Corners plant, PNM submits the facts simply do not support denial of its request to abandon its interest in Four Corners in favor of "a speculative gamble that other owners will agree to an early closure of the whole plant."[99] PNM emphasizes that an early retirement of the entire plant is not on the table, but the Company's exit here with net benefits to customers is. PNM advises that the quantifiable benefits that PNM's customers will receive from the component approvals included in the Amended Application are not worth trading for a belief that a better deal is out there. "Indeed," PNM concludes, "the failure to take the benefits to customers available here would result in the peculiar outcome of PNM staying in coal, its customers paying for more expensive coal-fired power than alternatives, and the default scenario of that situation persisting until Four Corner's planned closure date of 2031."[100]

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[97] PNM Br. 2.

[98] PNM Br. 9.

[99] PNM Br. 10.

[100] *Id*. n. 22.

2. Intervenors

Of the parties taking definitive positions on the Amended Application[101] only one, WRA, expresses direct support for the Amended Application, concluding "that abandonment is in the economic interests of PNM and its customers." Nonetheless, WRA's support of the Amended Application comes with conditions opposed by PNM. WRA recommends that the Commission approve PNM's request to abandon FCPP on December 31, 2024 with the following conditions: (1) PNM's request to obtain a financing order to securitize energy transition costs, but limiting approval to $230 million based on certain recommended adjustments considered in the Hearing Examiner's companion *Recommended Decision on FCPP Financing Order*; and (2) approve the sale and transfer of PNM's interest in FCPP to NTEC only if PNM files an amended purchase and sale agreement that strikes or modifies the language contained in Article 6.1(d)(i) of the PSA (conduct pending closing, addressed in Section IV.B.3 below) so that it does not limit the other facility owners' ability to vote for early closure of the plant.

The Attorney General recommends that if the Commission approves PNM's Amended Application, any securitized costs be limited to $29.3 million. PNM should not be allowed to securitize costs and expenses found imprudent in the Certification of Stipulation in Case No. 16-00276-UT (the $148.7 million in Four Corners capital additions between July 1, 2016 and December 31, 2018) because, the Attorney General argues, the abandonment of FCPP and scheme to foist costs upon ratepayers substantial costs that should be subject to a prudence review in

[101] The very first provision of the Hearing Examiner's Briefing Order asked the parties to provide in the briefs in chief their respective recommendations on the Amended Application. *See* Briefing Order, at 1, ¶ A(1) ("Please provide your recommendation on [PNM's] . . . Amended Application for abandonment of the Four Corners Power Plant . . . and issuance of a securitized financing order pursuant to the Energy Transition Act . . . .").

PNM's next rate case is a precondition of PNMR's merger with Iberdrola/Avangrid.[102] Since the issue of prudence on findings made by the Hearing Examiners in Case No. 16-00276-UT relate to what undepreciated investments in Four Corners may or may not be securitizable, the Attorney General and other parties' arguments that the ETA should not apply to certain undepreciated investments are addressed in the companion *Recommended Decision on FCPP Financing Order*. Whether the proposed PNMR merger with Iberdrola/Avangrid pending in Case No. 20-00222-UT pertains, if at all, to this proceeding is addressed in section IV.A.13 below.

NM AREA declined to state a position the "threshold issues" in this matter, electing instead to brief three limited issues addressed in the testimony of its witness James R. Dauphinais, who takes position on issues that would appear to assume the Amended Application is approved.[103] Mr. Dauphinais' issues are addressed in the *Recommended Decision on FCPP Financing Order* accompanying this decision.

Turning now to the parties who explicitly oppose the Amended Application, San Juan County does not support the PNM's proposed abandonment of the FCPP without first settling the issue of the location of replacement resources following abandonment or the replacement of lost property taxes to the county. Except as San Juan County's specific concerns relate to two questions in the Hearing Examiner's Briefing Order (Questions 1 and 10), San Juan County takes

[102] NMAG Br. 6-8. In relating its position on the merits, the Attorney General either forgot to acknowledge or tries to elide the fact that its witness, Andrea C. Crane, took the position *for the Attorney General* in her testimony and at hearing that the Attorney General *supports the abandonment of FCPP if the Avangrid/PNMR merger is approved*. *See* Tr. Vol. IV (Crane) 856 ("I support the abandonment aspect of the Application provided that the proposed merger is approved. In my view the abandonment is an integral part of the merger, *and the Attorney General is a signatory to the merger*. So if the merger is approved, then yes.") (emphasis added); *id.* NMAG Exh. 1 (Crane Dir.) 6-7, 35.

[103] NM AREA Br. 1-2.

no positions on the remaining eight questions posed in the Briefing Order.[104] Since its concerns relate to certain provisions of the ETA, San Juan County's issues are addressed in the companion *Recommended Decision on FCPP Financing Order*.

Intervenors taking thoroughly steadfast positions in opposition to PNM's Amended Application on grounds too numerous to summarize in this introduction include ABCWUA, Bernalillo County, CCAE, Community Groups, NEE, and Sierra Club. Their arguments are sorted out, as germane, either below or in the companion *Recommended Decision on FCPP Financing Order*.[105]

3. Staff

In its post-hearing brief, Staff opposes the Amended Application on the sole ground that PNM's alleged "failure to identify sufficient justification for the Commission to deny the abandonment[106] – a position, incidentally, which is at odds with the opinion of its witness on this very issue as well as his opinion on the merits of the Amended Application.[107] In any event, Staff's argument is addressed in section IV.A.11 below. Staff's other argument – that the $148.7 million in FCPP capital additions found imprudent in the Certification of Stipulation should not be securitized

[104] SJC Br. 1.

[105] For instance, the constitutional challenges centered on the ETA posed by ABCWUA/County (filing a joint initial and response briefs) and NEE are addressed, as they were in Case No. 19-00018-UT, in the *Recommended Decision on Financing Order*. Likewise, the intervenors' arguments that the doctrines of estoppel or waiver bar pnm from asserting the ETA applies to the contested undepreciated investments in the FCPP are considered in the *Recommended Decision on Financing Order*.

[106] Staff Br. 2.

[107] As discussed in section IV.A.11 *infra*, Staff witness Eli LaSalle testified that PNM's identification of potential replacement resources met the statutory requirements of the ETA "given that adequate potential new resources are identified in the application for abandonment," and he concluded that that there was a net public benefit to granting PNM's abandonment application. Staff Exh. 1 (LaSalle Dir.) 9, 10, 12. Staff witness Marc A. Tupler also concluded that "Staff recommends approval of the Application, subject to the proposed Staff modifications." Staff Exh. 2 (Tupler Dir.) 16.

– is covered, like the numerous intervenors' related arguments on that contentious issue, in the *Recommended Decision on FCPP Financing Order* issued today.[108]

IV. DISCUSSION, ANALYSIS, AND RECOMMENDATIONS

A. Abandonment of PNM's Interest in the Four Corners Power Plant

This decision first discusses and analyzes PNM's case for abandonment of the Four Corners plant and the intervenor and Staff arguments on an issue-by-issue basis. The process is repeated in the next section, IV.B below~~IV.B~~, for PNM's proposed sale and transfer of its interest in Four Corners to NTEC.

PNM asserts the Commission's approval of the abandonment and sale and transfer of its interest in Four Corners will result in the following concrete benefits to PNM customers and, as applicable, the public at large:

> (1) quantifiable savings to customers;
>
> (2) increased flexibility on PNM's system given the types of replacement resources that will be deployed;
>
> (3) furtherance of PNM's progress toward reducing its portfolio emissions consistent with the ETA;
>
> (4) reduced overall emissions from Four Corners via the agreements encompassing seasonal operations;
>
> (5) a reduction in abandonment costs by using securitization;
>
> (6) consistent with the Navajo Nation's call for a Just Transition, preservation of a strong Navajo Nation voice in the future of Four Corners by transferring PNM's interest in the plant to NTEC, an arm of the Navajo Nation; and
>
> (7) mitigation of adverse economic impacts to the local workforce and community.[109]

[108] LaSalle Dir. 9-10.

[109] PNM Br. 9.

PNM's first five claims, most but not all of them vigorously challenged, and several additional matters – i.e., issues emanating from the parties' briefs or the record that relate in one fashion or another to the abandonment portion of the Amended Application but do not fit precisely elsewhere – are addressed in the following subsections. Because items 6 and 7 pertain to asserted beneficial attributes of PNM's transfer of its interest to NTEC, those claims are analyzed in section IV.B below.

1. Claimed savings to customers

PNM asserts that the abandonment and sale of its interests in the Four Corners plant will result in a net public benefit through cost savings to customers, estimating the overall twenty-year savings to customers on a net present value basis is estimated to range from $30 million to $300 million.[110] The median expected savings is approximately $143.7 million.[111]

PNM's Four Corners abandonment analysis was presented by PNM witness Nicholas Phillips, the Company's Director of Integrated Resource Planning.[112] Mr. Phillips stated that the general methods used to evaluate the "FCPP Assets" (i.e., PNM's 13% interest in the plant and associated PNM-owned assets like the FCPP switchyard, inventory, and fuel inventory) follow similar protocols to those used in the recent SJGS abandonment analysis used in Case Nos. 19-00018-UT and PNM's 2017 IRP.[113] Phillips examined two primary paths that compared the long-term costs of the retention of the 200 MW of capacity at Four Corners with the costs of abandoning the FCPP Assets, including terms of the sale of the assets, and replacing that capacity and energy

[110] Fallgren Supp. 17-18 (citing PNM Exh. 9 (Phillips Dir.) 3); Fallgren Reb. 3.

[111] Phillips Dir. 3.

[112] Phillips Dir. 1.

[113] Phillips Dir. 2, 11.

with other sources. Phillips studied both scenarios under a wide range of input assumptions, including a range of different system loads, combustion turbine price forecasts, carbon emission prices, and costs for replacement resources. He stressed that in all scenarios analyzed PNM required the resulting portfolio to meet all required laws and regulations – such as the updated renewable portfolio standard (RPS) and portfolio carbon emission requirements prescribed by the ETA, as well as PNM's planning criteria for reliability.[114]

PNM measured long-term cost savings by comparing the net present value of costs required to meet retail customer loads over a 20-year planning period under two primary scenarios: (i) assuming the continued operations of the FCPP Assets through 2031, and (ii) assuming the FCPP Assets are transferred under the terms of the proposed NTEC transaction and resources are obtained to replace the FCPP Assets.[115] Mr. Phillips said this approach is consistent with the requirement in the Commission's IRP Rule, 17.7.3 NMAC, to consider resource portfolio costs over a 20-year planning period. PNM's calculation of long-term cost savings included the following:

- Cost to operate and maintain existing resources over 20 years,
- Cost to build, operate, and maintain any resources added in the 20-year study period, and
- Costs associated with retiring any resources during the 20-year study period.[116]

[114] Phillips Dir. 11-12 (noting that rules for measuring and verifying compliance with the CO2 emissions limits for generation and sources of energy procured pursuant to PPAs by a qualifying utility that has received a financing order pursuant to Section 62-18-10(D) of the ETA have not been promulgated).

[115] Phillips Dir. 12

[116] *Id*.

Additional details regarding PNM's modeling, such as system reliability metrics, software and modeling tools, key assumptions, environmental and regulatory requirements, load and commodities forecasts, and other model design factors are discussed in Mr. Phillips' testimony.[117]

The results of Mr. Phillips' analysis are presented in the graph depicted below, which is PNM Figure NLP-3 in his direct testimony.[118] The figure shows a histogram and approximated probability density of the potential future scenarios analyzed. The area beneath the probability curve sums to 100%. Phillips concludes that summing the area left of the breakpoint between customer savings and customer costs results in a 98.5% likelihood that customers will be "better off due to exiting FCPP in 2025."[119] Beneath the x-axis on what Phillips describes as the "rug" of the plot are color coded marks showing where the individual cases analyzed fall in the savings spectrum.[120]

Mr. Phillips, continuing, explained that within each color-coded grouping in the graph are multiple cases that examined different future load, commodity forecast, and technology cost combinations. The main groupings consist of technology restrictions – "high replacement cost" (HRC) and "low replacement cost (LRC) combinations. Phillips noted that the "no new combustion" cases assumed that no non-carbon emitting fuel is expected to materialize and

[117] *See* Phillips Dir. 13-20 (for example, PNM's analysis factored in RPS requirements and carbon intensity limits of 400 lbs/MWh and 200 lbs/MWh in 2023 and 2032 respectively; required each portfolio to meet a target planning reserve margin to approximate Loss of Load Event (LOLE) metrics; used EnCompass software in its resource model runs; used a June 2020 load forecast prepared by Itron, Inc.; used a wholesale fuel commodity and carbon emission price forecast prepared by PACE Global being used in PNM's 2020 IRP; used National Renewable Energy Laboratory (NREL) and U.S. Energy Information Administration (EIA) public data and non-public data from the San Juan RFPs and other private data sources; and modeled the portfolio (CCAE-1) approved by the Commission in Case Nos. 19-00195-UT and 20-00182-UT.

[118] Phillips Dir. 23, PNM Fig. NLP-3.

[119] Phillips Dir. 21.

[120] *Id.*

consequently no combustion turbines (or other carbon emitting resources) are allowed for replacement resources. He observed that the no new combustion cases are generally more costly for customers than cases where technology type selection is neutral; however, they do still produce net savings in Phillips' analysis. Phillips said the technology neutral cases generally produce marginal increases in carbon emissions compared to the no new combustion cases, but all cases meet or exceed the ETA carbon emission requirements discussed further below.[121]

Phillips explained that the HRC set of assumptions is a combination of assumptions intended to account for a high technology cost curve for replacement resources, high gas prices, and low carbon emission prices. This combination of assumptions would tend not to favor the early exit from FCPP. Indeed, when the HRC assumptions are combined with no new combustion, the savings to customers resulting from the proposed transaction diminish and approach a break-even when compared to PNM retaining its interest in FCPP. Conversely the LRC assumptions include low technology cost curves for replacement resources, low gas prices, and high carbon emission prices. The results of Mr. Phillips' analysis are encapsulated in Figure NLP-3 below: [122]

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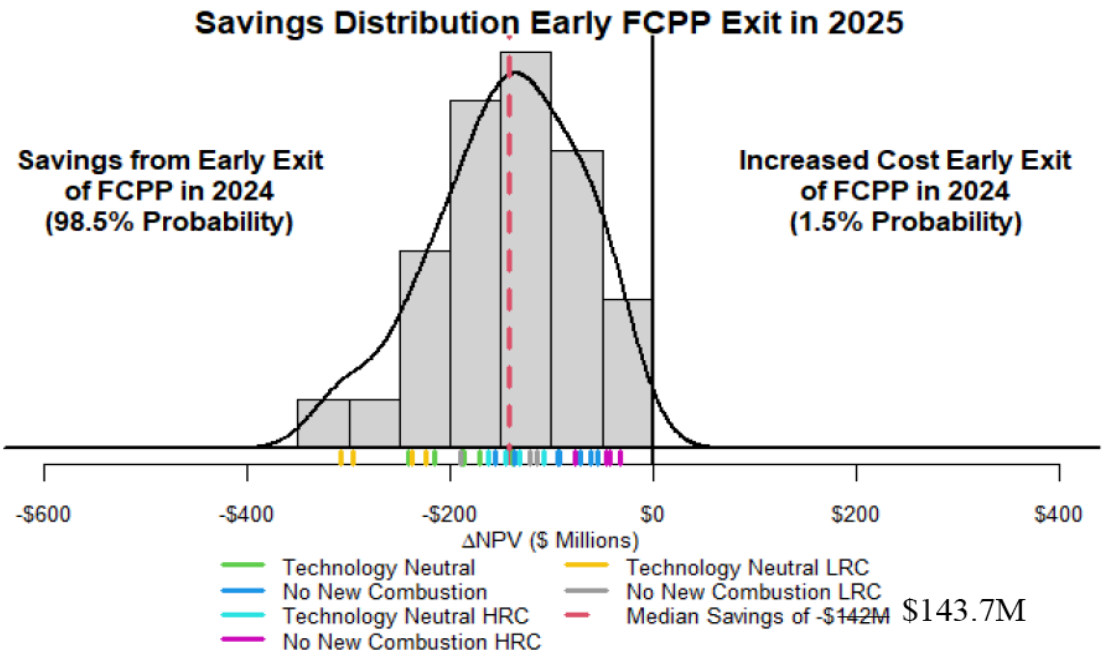
[121] Phillips Dir. 21-22 (Phillips noted that PNM Figure NLP-4 presented later in his testimony, at 29, depicts the carbon intensity of the reference case portfolios for both technology restricted and unrestricted cases.).

[122] Phillips Dir. 23, PNM Fig. NLP-3 (corrected per errata). PNM Exhibit NLP-5 to Phillips' direct testimony shows a complete list of modeled futures and sensitivities in his analysis. According to Mr. Phillips, the data in the Figure NLP-3 below

> are the differences in NPV cost between pairs of model simulations in which FCPP Assets continue operation through 2031 and in which FCPP Assets are transferred and replaced at the end of 2024. Different pairs of simulations were modeled based on external conditions defined by the following factors:
>
> - Presence or absence of a restriction on the types of technologies eligible for replacement resources
> - Mid, low, or high load forecast
> - Mid, low, or high gas price forecast
> - Presence or absence of carbon emissions prices

(*Cont'd on next page*)

PNM Figure NLP-3



Phillips determined that the results of the analysis show that the early exit from FCPP will provide savings to PNM customers under all potential future scenarios that PNM analyzed. However, given that a few cases do approach the breakeven point, Phillips concedes that his analysis "results in a non-zero probability that customers could face an increased cost, but such an outcome is highly unlikely."[123] Nevertheless, Phillips concluded that "[t]he key takeaways from the figure show that in all cases PNM considered, there are net customer savings provided by the

(*Cont'd from previous page*)

- Mid, low, or high forecasts of cost declines for renewable and energy storage resources

This range of simulations is meant to test the robustness of our conclusions to external factors uncontrolled by PNM."

Phillips Dir. 23-24.

[123] Phillips Dir. 24.

proposed NTEC transaction, which allows PNM to abandon its FCPP interest under favorable circumstances for customers."[124]

The composition of the proxy replacement portfolios that resulted from Mr. Phillips' analysis are presented in his PNM Table NLP-1, which is also reproduced below. In general, Phillips' model runs selected resources that provide "flexible power and capacity, with a resulting system energy mix that helps meet future increasing RPS requirements."[125] While the actual replacement portfolio will not be determined until PNM has completed its RFP evaluation process, Phillips believed that the results of his analysis using what he termed the "generic placeholders" provides reliable insight into what a potential replacement portfolio might look like and cost; under its "Current Trends and Policy" assumptions, i.e., those which reflect PNM's view of the most likely set of conditions in the future, Phillips started out with gas, wind, solar and energy storage technologies as replacement options.[126] PNM's resulting replacement portfolios were primarily combinations of solar photovoltaic (PV), energy storage, and flexible combustion turbine resources that are expected to convert to hydrogen fuel (or some other non-carbon emitting fuel) by 2040. The levels of each type of resource depend upon the assumptions surrounding technology restrictions as well as the resources that would be brought online in 2023/2024 as replacements to the 114 MW of Palo Verde Nuclear Generating Stations (PVGNS) leases being returned.[127]

In aggregate, Phillips estimated that over the Palo Verde and FCPP replacement period (2023-2025), PNM would expect to add approximately 80 MW of storage, 50 MW of solar, and

[124] *Id*.

[125] Phillips Dir. 26.

[126] *Id*.

[127] *Id*.

360 MW of flexible combustion turbine resources, if there are no technological restrictions placed on the proxy replacement portfolio. However, if there are technological restrictions such as the exclusion of potential hydrogen resources such that only renewable resources and energy storage resources are available, Phillips estimated the aggregate replacement resources in the 2023-2025 timeframe would then be approximately 460 MW of storage and 210 MW of solar resources. Phillips concluded that while both proxy portfolios would provide a net benefit to customers, the technology neutral proxy portfolio would cost approximately $300 million less on a 20-year NPV basis.[128]

PNM Table NLP-1[129]

Line	Years	Resource Type	Technology Neutral (Scenario 1) Exit FCPP 2024 Incremental Capacity (MW)	Technology Neutral (Scenario 1) Exit FCPP 2031 Incremental Capacity (MW)	No New Combustion (Scenario 2) Exit FCPP 2024 Incremental Capacity (MW)	No New Combustion (Scenario 2) Exit FCPP 2031 Incremental Capacity (MW)	Line
1	2023-2024	Combustion Turbine	280	240	0	0	1
2		Storage	24	53	305	311	2
3		Solar	(1)	9	125	53	3
4		Wind	0	0	0	0	4
5		Nuclear	(114)	(114)	(114)	(114)	5
6		Coal	(497)	(497)	(497)	(497)	6
7	2025	Combustion Turbine	80	0	0	0	7
8		Storage	57	0	156	0	8
9		Solar	57	0	95	0	9
10		Wind	0	0	0	0	10
11		Nuclear	0	0	0	0	11
12		Coal	(200)	0	(200)	0	12
13	NPV (2021$)($M)		$6,933	~~$7,105~~ $7,106.7	$7,240	~~$7,335~~	13
14	Total 2040 Capacity (MW)		5,941	5,869	6,401	6,401	14
15	CO2 (Tons)(M)		28.4	32.9	26.1	31.7	15

$7,336.7

Turning now to the matter of PNM's share of ongoing costs to operate Four Corners, PNM witness Thomas Fallgren testified that customers are released, as of 2025, from the obligation of future ongoing costs for operating the plant, including costs associated with capital investments,

[128] Phillips Dir. 27.

[129] Phillips Dir. 27, PNM Table NLP-1 (corrected per errata).

operations and maintenance, and coal supply for the plant.[130] Customers also benefit, Fallgren adds, from a PNM shareholder payment of $75 million to the buyer, NTEC. That payment also absolves PNM's customers from any further costs associated with the CSA for Four Corners.[131] "The result," PNM's witness Phillips, concludes, "is a one-time opportunity that allows PNM to accelerate its exit from FCPP," while PNM's customers and the impacted communities realize concrete benefits pursuant to the ETA and its securitization process and funding for local communities.[132]

PNM has estimated the range of revenue requirement reductions of between $49 million to $58.8 million for the first year (2025) as a result of the abandonment and sale of PNM's interest in the FCPP and its replacement with lower cost resources.[133] PNM witness Thomas J. Settlage, noting that Residential 1A and Small Power 2A rate schedules account for over 99% of all customer bills, projected customer bill impacts to range from an increase of $1.32 to a decrease of $19.31 per month for Residential 1A customers, and an increase of $2.89 to a decrease of $133.12 per month for Small Power 2A customers.[134] PNM concludes these estimates provide quantifiable customer cost savings, resulting in a net public benefit.[135] Denial of abandonment in this case would cost customers, Mr. Fallgren contended, "the only available exit plan for PNM to exit Four Corners."[136]

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[130] Fallgren Reb. 3.

[131] Fallgren Reb. 4.

[132] Phillips Dir. 6 (as corrected by errata).

[133] Fallgren Supp. 18 (citing PNM Exhibit 10 (Baker Dir.) 36, PNM Table MSB-7).

[134] PNM Exh. 13 (Settlage Dir.) at 24. Mr. Fallgren noted that the "estimated savings will depend on usage and the assumptions concerning the final composition of replacement resources."). Fallgren Supp. 18.

[135] Fallgren Supp. 18.

[136] Tr. Vol. II (Fallgren) 385.

Sierra Club was the only party that attempted to discredit PNM's cost savings analysis.[137] Sierra Club argues that PNM's has not proven that abandonment will result in a net economic benefit to customers and has improperly inflated the relative savings of its abandonment application by:[138] (i) failing to update its include PNM's increased costs associated with the June 25, 2021 seasonal operations amendments to the Four Corners agreements, thus rendering PNM witness Nicholas Phillips' economic analysis stale;[139] (ii) not accounting for $146 million in customer savings in a scenario in which abandonment is denied and that amount (capital costs incurred between 2016 and 2020) is disallowed from rates;[140] (iii) assuming an unrealistic, "worst-case"

[137] In fact, certain other intervenors strongly opposed to the proposed sale and abandonment accept or assume that PNM's estimated savings are accurate or at least in the ballpark. *See* ABCWUA/County Br. 3 ("PNM has demonstrated that the plant cannot continue to operate in a cost-effective manner to the benefit of the public – an undisputed fact evinced by PNM's estimate that closure of the plant *and replacement with almost any replacement portfolio will result in savings* to rate payers.") (emphasis added); Community Groups Br. 25-26 ("PNM estimates that it would save $30 to $300 million, on a net present value basis, by substituting other resources for the Four Corners power plant between 2025 and 2031. It is likely other utility owners could also realize commensurate savings by exiting the Four Corners plant.) (citation omitted); NEE Br. 57 ("Mr. Fallgren testifies that, 'the overall twenty-years savings . . . ranged from $30 to $300 million.' . . . This is an explicit admission that Four Corners is uneconomic for ratepayers.") (internal citation and footnote omitted).

[138] *See generally* Sierra Club Br. 5, n. 5, 26-34.

[139] Sierra Club Br. 22-25. Sierra Club maintains that the June 25th amendment to the operating agreement, Amendment 21, "significantly changes PNM's entitlement, obligations, and costs at Four Corners, and thus PNM's costs of owner Four Corners prior to exiting at the end of 2024." Sierra Club Br. 23. Sierra Club concludes that: "PNM is trying to have it both ways: PNM wants to use Amendment 21 to claim that there are net emissions reductions from abandonment and that the agreement provides flexibility to its partners; but PNM ignores Amendment 21 in its economic analysis of abandonment and the inflexibility in PNM's ability to decrease output from Four Corners. . . . The result is a fatally flawed record: PNM's economic evidence predates the June 25 amendments; but PNM's environmental evidence postdates the June 25 amendments." Sierra Club Br. 24-25.

[140] Sierra Club Br. 26-28. Sierra Club later argues, relatedly, that based on alleged flaws in PNM's calculated customer savings, the relative savings would shift from "$0 to $100 million." Sierra Club Br. 34. The derivation of this "$0 to $100" million is unclear, but as PNM points out in its response brief, at 21-22, it might be based on Sierra Club's estimate of what customer savings might be if PNM had not included new natural gas units in its replacement portfolios. Sierra Club postulates that granting PNM's application would impose $146 million in costs, the figure Sierra Club anticipates the Commission will or should disallow for imprudence. Reconciling these numbers (shifting from $0 to $100 million in savings to $146 million in costs), Sierra Club states that "on a net basis, granting PNM's application results in a net cost to customers ranging from $46 to $146 million[,]" but based on more realistic assumptions of the replacement portfolio, the net benefits probably range from "a negative $46 to $116 million." Sierra Club Br. 34. As PNM points out, it is unclear precisely how Sierra Club

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baseline scenario in which PNM owns Four Corners until 2031 if this abandonment application is denied;[141] and (iv) considering "technologically neutral" portfolios that include new gas plants, despite the high hurdles PNM faces in building new gas.[142]

PNM disagrees with Sierra Club on every point and endeavors to refute each criticism. Responding, first, to Sierra Club's argument that Mr. Phillips economic analysis is stale because it failed to consider the increased costs associated with the June 25, 2021 modifications to the CSA and operating agreements for seasonal operations, PNM asserts there is no credible record evidence to support a finding that PNM's costs will change as a result of seasonal operations. In fact, PNM maintains it did not have any reason to update its calculated customer savings since, according to Mr. Fallgren, there are no anticipated significant cost differences expected from seasonal operations, and seasonal operations does not require PNM to operate differently than it does now. Mr. Fallgren also addressed in his rebuttal testimony why Sierra Club witness Fisher's assumptions regarding the costs associated with these amended agreements were mistaken.[143]

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calculated $0 to $100 million in savings to derive the $46 million to $146 million range or how $146 million shifted to "$116 million." PNM Resp. 22. Sierra Club repeats this *unattributed* "net cost to customers of $46 to $146 million" based on a $0 to $100 million "potential benefit") in its Response Brief, at 8. Whatever the derivation of the calculations – which is precisely the point because it is unclear who or what they are derived from – because Sierra Club does not appropriately source or adequately explain the figures that are the basis of its new savings or "potential benefit" estimates from any specific testimony or other record cite, the Commission cannot accept Sierra Club's novel, unexplicated, and unsourced argument.

[141] Sierra Club Br. 28-30.

[142] Sierra Club Br. 31-33. In this argument, Sierra Club suggests that the Commission is more likely to approve non-combustion portfolio than a new portfolio with new gas, noting that the Commission rejected PNM's request to build new gas plants to replace the SJGS in Case No. 19-00195-UT and also rejected El Paso Electric's (EPE) bid to build a new gas plant, citing the ETA's carbon-free goals in Case No. 19-00349-UT. Sierra Club Br. 32.

[143] *See* Fallgren Reb. 37-38 ("Sierra Club Witness Fisher incorrectly assumes that PNM and NTEC would have to carry 85 percent of the operating cost when in single unit operation. The only modifications to cost allocations is that each party will pay their individual variable costs of chemicals, and there is no requirement for PNM to take on any additional ownership obligation for non-variable costs. In fact, there is a potential that PNM customer O&M costs could decrease with the ability to perform planned unit outages with an extended timeline

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According to Mr. Fallgren, PNM did analyze the issue and concluded that seasonal operations does not require PNM to utilize the plant differently than it does now.[144] More specifically, seasonal operations will not change the overall manner in which PNM must schedule generation from Four Corners. While the other co-owners will have some increased flexibility from Unit 5 being "layed-up" (turned off) during the spring and winter seasons, PNM will be operating under the status quo by dispatching 26% from Unit 4 in the same manner that it dispatched its 13% from Units 4 and 5 before. Since PNM is maintaining the status quo of both its total percentage take and its dispatch order, PNM expects no material cost differences.[145] PNM therefore contends there were no grounds to re-run the financial analysis calculating expected customer savings from the sale and transfer of PNM's interest in Four Corners to NTEC.[146]

Second, addressing Sierra Club's assumption that a $146 million disallowance should have been factored into PNM's cost modeling, PNM says it has consistently argued that, inasmuch as this is an ETA proceeding, prudence is not at issue. PNM adds that the Hearing Examiners' *Certification of the Stipulation* in Case No. 16-00276-UT was not adopted by the Commission and there is no record evidence to indicate that in this case or any other case that the Commission would decide that a $146 million disallowance would be the result of a current or future prudence review, and thus, should have been the crux of PNM's modeling.[147]

Third, concerning Sierra Club's argument that PNM should have assumed that FCPP would close before 2031 to calculate customer savings, PNM responds that modeling a pre-2031 closure

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potentially resulting in lower overtime costs. PNM does not anticipate any material changes to its operating costs during the seasonal operation time period.").

[144] *Id.*

[145] PNM Resp. 32-33.

[146] PNM Resp. 8, 30.

[147] PNM Resp. 17-18.

would amount to nothing more than an exercise in sheer speculation or, as PNM put it, "picking a date out of a hat."[148] PNM states that the current, legally operative date for FCPP closure is 2031, and there is no concrete evidence in the record that FCPP will close on any date other than 2031. PNM maintains it has no factual basis to choose another date to determine customers savings, and even Sierra Club has not decided what that date should be. PNM notes that at various points in its brief, Sierra Club speculates FCPP could close in 2023, 2027, or 2029.[149] PNM contends that "the Commission should reject Sierra Club's efforts to introduce speculative dates for Four Corners closure, and then claim PNM's evidence is lacking because PNM did not make the same guess as Sierra Club."[150]

Regarding Sierra Club's fourth criticism that Mr. Phillips should not have included new natural gas plants in his replacement scenarios, PNM states that the foundation of Sierra Club's arguments is more speculation. Defending PNM's commitments to decarbonize its generation fleet, PNM insists Mr. Phillips' modeling already accounts for this issue.[151] Because the replacement resources for Four Corners are likely to remain in PNM's portfolio beyond the date on which PNM must be carbon-free, PNM says it limited the replacement alternatives in its analysis to resources that may viably contribute to a carbon emissions-free portfolio. Hence, Phillips modeled solar, wind, energy storage, and flexible combustion turbine resources under an expecta-

[148] PNM Resp. 6.

[149] *Id*. (citing Sierra Club Br. 5 n. 7, 41-42.)

[150] PNM Resp. 6.

[151] PNM Resp. 9 (Here, citing Phillips' direct testimony, at 26, PNM notes that "Mr. Phillips' modeling in his direct testimony assumed that natural gas replacement resources would have to covert to hydrogen fuel (or some other non-carbon emitting fuel) by 2040." PNM continues, '[a]t hearing, Mr. Phillips explained that given commitments made in the PNM/Avangrid merger to decarbonize by 2035, he expected that natural gas turbines that would be converted to hydrogen by 2035 would 'come into the portfolio on a least-cost basis, predominantly because of that firm capacity they provide at a low cost.'" *Id*. n. 28 (citing Tr. Vol. III (Phillips) 808-09.

tion that new gas units would be converted to burn a non-carbon emitting fuel, such as hydrogen.[152] PNM claims the results of Mr. Phillips' analysis show that an early exit from FCPP will provide savings to customers in all potential future scenarios.[153] As such, PNM insists its calculations of customer savings already account for the company's future commitments to be carbon-free. PNM lastly argues that past Commission decisions about gas replacement resources should have no bearing on the actual factual record that PNM presents to the Commission in its replacement resources case. PNM believes that if it can prove that the only means to reliably serve customers includes a gas peaker in the portfolio, the Commission will base its decision on the record before it and not on prior decisions.[154]

Having closely evaluated the evidence, the Hearing Examiner finds PNM's modeling and analyses sufficiently credible to support a finding that the proposed FCPP abandonment should result in a significant benefit to customers through quantifiable cost savings, on an NPV basis over twenty years, in the range of $30 million to $300 million. In addition, PNM's systematic refutation of Sierra Club's unsubstantiated criticisms reinforces the demonstration of customer savings

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[152] Phillips Dir. 17.

[153] *Id*. at 21:3-5.

[154] PNM Resp. 10. Additionally, related to the discussion in n. 140 *supra* regarding Sierra Club's postulation that customer savings would shift from $0 to $100 million to $146 million in costs, PNM rebuts Sierra Club's assumption that if natural gas has been left out that "the median savings from PNM's proposed abandonment would be less than $143 million[,]" but, "Sierra Club reaches this conclusion by stating that 'the savings from most of the no-combustion portfolios are less than $143 million." PNM Resp. 10. PNM observes that Sierra Club's "statement is an assumption and is not supported by the factual record," noting that PNM witness Phillips responded to Sierra Club's attorney that "It would be tough to say [whether the no new combustion resources would be less than the median of $143 million] without performing the analysis, given the technology-neutral cases." PNM Resp. 10 (quoting Tr. Vol. III (Phillips) 78. Taking the assumption further, Sierra Club states that "the no-combustion portfolios have expected savings in the $30 million to $100 million range." Sierra Club Br. 33 (citing Phillips Dir. 23, PNM Fig. NLP-3). "It seems," PNM deduces, "that Sierra Club has reached this conclusion by eyeballing the color coding in PNM Figure NLP-3. Sierra Club could have factually supported its attempted arguments by asking PNM discovery questions about these issues earlier in the case, but instead has clouded the Commission record by making assumptions and guesses as to the actual facts in its brief."). PNM Resp. 10.

associated with the Company's proposal to abandon Four Corners. Moreover, performing a net present value revenue requirements (NPVRR) modeling analysis that compared the potential costs to ratepayers of abandoning Four Corners at year-end 2024 against PNM maintaining its ownership share through 2031 under numerous procurement scenario runs, WRA witness Brendon Baatz found customer savings in his analysis ranging from ranging from $95.7 to $305.2 million, depending on the replacement resource portfolio and assumptions.[155] Mr. Baatz's findings, which corroborate PNM witness Phillips' results, support the demonstration of the significant costs savings to ratepayers in PNM exiting the Four Corners plant in 2024.

2. Increased flexibility on PNM's system

PNM states that while baseload resources have served its system requirements well in the past, the growing penetration of renewable resources requires PNM's system to become more flexible to maximize the deliverability of renewable resources and reliably serve PNM's "net load."[156] PNM notes that because renewable resources like wind and solar are intermittent by nature and there are requirements about how much energy on the system must be served by those types of resources, the planning paradigm shifts from gross load planning to net load planning. "Net load," Mr. Phillips explained, is characterized as the gross system load less expected renewable output (and potentially minimum requirements of inflexible generators). It follows that more flexible resources are needed because net load is much more volatile.[157]

PNM thus asserts that the sale and abandonment of Four Corners will facilitate PNM's replacement of inflexible baseload generation with lower cost and more flexible resources on

[155] *See* WRA Exh. 1 (Baatz Dir.) 6-7, 18-19, Exh. BJB-8.

[156] PNM Br. 12.

[157] Phillips Dir. 7; *see also* Tr. Vol. III (Phillips) 761.

PNM's system.[158] In addition to wind and solar resources, Mr. Fallgren observed that "flexible generation resources" include combustion generation and energy storage, technologies that are, in his expert opinion, important reliability resources as PNM deploys additional renewable resources.[159]

While some parties opposed to or even supporting the Amended Application may take issue in a future proceeding with PNM including combustion generation as a replacement resource for abandoned FCPP generation (while presumably being less likely to object to energy storage), no party seriously disputed the imperative to transition from gross load planning to net load planning as resources with more volatile load patterns are increasingly added to PNM's system energy mix. From this perspective, then, the abandonment of an inflexible generator like the Four Corners plant will result in a benefit to PNM's customers and the public interest.[160]

3. Progress towards reducing portfolio emissions consistent ETA goals

PNM claims that it will effectuate the goals of the ETA by transitioning the energy used for its retail sale of electricity away from coal in favor of a more sustainable generation portfolio. PNM maintains that, in compliance with the ETA, the carbon emissions associated with PNM's generation portfolio used to serve customers will be significantly reduced by the end of 2024 if the Commission approves the Amended Application.[161] Mr. Phillips modeled the proxy replacement resource portfolios discussed above based on potential new resources because PNM will file a separate case for approval of its replacement resources, as PNM is allowed to do pursuant to the

[158] Fallgren Supp. 19; Fallgren Reb. 7.

[159] Fallgren Supp. 19. Fallgren adds that "[r]eliability is a fundamental part of providing utility service to customers." *Id*.

[160] *See also* n. 172 and accompanying text regarding Mr. Fallgren's discussion of the necessity for flexibility as more renewables are integrated into the PNM system.

[161] Fallgren Reb. 6.

ETA.[162] Phillips demonstrated in his modeling that any of the proxy replacement portfolios will lead to significant decreases in emissions from PNM's portfolio of generation resources between 2025 and 2031.[163]

Intervenors' arguments that net emissions will increase due to the seasonal operations amendments[164] and the PSA material adverse effect provision prohibiting PNM from voting for early closure of Four Corners[165] are considered below. However, focusing on this particular emissions reduction-related benefit PNM is claiming, WRA argues that PNM should not be allowed to claim emission benefits pursuant to the ETA because the REA – which as noted above was amended in conjunction with certain other statutes amended in S.B. 489 through which ETA was enacted[166] – prohibits simply transferring assets for compliance. WRA relies on Section 62-16-4(B)(4) of the REA, which provides that the Commission shall "prevent carbon dioxide emitting electricity-generating resources from being reassigned, redesignated or sold as a means of complying with the standard [80% renewable resources of retail sales by 2040 and zero carbon resources by 2045]."[167] This provision, WRA contends, weighs against Commission approval of the sale of PNM's share of Four Corners NTEC if considered as a means of complying with the ETA.[168]

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[162] *See infra* section IV.A.11.

[163] *See* Phillips Dir. 28 and 29 (PNM Fig. NLP-4).

[164] *See* Sierra Club. Br. 34-35, 36-42.

[165] *See* Sierra Club Br. 35-36; Community Groups Br. 4-6.

[166] *See supra* n. 59 and accompanying text.

[167] NMSA 1978, § 62-16-4(B).

[168] WRA Resp. 1-2.

Setting aside the fact that attempting to claim compliance with the 2040 and 2045 RPS at this time would be an attenuated proposition,[169] while the Hearing Examiner agrees with WRA that selling an ownership interest in a coal-fired plant and replacing the power with a more climate-friendly generation portfolio should not be counted as *compliance* with the ETA, that does not appear to be what PNM is claiming here. What the Hearing Examiner understands PNM's claim to be is that by achieving a generation portfolio that satisfies the carbon limits specified in Section 62-18-10(D) of the ETA for the qualifying utility's generation and sources of energy procured pursuant to a purchased power agreement (PPA) after receiving approval of a financing order,[170] "PNM is furthering," as Mr. Fallgren explained in his rebuttal testimony, "the ETA goals by transitioning the energy used for its retail sales of electricity away from coal in favor of a more sustainable generation portfolio."[171]

On this claim, no party challenged, through credible counter-analysis or otherwise, PNM's assessment that transitioning PNM's generation portfolio away from a coal-fired power plant to

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[169] *See* Case No. 21-00017-UT, Order Denying Motions to Dismiss Amended Application (June 14, 2021), at 22 ("The express directive of Section 62-16-4(B) that the Commission prevent CO_2 emitting electricity-generating resources from being sold or transferred as a means of complying with RPS standards kicking in *nineteen* to *twenty-four years* from now is an attenuated proposition even if this were an RPS proceeding.")

[170] WRA did not address Section 62-18-10 of the ETA in making its argument. That section, which specifies four "qualifying utility duties," states in pertinent part:

> D. For a qualifying utility that receives approval of a financing order and issues sources of energy transition bonds, the qualifying utility's generation and sources of energy procured pursuant to power purchase agreements with a term of twenty-four months or longer, and that are dedicated to serve the qualifying utility's retail customers, shall not emit, on average, more than four hundred pounds of carbon dioxide per megawatt-hour by January 1, 2023, and not more than two hundred pounds of carbon dioxide per megawatt-hour by January 1, 2032 and thereafter. Compliance shall be measured and verified every three years with the first period commencing on January 1, 2023. The commission shall adopt rules to implement the requirements of this subsection.

NMSA 1978, § 62-18-10(D).

[171] Fallgren Reb. 6.

combustion-free or even technologically-neutral resource mixes will significantly decrease CO_2 emissions from the PNM system.[172] Therefore, progress toward implementing the ETA goal of limiting the qualifying utility's portfolio emissions should be factored in as a benefit of the proposed FCPP abandonment through substantially reducing CO_2 *on the PNM system*.[173]

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[172] Mr. Fallgren was asked by counsel for ABCWUA a question regarding a similar issue: "[i]f the technological-neutral scenario plays out, the combustion turbines were added to PNM's system, would that increase the amount of carbon emitted by – it would offset the carbon-reduction that PNM would enjoy from exiting the Four Corners plant? Fallgren answered the question "two ways," as follows:

> Again, if you look at Mr. Phillips' testimony . . . there's a chart on page 29 . . . that clearly shows that with either one of the scenarios, there's a *substantial reduction in CO_2 on the PNM system*. If I answer a different way, if you look at PNM's exit from Four Corners, and let's say you postulate there's a potential for PNM replacement of gas, Four Corners continues to operation. If you look at that scenario, and you do some quick math, the Seasonal Operation[s] provides for a 20 to 25 percent reduction in emissions from the plant. That's the equivalent of almost a 400 megawatt coal plant being shut down in 2023. That's the equivalent, again, of a 400 megawatt coal plant that's date-certain in 2023, being shut down. If we did some math on the carbon emissions reductions on that, let's say a gas plant conservatively is half the carbon emissions of the coal plant, that's 800 megawatts of [a] gas plant. If we do a comparison on the capacity factors, so again the aeroderivative that Mr. Phillips is talking about are generally on the order of a 5 to 10 percent capacity factor. So, if you take the capacity factor of a 400-megawatt coal plant being shut down and a 5 to 10 percent capacity factor on an aeroderivative, you would have to add nearly 8,000 megawatts of aeroderivative to equal the equation. I would contend that the PNM system emission will see substantial reductions reflected in NLP-4, Mr. Phillips' testimony, and the example we just went through, the overall emissions for the state and the public in general is going to see substantial benefits. The speculation that some gas, aeroderivative gas would offset emissions reductions at Four Corners, it would require 8,000 megawatts of aeroderivative additions, which again, would be completely outside of reasonableness.

Asked next whether he would agree "that there would be some gas emissions from the combustion turbine, and you have explained that it is very small compared to the amount of emission due to Seasonal Operation[,] Fallgren answered:

> I would. And I would also point out, if you look at the Palo Verde case that we have, and you look at those scenarios, the necessity for flexibility on our system to integrate more renewables is spelled out pretty well in that case. And what you'll see actually, when you look at the scenarios for that, adding aeroderivatives can actually result in less carbon emissions than not adding aeroderivatives, because what it does is gives you the opportunity to then maximize the use of the solar in particular on your system. So again, just to speculate that a carbon emission – so that an aeroderivative is going to just increase emissions, you've got to factor into the entire modeling that show how you're going to meet system needs. And again, the increased flexibility that aeroderivatives bring can actually result in reductions in your overall carbon emissions.

Tr. Vol. II (Fallgren) 461-64 (emphasis added).

[173] Tr. Vol. II (Fallgren) 461.

4. Reduced overall emissions from Four Corners via seasonal operations

PNM asserts that carbon emissions reductions for the Four Corners plant are achieved via the separate agreement amendments that provide for seasonal operations. As indicated above, the FCPP co-owners expect the shift to seasonal operations to reduce emissions by 20 to 25 percent starting in 2023.[174] Mr. Fallgren testified that the 20 to 25% reduction in emissions from seasonal operations is nearly equivalent to a 400-megawatt coal plant being shut down in 2023 with no adverse impacts to the local communities.[175] Fallgren added that, assuming conservatively that carbon emissions from a gas plant are half that of a coal plant, seasonal operations would provide the equivalent of an 800 MW gas plant.[176] PNM therefore submits that the emissions reductions brought about by seasonal operations of Four Corners is a benefit to all New Mexicans and the public at large.[177]

Sierra Club and WRA dispute with PNM's claimed emissions reductions. Sierra Club argues that seasonal operations will actually increase net emissions over time because the PSA and the June 25th amendments effectuating seasonal operations would increase the earliest possible plant closure date by "at least four years (from 2023 to 2027), and more likely six years (from 2023 to 2029)."[178] Based on those premises, Sierra Club thus deduces the PSA and Amendment 21 [to the operating agreement] would increase the minimum life of Four Corners by 200% to 300%.[179] Sierra Club's reasoning is as follows:

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[174] Fallgren Reb. 6.

[175] Tr. Vol. II (Fallgren) 462-63.

[176] Tr. Vol. II (Fallgren) 462. *See supra* n. 172.

[177] PNM Br. 13 (citing Fallgren Reb. 6).

[178] Sierra Club Br. 41.

[179] *Id*.

> The net emission increase from the increase in the minimum life of Four Corners can be calculated with simple math based on the evidence in the record regarding: at the time PNM's application was filed, the minimum lifetime of Four Corners under the prior coal supply agreement (which was 2023); the increased minimum lifetime of Four Corners under the new coal supply agreement signed on June 25, 2021 (which is 2027, and more likely 2029); and the projected plant-wide CO_2 emissions once seasonal operations begins in 2023 (which PNM estimates as 75% of prior emissions, based on a 25% decrease in emissions). The calculation is analogous to concluding that if an item originally costs $10, and the price increases to $15, the new price is 150% of the original price. Based on this evidence in the record, net CO_2 emissions will increase 150% as a result of the June 25 contract amendments requiring the plant to operate until at least January 1, 2027. Net CO_2 emissions may increase as much as 225% as a result of the June 25 contract amendments because the new contract penalizes closing the plant before January 1, 2029, by significantly increasing the payments required to NTEC if the plant closes before 2029.[180]

Sierra Club's calculations are founded on the major assumption that Four Corners can close "as early as 2023," the first year that the FCPP contracts allowed the plant to close prior to the execution of the PSA and the June 25th amendments.[181] Hence, Sierra Club appears to be modeling a 2023 FCPP shutdown against the potential January 1, 2027 (but "more likely" 2029) closure date identified in the seasonal operations agreements. And, as PNM points out, Sierra Club presents these calculations, purportedly "based on evidence in the record," for the first time in this case in its post-hearing brief.[182]

[180] Sierra Club Br. 41-42 (internal notes excluded; however, those notes provide two calculations, first for the 150% CO2 emission increase, Sierra Club's calculation in n. 124 is "New emissions – prior emissions)/(prior emissions), which is ((4 years x 0.75% emissions/year) + 2 years x 100% emissions - 2 years x 100% emissions)/2 years x 100% emissions=1.5, which is a 150% net increase in emissions." For the second 225% increase, the calculation in n. 125 is: "(New emissions – prior emissions)/(prior emissions), which is ((6 years x 0.75% emissions/year) + 2 years x 100% emissions - 2 years x 100% emissions)/2 years x 100% emissions= 2.25, which is a 225% net increase in emissions.").

[181] Sierra Club Br. 5, nn. 7-8, 41-42.

[182] PNM Resp. 21.

WRA argues, for the first time in its response brief, that emissions benefits from seasonal operations that are contingent on PNM's abandonment are speculative. WRA alleges that both its witness, Mr. Baatz, and Sierra Club witness Jeremy Fisher testified that the seasonal operations agreements "***could*** prolong the life of Four Corners, thereby negating the purported emissions benefits of seasonal operations."[183] WRA adds that the only reason for the abandonment proposal, which it supports, "is economic – the analysis performed by WRA's expert witness, Mr. Baatz, confirms PNM's finding that abandonment is in the economic interest of PNM and its customers. In fact, this analysis shows that PNM customers are economically much better off having PNM abandon the plant under a variety of assumptions and sensitivities."[184] WRA therefore urges the Commission to "disregard PNM's claim of emissions benefits that facilitate ETA compliance and approve PNM's abandonment, adjusting the amount to be securitized as recommended by WRA, on the basis of cost savings to customers."[185]

PNM, which responded only to Sierra Club's hypothesis, describes the novel modeling as "a perfect example of Sierra Club layering speculation to reach a desired conclusion. To accept that the agreements implementing seasonal operations would increase the life of Four Corners, we have to assume that the current co-owners can (from a reliability perspective) and will (from a regulatory or political perspective) get out of Four Corners in 2023."[186] PNM asserts there is "absolutely no evidence that PNM and the other co-owners could close Four Corners by 2023. Rather than play this layered speculation game, PNM asks that the Commission base its decision

[183] PNM Resp. 2 (WRA's emphasis).

[184] *Id*.

[185] *Id*.

[186] PNM Resp. 16.

on the record evidence: seasonal operations is expected to reduce emissions by 20 to 25 percent, which is equivalent to a 400-megawatt coal plant being shut down in 2023."[187]

PNM's points are well-taken in refuting Sierra Club's conjectural analysis and they apply with equal force to WRA's observation, which is based solely on the *belief* of Mr. Baatz – who was not qualified in this proceeding as an engineering or scientific expert[188] – that the seasonal operations agreements "*could* delay early closure of FCPP, which would eliminate or significantly reduce the possible environmental benefits associated with the . . . agreements."[189] The only credible evidence in the record, founded as it is on the unrebutted expert analysis of PNM witness Fallgren, is that seasonal operations should reduce emissions between 20 to 25 percent, which equates to closing a 400 MW coal-fired plant.[190] This salutary effect of seasonal FCPP operations should also be factored in as a quantifiable benefit of the FCPP abandonment proposed in this case.

5. Reduction in abandonment costs using securitization

PNM asserts that the early exit from the FCPP pursuant to the ETA's securitized financing provisions fulfills the Legislature's public interest directive to accelerate the departure from coal plants and to balance the impacts and benefits of the state's transition away from coal among customers, the environment, local communities, and shareholders.[191] PNM showed that by using the ETA's financing tool to abandon PNM's interest in Four Corners, customers stand to save approximately $17.1 million in 2025 compared to traditional rate recovery of the return-on and

[187] *Id*.

[188] Mr. Baatz, a Vice President at Gabel Associates, Inc. was, however, well-versed as an expert to opine on economic, environmental, and utility regulatory policy issues and has testified before the Federal Energy Regulatory Commission (FERC) and numerous state utility commissions. *See* Baatz Dir. 2-3, Exh. BJB-1.

[189] WRA Exh. 1 (Baatz Dir.) 14 (emphasis added).

[190] *See, e.g.,* n. 172 *supra*; Fallgren Supp. 2, 28; Fallgren Reb. 6, 13, 28-29.

[191] Fallgren Supp. 19 (citing PNM Exh. 7 (Sanchez Dir.) 37).

return-of a regulatory asset.[192] PNM, further, emphasizes that the credit-favorable financing mechanism under the ETA for accelerated removal of coal-fired generation comes with a duty for the utility, which includes forgoing an equity return and ensuring that emissions associated with its retail generation portfolio are within the limits set out in Section 62-18-10(D) of the ETA.[193]

The value of securitization in facilitating the early retirement of coal plants was not reasonably disputed by any party to the proceeding. Parties taking positions meriting serious attention on the matter of securitization either opposed the sale and abandonment proposal in its entirety for a host of other reasons or, alternatively, opposed the securitized financing of certain undepreciated investments in the FCPP like the $148.7 million in FCPP capital additions between 2016 and 2018 or other cost items treated in the companion *Recommended Decision on FCPP Financing Order*. A balanced statement of the latter position that recognizes the advantage of securitization is volunteered by the Attorney General's witness, Andrea Crane, when Ms. Crane observes in her testimony:

> At any given level of investment, securitization is likely to be less expensive for ratepayers then recovery of that investment under traditional, rate base, rate of return ratemaking mechanisms. This is because traditional rate-making assumes that utility investment is financed by a combination of both debt and shareholder equity, while securitization is based solely on debt financing. Debt financing is almost always less expensive than equity financing because equity financing is riskier for investors. This is especially true when equity financing is compared to debt that is highly-rated, such as securitized debt, which carries a low interest rate.
>
> However, in the absence of the ETA, there are other alternatives available to the NMPRC that could be less costly for ratepayers. For example, the Commission could require PNM's shareholders to absorb all

[192] Fallgren Supp. 18 (citing Baker Dir. 4); Fallgren Reb. 4-5. The estimated savings takes into account that PNM earns a debt-only return on stranded capital investments made between July 2016 and December 2018, consistent with the final order in Case No. 16-00276-UT. Fallgren Reb. 5.

[193] Fallgren Reb. 5-6.

> or a portion of any stranded costs. In addition, even if the NMPRC authorized PNM to recover some portion of stranded costs from ratepayers, the Commission could limit carrying charges on these costs during the recovery period. Therefore, in the absence of the ETA, there would be other options available to the Commission that could provide a greater benefit to New Mexico ratepayers. Nevertheless, if the NMPRC determines that securitization is the least expensive option, I am not opposed to the use of securitization to recover the prudently-incurred costs that the Commission determines should be recovered from ratepayers[.][194]

WRA expresses a similarly nuanced perspective regarding the benefit of securitizing abandonment costs to ratepayers. Even though it opposes securitization of certain costs PNM has included in its financing order request, WRA asserts that the "[t]he ETA gives the Commission a powerful tool to accomplish this objective by providing for the securitization of abandonment costs and other energy transition costs. Applying the ETA and allowing for the securitization of these energy transition costs will benefit ratepayers from a long-term perspective."[195]

Consequently, based on the uncontroverted record, the Hearing Examiner finds that the substantial savings afforded through the securitization of investments authorized by the Legislature through the ETA should be counted as another quantifiably positive factor in the cost-benefit analysis of PNM's abandonment of FCPP.

[194] Crane Dir. 26-27.

[195] WRA Br. 10.

6. Future environmental impacts in the cost-benefit equation

Community Groups assert that in weighing the quantifiable and non-quantifiable benefits of the proposed abandonment and transfer against the costs of those actions, PNM failed to quantify the costs of its chosen approach. The costs of not pursuing another approach favored by Community Groups and other intervenors – early closure of Four Corners – include in Community Groups' estimation: ongoing air pollution emissions, and groundwater contamination, the associated impacts to the health and well-being of nearby communities, and the social cost of carbon from ongoing greenhouse gas emissions.[196] Community Groups reason that since the net public benefit standard involves a weighing of the benefits and costs of the abandonment and transfer and PNM has failed to acknowledge, much less quantify or otherwise take into account or disclose the many costs associated with its chosen approach, the Amended Application is incomplete.[197]

PNM, focusing on Community Groups' preferred outcome, i.e., early closure of Four Corners, reminds that closing Four Corners requires a unanimous vote of all the utility co-owners of the plant. PNM, as a minority owner of Four Corners, only has limited influence it can bring to bear in moving its co-owners toward full closure. Because PNM cannot force a closure of the plant – although it is on record trying to negotiate an early retirement of Four Corners[198] – PNM contends it would be exceptional for the Commission to weigh the continued operation of Four

[196] Community Groups Br. 30-31 (citing Case No. Case No. 19-00915-UT, *Recommended Decision on Replacement Resources – Part II*, at 124, regarding the social cost of carbon ("The difference, moreover, may be substantially less and may be reversed if the Commission considers the social costs of CO_2 emissions that would be incurred with the 11 new natural gas units in PNM Scenario 2 or any of the other portfolios that incorporate natural gas turbines.").

[197] Community Groups Br. 31.

[198] Fallgren Reb. 10-11.

Corners as a cost of the abandonment in the net public benefit test. PNM has demonstrated that the abandonment benefits its own customers significantly. While PNM acknowledges there may be ongoing impacts to the public at large from Four Corners staying open, those impacts are not, PNM insists, within the control of PNM, its customers, or the Commission.[199]

Moreover, to the extent that Community Groups view continued operation of Four Corners as a cost, PNM asserts there are benefits that the Commission must weigh in this equation. From this perspective, PNM notes that seasonal operations is expected to reduce emissions at Four Corners by 20 to 25 percent, the equivalent of closing a 400 MW coal plant. Moreover, PNM adds there are other benefits of keeping Four Corners open for now in that Navajo Nation keeps its current jobs and revenue from the plant and is guaranteed four years of advance notice of closure or additional payments to NTEC if the notice for closure is shorter than four years. Thus, turning the inquiry around, PNM maintains that the cost-benefit analysis of Four Corners remaining open must be balanced and account for the quantifiable and unquantifiable benefits in the record.[200]

The Hearing Examiner's weighing of the quantifiable and unquantifiable benefits of the sale and abandonment of FCPP is reflected at various points in this decision and are summarized in his recommendations on the merits below.

7. Decommissioning and remediation obligations

Community Groups also take PNM to task for allegedly neglecting to identify and address concerns around decommissioning and remediation costs associated with Four Corners, arguing that PNM had not quantified the scope or taken into account the deleterious impacts of pollutants like coal ash (a/k/a coal combustion residual or CCR) on customers and local communities or the

[199] PNM Resp. 51-52.

[200] PNM Resp. 52.

scope of its joint and several liability under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq*.[201] By not adequately weighing the "quantifiable and non-quantifiable" risks, harms, and costs to nearby communities, ratepayers, and the broader public interest associated with past and ongoing contamination from FCPP, Community Groups contend, PNM has failed to meet the net public benefit standard.[202]

PNM believes Community Groups' concerns are misplaced. In terms of PNM's ongoing decommissioning and reclamation obligations, PNM asserts that the PSA with NTEC strikes the appropriate balance given the more than 50 yeas of certificated service in Four Corners that has benefitted PNM's customers.[203] The PSA sets forth the liabilities that PNM is retaining from Four Corners[204] as well as the "Assumed Liabilities" that NTEC as purchaser of the plant will take on after closing.[205] As part of the negotiations for PNM to transfer its interests to NTEC, PNM agreed to retain its obligations for both mine reclamation and plant decommissioning costs.[206]

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[201] *See* Community Groups Br. 31-37.

[202] Community Groups Br. 37.

[203] *See* PNM Br. 26-30.

[204] Fallgren Dir., PNM Exh. TGF-2, pp. 26-28, Sec. 2.4. As set forth in Section 2.4, PNM as "Seller" retains certain liabilities and obligations after the closing, defined as "Excluded Liabilities." In that section, PNM retains several Excluded Liabilities that include Landfill Obligations (other than "Post-Closing Environmental Liabilities"), decommissioning costs, and "Pre-Closing Environmental Liabilities." *See also* PNM Exh. 8 (Sanchez Reb.) 34-35 ("The PSA's Sections 2.4(f) through (h) affirm that PNM is obligated to pay for all remediation costs related to the landfill, facility decommissioning, and for any Pre-Closing Environmental Liabilities (as defined in the PSA). The overall import of these provisions is that the PSA specifically provides that PNM retains responsibility for its decommissioning and remediation costs, and PNM is not using the transfer to NTEC as a means to side-step any liability.").

[205] *See* Fallgren Dir., PNM Exh. TGF-2, pp. 18-19, Sec. 2.3(a). The Assumed Liabilities include Post-Closing Environmental Liabilities and some Pre-Closing Environmental Liabilities if the environmental laws are changed after closing. Remediation liabilities, arising in connection with decommissioning, are excluded from Pre-Closing Environmental Liabilities that NTEC may be responsible for pursuant to the PSA. "Remediation" is defined at Sec. 1.1.66. *Id.* PNM Exh. TGF-2, pp. 16-17, Sec. 1.1.66.

[206] Fallgren Dir. 23.

Regarding decommissioning, Four Corners is located on Navajo Nation land pursuant to terms of the Navajo Nation Land Lease. As a condition of locating, constructing, and operating the plant on Navajo Nation land, the lease requires that upon termination, all facilities, equipment, buildings, and other structures must be dismantled and removed from the site unless otherwise requested by the Navajo Nation.[207] Therefore, the estimated decommissioning costs assume a full plant dismantling and disposal. PNM's current obligation for decommissioning costs for Four Corners Units 4 and 5 comes from a December 2020 decommissioning study, which was included as Exhibit TGF-4 to Mr. Fallgren's direct testimony.[208]

The co-owners of the plant also have certain mine reclamation obligations under the CSA. PNM remains responsible for its share of costs associated with mine reclamation under the PSA. NTEC and PNM will complete a Reclamation Study in 2024 that will provide the latest final mine reclamation cost payment to NTEC based on the Reclamation Study. The Reclamation Study ensures that the latest cost estimates are fully satisfied and that the full costs for final mine reclamation are provided to NTEC. Any additional mine reclamation costs attributable to PNM that come out of the Reclamation Study will not be charged to PNM customers, given PNM has reached its cap on the amount of surface mine reclamation it can recover from customers pursuant to prior Commission orders.[209] Therefore, any additional Four Corners surface mine reclamation obligations will be funded by PNM shareholders.

Given that PNM's customers received the benefits of the plant, PNM believes it is appropriate that the Company retain certain liabilities that arose from over a half-century of PNM's

[207] Fallgren Dir. 20.

[208] Fallgren Dir. 21 and PNM Exh. TGF-4.

[209] PNM Exh. 10 (Baker Dir.) 9-10.

pre-closing ownership interest. PNM believes it is also appropriate that post-closing liabilities be assumed by NTEC. Since PNM will no longer be a co-owner and will have no say in how the plant operates, neither PNM nor its customers should be responsible for the costs associated with the post-closing liabilities.[210]

Regarding the matter of ongoing liabilities associated with the sale and abandonment of FCPP, the Hearing Examiner finds that a reasonable balance has been struck between the liabilities PNM retains and the liabilities that NTEC assumes. For example, while PNM customers are no longer responsible for any reclamation costs, as provided in the *Recommended Decision on FCPP Financing Order*, customers will pay up-front for reasonably estimated decommissioning costs through securitized financing, but will only pay the final, actual decommissioning costs after PNM has shown the prudence and reasonableness of the costs in the reconciliation ratemaking process pursuant to Section 4(B)(10) of the ETA. PNM and its customers do not assume any post-closing environmental liabilities. But, to ensure that Navajo Nation land is returned to the condition envisioned in the Navajo Nation Land Lease, PNM retains its decommissioning liabilities. Therefore, from the perspective of both PNM customers and the Navajo Nation, for purposes of reasonably balancing ongoing liabilities, the net public benefit standard is addressed and satisfied.

8. PNM's alleged failure to perform a cost-benefit analysis of an early exit from Four Corners pursuant to the stipulation in Case No. 16-00276-UT.

Although most of the issues stemming from Case No. 16-00276-UT are addressed in the companion *Recommended Decision on FCPP Financing Order*, one that should be considered in this space is an argument made by Sierra Club that involves PNM's alleged violation of the Commission's Final Order in the 2016 rate case by failing to conduct cost-benefit analyses of

[210] PNM Resp. 54.

exiting Four Corners in 2024 and 2028 that PNM agreed to perform in the Modified Revised Stipulation.

To fully understand the argument, some background is required. In Case No. 16-00276-UT, the Commission approved modifications to the revised stipulation the parties reached. Pursuant to that Modified Revised Stipulation filed on January 23, 2018, among the things PNM committed to do or submit to was the following cost-benefit analysis:

> 10. PNM shall perform a cost-benefit analysis as part of its 2020 Integrated Resource Plan, on the impact of an early exit from Four Corners as a participating owner, as of 1) 2024, and 2) 2028, that includes an analysis of the cost recovery of and return on PNM's undepreciated investments in Four Corners together with full recovery of all existing contractual obligations, including default payments and penalties.[211]

Sierra Club argues that PNM has flouted its obligation to analyze exiting Four Corners in 2024 and 2028 by breaching its existing Four Corners contracts. Nowhere in PNM's 2020 IRP does PNM present the cost-benefit analysis required by the stipulation the Commission approved in Case No. 16-00276-UT. Similarly, in this case, PNM witness Phillips acknowledged that PNM did not present cost-benefit analyses that involve breaching its Four Corners obligations.[212]

Sierra Club contends that PNM's alleged violation of the Commission's *Revised Final Order* in Case No. 16-00276-UT is directly relevant here. Sierra Club posits that if PNM had complied with its order, the Commission and parties would have had two other base cases against which it could measure PNM's proposed sale and abandonment. Hence, Sierra Club argues that PNM's failure to perform the cost-benefit analyses called for in the Modified Revised Stipulation

[211] Case No. 16-00276-UT, Modified Revised Stipulation at 9, ¶ 10.

[212] Tr. Vol. III (Phillips) 798-99.

"has enabled PNM to present a worst-case, and unrealistic, baseline scenario in which PNM remains in Four Corners until 2031."[213]

Responding to Sierra Club's breach option, PNM maintains that if its simply walked away without any deal, its breach of contractual obligations would carry a significant cost. PNM contends that one cannot reasonably assume that this is a practical or acceptable option, or that relative savings between PNM's proposal and a pre-2031 abandonment attempt would be less than when the plant's contracts expire in 2031. As alternative scenarios for abandonment go, PNM states, "premising a 'better' abandonment deal on a contractual breach by PNM is neither realistic or [*sic*] availing."[214]

PNM insists that without an agreement like the sale and transfer to NTEC, there is no viable option for PNM to exit Four Corners. Because the stated intent of the other co-owner utilities is to continue operating the plant, PNM would be subject to default payments and penalties if it attempted to unilaterally cease its participation at Four Corners.[215] Under the current agreements, PNM also would be obligated to pay for its share of operating and fuel costs through 2031.[216] If PNM defaulted in this way and ceased using Four Corners, replacing it with other resources, customers would have to pay both for the ongoing costs at FCPP (without getting the power), as well as the costs of the new resources. PNM asserts this would be an uneconomic outcome, and PNM could not demonstrate that there was a net public benefit to such a proposal.[217] Without the transfer of ownership to NTEC, PNM claims it would not be possible for it to exit

[213] Sierra Club Br. 31.

[214] PNM Resp. 13.

[215] Fallgren Dir. 11.

[216] Fallgren Reb. 25.

[217] PNM Resp. 13.

Four Corners in 2024, 2028, or any year before 2031. In short, quoting Mr. Fallgren's observation at hearing, without an agreement like the sale and transfer to NTEC, PNM concludes "[i]n 2028, there was not a credible exit plan."[218]

To accept the premise that a more beneficial abandonment proposal could hinge on PNM deliberately breaching substantial contractual obligations to the other FCPP co-owners, the Commission has to assume that: (i) PNM would be exposed to significant default payments and penalties; (ii) PNM would still remain bound to continue paying operating and fuel costs while the coal plant supplies electricity for the benefit other utilities' customers; (iii) PNM's customers, who would still be on the hook for ongoing FCPP costs but who no longer share the benefit of power produced from the plant, would also have to pay the cost of replacement resources to serve their electricity needs; and (iv) affected communities surrounding and related to the plant by employment or the local economy would be deprived of the transition funds afforded by the ETA. Considering the foregoing factors, the Hearing Examiner finds that requiring PNM to conduct a contractual breach option analysis would not be a worthwhile or sensible exercise. Moreover, to the extent that an abandonment-by-breach would leave impacted communities without ETA transition funding, the drastic scheme to induce an early closure of Four Corners would not be in the public interest. The Commission, therefore, should find PNM's Amended Application and evidentiary showing in this case substantially satisfied its obligation under Paragraph 10 of the Modified Revised Stipulation to perform a cost-benefit analysis of exiting Four Corners at the end of 2024.

[218] PNM Resp. 13-14 (quoting Tr. Vol. II (Fallgren) 409).

9. Four Corners closure date: 2031 or earlier?

As suggested in the just concluded abandonment-by-breach discussion, some intervenors, particularly Sierra Club but also Community Groups, seem to assume, repeating the mantra of "early closure,"[219] that as discussed above if the proposed sale and abandonment is rejected the Four Corners plant can still close before 2031, perhaps as early as 2023, or 2027, or 2029.[220] They further postulate that the PSA and agreements encompassing seasonal operations will prolong the life of Four Corners, requiring the other co-owners to stay in coal longer than they otherwise would and contributing to the negative effects of climate change, as well as increased costs, an issue dealt with above.[221] While an early closure is possible – and, as found in section IV.B.3 below the Commission should not endorse any provision that would thwart it – the Commission cannot make decisions in the realm of the possible based on circumstantial speculation or conjecture.[222] It must, instead, determine cases on the basis of the evidence adduced. The reliable evidence adduced in this case indicates that Four Corners will close in 2031, when the coal supply agreement expires.[223] As PNM witness Fallgren accurately observed: "The only concrete and quantifiable date this Commission has for the other co-owner's plans is a 2031 retirement: APS, TEP, and SRP all have made filings approximately within the last year that they intend to stay with the plant until

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[219] *See* Sierra Club Br. 16, 35, 36, 38, 46, 47; Community Groups Br. 7, 9, 19, 20, 25, 28, 30, 43.

[220] Sierra Club Br. 3, 5 n. 7, 9, 22, 25-26, 29, 63; Community Groups Br. 19, 43 ("The Commission's decision in this case will be judged not through balance sheets and parsed language, but against the weight of history and *opportunity to leverage the early closure of Four Corners*.") (emphasis added).

[221] Sierra Club Br. 1, 63; Community Groups Br. 30-31. WRA witness Brendon Baatz expressed a similar concern. *See* Baatz Dir. 14 ("The provision may also increase the cost of early retirement by extending the closure notice to 48 months because of the payments required to NTEC.").

[222] For instance, Sierra Club witness Dr. Jeremy I. Fisher only points to circumstantial indicators that Four Corners might close early, like the value of the sale of Four Corners by PNM to NTEC and the proposed move to seasonal operations. *See* Sierra Club Exh. 1 (Fisher Dir.) 29-30.

[223] Fallgren Dir. 7; Fallgren Supp. 4-7; Fallgren Reb. 4, 6, 9, 11, 14, 15, 23, 24-25, 33.

2031."[224] For its part, the operator of the plant, APS, recently has maintained to the Arizona Corporation Commission (ACC) that it needs the Four Corners plant to operate until 2031, which is apparently regarded as an "early closure" date in APS's most recent general rate proceeding before the ACC.[225]

Regarding the intervenors' concerns over the PSA and the agreements effectuating seasonal operations preventing an early closure of Four Corners, there is nothing in the record to indicate any other FCPP co-owner is seeking to exit the plant or advocate for an early closure of the plant. Any vote to close the plant early would have to be unanimous. A unanimous vote would signify, as PNM points out, that all co-owners would be on equal footing in terms of not needing the energy and capacity from the plant and firm in their belief that their regulatory environment supports early closure.[226] To the contrary, as Mr. Fallgren's testimony disclosed, the co-owners' public and private discussions regarding Four Corners all indicate that APS, TEP, and SRP are committed to staying in Four Corners through 2031.[227] Fallgren explained, moreover, that the co-owners' commitments

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[224] Fallgren Reb. 33.

[225] *See In the Matter of the Application of Arizona Pub. Serv. Co. for a Hearing to Determine the Fair Value of the Utility Property of the Company for Ratemaking Purposes, to Fix a Just and Reasonable Rate of Return Thereon, to Approve Rate Schedules Designed to Develop Such Return*, ACC Docket No. E-01345A-19-0236, Recommended Opinion and Order of Administrative Law Judge (Aug. 2, 2021), at 26 ("On August 11, 2020, Chairman Burns filed a letter requesting that APS performing analyses using four different methods of cost recovery for the stranded costs resulting from *early closure* of the 4CPP in 2031[.]"). Later in the recommended opinion and order (ROO), the ACC administrative law judge states that:

> When APS filed its application in this matter on October 31, 2019, APS indicated that the *4CPP would not shut down earlier than earlier than 2038*. Only a few months thereafter, APS made its Clean Energy Commitment, indicating that it would exit coal generation by 2031. During this matter, APS consistently emphasized the importance of Units 4 and 5 to the reliability of APS's service, particularly during peak summer months, and the need to keep Units 4 and 5 in service until 2031.

Id. 112 (emphasis added).

[226] PNM Br. 17.

[227] Fallgren Supp. 6-7.

to rely on FCPP through the remaining contract term to 2031 are not trivial, as such commitments are related to each utility's ability to reliably serve its customers.[228] He noted, in particular, that APS, the Four Corners operator, is already closing a significant amount of coal capacity and planning to add between 1,500 and 2,200 MW of battery storage by 2026.[229] For APS, an early closure of Four Corners would require 970 MW of additional firm capacity during the same period of significant transition and resource additions on its system.[230] Therefore, in the recent rate case, APS asserted to the ACC in rebuttal testimony that retiring Four Corners would jeopardize system reliability.[231]

In short, while an early closure of the Four Corners plant is conceivable and even provided for in the agreements for seasonal operations that align with the Navajo Nation's Just Energy Transition,[232] the preponderance of the evidence in this case – in fact, the only probative evidence

[228] Fallgren Supp. 4-6. Fallgren explains, at 4-5, that "Arizona's economy," the state where all the other co-owners are located, "has recovered more quickly than New Mexico's. Load increases in Arizona are projected to continue to rise approximately 2.5% annually. Both the [SRP] and the APS systems are much larger than PNM's system. Therefore, this increase results in the need for additional firm capacity of approximately 175 MW per year on the APS system alone. In addition, other baseload plants in APS' and SRP's systems have been shutting down. One such closure was the Navajo Generating Station which in turn has put immediate economic pressure on the Navajo Nation economy. In addition, APS is planning to close the Cholla coal plant in 2025.").

[229] Fallgren Supp. 5 (noting that the closure of the Navajo Generating Station "put immediate economic pressure on the Navajo Nation economy" and adding that APS is planning to close the Cholla coal plant in 2025).

[230] *Id*. (indicating that APS's 2020 IRP showed an expected reliability need of over 6,000 MW of capacity by 2035).

[231] *Id*.

[232] As discussed in section II.A.5 above, the seasonal operation agreements amend Section 20 of the Four Corners CSA so the owners would not vote for a closure of Four Corners to be effective prior to January 1, 2027. While the Four Corners co-owners agreed to provide four years notice for an early closure, they retain the right to the right to give two-years' notice of early closure (the current length of the notice period) on or after January 1, 2027 by paying $200 million, and three-years' notice of early closure on or after January 1, 2028 upon payment of $100 million. This four-year notice tracks the request of the Navajo Nation for adequate notice as outlined in President Nez's January 24, 2020 letter to the ACC regarding the TEP rate case, which states: "The Nation recommends the ACC require utilities to provide a five-year advanced notice of any planned power plant closure." Fallgren Supp. 31 (citing https://docket.images.azcc.gov/E000004596.pdf).

of record – indicates that Four Corners will continue to operate until 2031, irrespective of PNM's early departure pursuant to the proposed sale and abandonment.

10. *Commuters' Committee* factors

PNM addressed the *Commuters' Committee* factors in the direct testimony of PNM witness Mark Fenton. As he testified regarding the SJGS abandonment in Case No. 19-00018-UT, Mr. Fenton asserted that the first factor, the extent of the carrier's loss on the particular branch or portion of the service and the relation of that loss to the carrier's operation as a whole, is not directly applicable to the abandonment of Four Corners because the plant is currently being used to serve customers, has been in rate base for more than 50 years, and PNM's current rates recover a representative amount of the company's annual revenue requirement associated with the investments and O&M expenses associated with the plant.[233]

Mr. Fenton agreed, however, that the second factor, the use of the service by the public and prospects for future use, is applicable and that PNM fulfills it. Fenton refers here to Mr. Fallgren's testimony that PNM expects FCPP will continue operating and providing power to electric utility customers other than PNM's beyond its exit on December 31, 2024. However, Fenton asserts, PNM's analyses show that it will be beneficial to PNM's customers if FCPP is abandoned through an early exit in 2024 and replaced with other resources.[234]

As to the third *Commuters' Committee* factor, balancing of the carrier's loss with the inconvenience and hardship to the public upon discontinuance of service, Mr. Fenton posited that factor is directly related to the fourth factor, availability and adequacy of substitute service. Citing the testimonies of PNM witnesses Phillips, Baker, and Fallgren, Mr. Fenton said PNM has

[233] PNM Exh. 2 (Fenton Dir.) 13.

[234] *Id*.

determined that it is economically beneficial for customers if FCPP is abandoned in 2024 and replaced with more flexible and lower carbon emitting replacement resources. He asserted analyses performed by PNM witness Phillips "clearly illustrate a savings and net benefit for PNM's customers."[235] Fenton further maintained that the ETA and the amendments to the REA are also relevant to this analysis because abandonment of FCPP will eliminate PNM's reliance on coal generation and facilitate PNM's deployment of lower carbon emitting resources.[236]

Mr. Fenton also asserted that the last three *Commuters' Committee* factors, properly analyzed, should account for the net public benefit of abandoning FCPP in the form of cost savings for customers. Fenton cited the PNM analyses, discussed at length already, that show the abandonment of FCPP by the end of 2024 and its replacement with more flexible and lower carbon emitting replacement resources saving customers significant money over the long-term. He also highlighted the fact that PNM's shareholders, and not its customers, would be paying NTEC $75 million to relieve PNM of its ongoing obligations under the Coal Supply Agreement.[237]

Only two parties besides PNM addressed the *Commuters' Committee* factors in the context of the proposed abandonment.[238] Those parties were NEE and Staff.

NEE argues that PNM has not met any of the *Commuters' Committee* factors. Regarding PNM's alleged failure to meet the first factor, NEE asserts that although it "believes there will be replacement resources that will meet or increase resource adequacy requirements to benefit 'operations as a whole', [*sic*] this is the first abandonment case that NEE is aware of that has not

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[235] Fenton Dir. 14.

[236] *Id*.

[237] Fenton Dir. 14-15.

[238] For example, ABCWUA and the County alluded to the *Commuters' Committee* factors, but did not analyze them, in the context of "foisting imprudent assets on ratepayers." ABCWUA/County Br. 11.

included actual replacement power packages for the Commission's review[.]"[239] NEE infers this is "because PNM was rushed to apply for abandonment because of the Iberdrola/Avangrid merger."[240]

NEE contends PNM has not satisfied the second and third *Commuters' Committee* factors because PNM's abandonment proposal could extend the life of the plant through the sale to NTEC and prevent PNM and the other co-owners from reaching agreement to close the FCPP earlier than it would otherwise.[241]

Lastly, NEE maintains the fourth factor has not be met because there is adequate and available service, pointing to the replacement resources PNM is proposing to replace nuclear power from the Palo Verde Nuclear Generating Station abandonment and returning to the theme that this is the first case that NEE could find where the proposed abandonment is not coupled with "actual replacement power packages" for Commission review.[242]

Staff argued in its post-hearing brief that PNM failed to meet the first *Commuters' Committee* factor, yet Staff does nothing more than make the statement, neglecting to explain how PNM failed to meet the factor. What's more, on this matter as well as the issue addressed in the next section, Staff is at odds with its own witness, Eli LaSalle. Mr. LaSalle contended in his direct testimony that PNM had not adequately addressed the first factor and opined that there would be no real harm to PNM if the abandonment were not approved because PNM would continue to recover on its investments in FCPP in rates.[243] However, at hearing, Mr. LaSalle testified that he

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[239] NEE Br. 62-63.

[240] NEE Br. 63.

[241] NEE Br. 63-64.

[242] NEE Br. 64.

[243] Staff Exh. 1 (LaSalle Dir.) 7. PNM witness Lauren Sanchez refuted Mr. LaSalle's "no harm" contention in her rebuttal testimony. *See* PNM Exh. 8 (Sanchez Reb.) 18 ("PNM's customers will suffer harm if the (*Cont'd on next page*)

did not be believe this one factor "to be a substantive difference, or to affect the adequacy of the Application," as the *Commuters' Committee* factors "have been viewed holistically" in net public benefit analyses in prior Commission cases.[244]

Whatever the case, consistent with the findings in foregoing sections of this decision that factor into finding a net public benefit in PNM's abandonment of the FCPP, the Hearing Examiner finds PNM has satisfied the *Commuters' Committee* factors. To the extent replacement resource adequacy is applicable to any of those factors, that issue is resolved in the section immediately below.

11. Adequacy of replacement resources pursuant to the Energy Transition Act

Similar to NEE's argument that PNM failed to put forward "actual replacement power packages," Staff argues that PNM's failure to identify sufficient generation resources to replace its abandoned interest in Four Corners provides sufficient justification for the Commission to deny abandonment.[245] While Staff acknowledges that PNM is expressly permitted to defer its replacement resource portfolio filing pursuant to Section 62-18-4(D) of the ETA, "the lack of known replacement facilities flatly should prevent the Commission from granting approval to abandon the FCPP."[246] Staff asserts that the issue is "especially critical at this time," where recently, PNM has had to brief the Commission on delays in constructing generation facilities intended to replace the

(*Cont'd from previous page*)

abandonment is not approved. PNM Witness Nicholas Phillips at page 3 of his Direct Testimony has determined that the magnitude of customer savings from the early divestiture of the FCPP assets ranges from approximately $30 million to $300 million on a net present value basis. Customers are released, as of 2025, from the obligation of future ongoing costs for operating the plant, including costs associated with capital investments, operations and maintenance, and coal supply for the plant. These are quantifiable benefits that customers will forego if abandonment is denied.").

[244] Tr. Vol. VI (LaSalle) 1516.

[245] Staff Br. 3.

[246] *Id*.

SJGS abandonment. Staff thus concludes that "given the difficulties in constructing resources approved some time ago, it would be irresponsible for the Commission to authorize PNM to abandon its interest in FCPP without confidence that the generation from the abandoned facility would be adequately replaced."[247]

PNM, in response, notes that Staff's position in briefing contradicts its own witness's testimony on the adequacy of replacement resources ***and*** the merits of the proposed abandonment. In fact, Mr. LaSalle testified that PNM's identification of potential replacement resources met the statutory requirements of the ETA "given that adequate potential new resources are identified in the application for abandonment," and he concluded that that there was a net public benefit to granting PNM's abandonment application.[248]

Apart from the contradiction, PNM asserts that Staff's new position is also inconsistent with the problem it identifies because, in PNM's view, denying abandonment would likely increase the possibility of a delay in bringing forward replacement resources for Four Corners by the end of 2024. PNM explains that it sought to abandon its Four Corners interest with an adequate time runway to conduct an RFP for replacement resources to have them online prior to exiting the plant.[249] PNM thus emphasizes the importance of bringing forward an abandonment request early so that the need for the replacement resources may be adequately established, and PNM can then turn to securing the regulatory approvals required to obtain replacement resources.[250]

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[247] *Id*.

[248] LaSalle Dir. 9-10.

[249] PNM Resp. 55 (citing Fallgren Reb. 45-46 where Mr. Fallgren proclaims "[t]his filing is not too soon; rather, the timing of this filing provides adequate margin to ensure a smoother transition and acquisition of replacement resources.").

[250] PNM Resp. 56.

The Hearing Examiner finds, consistent with related findings above[251] and the testimony of its director of integrated resource planning at hearing,[252] that PNM has reasonably demonstrated that replacement resources can be deployed prior to its abandonment of Four Corners. The IRP director, Nicholas Phillips, testified that PNM has already conducted an RFP for replacement resources for Four Corners.[253] Mr. Phillips said that PNM will file its replacement resource case in the first quarter of 2022. And, assuming a Commission order in the replacement resources case occurs by the end of 2023, Phillips estimated that developers will have the better part of two years to bring resources online before the summer peak of 2025.[254] He also noted that any projects chosen from this RFP will have a much longer lead time to complete construction as compared to the developers of replacement resources for the SJGS.[255] The evidence adduced by PNM on the issue of potential resource adequacy, therefore, is sufficient to satisfy the Company's deferral of an application for Four Corners replacement resources pursuant to ETA Section 62-18-4(D).[256]

12. Whether Section 62-18-3 of the ETA is applicable to this case

San Juan County argues that the Commission should deny abandonment because PNM refuses to acknowledge that all the requirements of the ETA are applicable to these proceedings.[257] In particular, San Juan County asserts that Section 62-18-3 of the ETA, which contains the location

[251] *See* sections IV.A.1 and IV.A.3 *supra*.

[252] Tr. Vol. III (Phillips) at 785-78, 823-24, 828-30.

[253] Tr. Vol. III (Phillips) 779.

[254] *Id*.

[255] Tr. Vol. III (Phillips) 778-80.

[256] That section of the ETA explicitly permits the utility to "defer applications for needed approvals of new resources to a separate proceeding; provided that the applicant identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers." NMSA 1978, § 62-18-4(D).

[257] SJC Br. at 1.

of replacement resources or "resource development" provisions of the act, is applicable to PNM's Amended Application.[258] Section 62-18-3(A) of the ETA provides:

> A. For a qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023, the qualifying utility shall, no later than one year after approval of the abandonment, apply for commission approval of competitively procured replacement resources. As part of that competitive procurement, and in addition to the criteria set forth in Subsections B and C of this section, projects shall be ranked based on their cost, economic development opportunity and ability to provide jobs with comparable pay and benefits to those lost due to the abandonment of a qualifying generating facility.[259]

Due to the tax revenue implications of resource development to replace the abandoned plant interest and tax revenues accruing from the plant pre-abandonment,[260] San Juan County places greatest emphasis on the definition of "replacement resources" in Section 12-18-3(F):[261]

> F. As used in this section, "replacement resources" means up to four hundred fifty megawatts of nameplate capacity identified by the qualifying utility as replacement for a qualifying generating facility, and may include energy storage capacity; provided that such resources are located in the school district in New Mexico where the abandoned facility is located, are necessary to maintain reliable service and are in the public interest as determined by the commission.[262]

Reading the provisions of Section 62-18-3 relating to replacement resources as "effective and mandatory" in this case, San Juan County thus argues by having opted to not apply for

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[258] *Id*. at 2, 4.

[259] NMSA 1978, § 62-18-3(A).

[260] Section 62-18-4(E) provides that replacement resources "shall be subject to local property taxes or a binding commitment to make an equivalent payment in lieu of taxes." NMSA 1978, § 62-18-3(E). San Juan County maintains that the consequence of the abandonment to the county "is that it will lose critical tax revenue due to NTEC's non-taxable status as an arm of the sovereign Navajo Nation. . . . This loss of tax revenue is an additional reason that Section 62-18-3(F) must be given effect because the ETA plainly contemplates minimizing disruption to tax revenue." (citations omitted).

[261] San Juan County asserts "First, any construction of Section 62-18-3 must begin, not with subsection A, [*sic*] but with Subsection F, which defines 'replacement resources.'" SJC Br. 5.

[262] *Id.* § 62-18-3(F).

approval of competitively procured replacement resources in this case, the Amended Application must be rejected. Acknowledging that Section 62-18-13(A) contains a statutory cut-off date for abandonment of a qualifying facility occurring prior to January 1, 2023, San Juan County argues that the same cut-off date is not restated in Subsections B through F of the act and nothing in those subsections indicates that the January 1, 2023 cut-off date applies to those provisions.[263]

Still, mindful that the statutory cut-off date may apply to only one of the two qualifying generating facilities that the qualifying utility is the operator (the San Juan Generating Station operated by PNM) and for which replacement resources have already been approved in Case Nos. 19-00195-UT and 20-00182-UT, San Juan County also argues that the ETA would constitute unconstitutional special legislation if PNM's position on the application of Section 62-18-3 is accepted: "PNM's position comes perilously close to a contention that the statute is unconstitutional as written. Article IV, Section 24 of the New Mexico Constitution prohibits special legislation "where a general law can be made applicable."[264] That constitutional challenge to the ETA is disposed of along with those made by other parties in the companion *Recommended Decision on FCPP Financing Order* issued today.

As for the argument at hand, PNM's counter is relatively straightforward. Applying a "plain meaning" construction of the statute discussed below, PNM reads Section 62-18-3 of the ETA to apply to "a qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023." Since the abandonment proposed in the Amended Application will occur after January 1, 2023, PNM reasons that this section of the ETA does not apply to the Four Corners

[263] SJC Br. 5.

[264] SJC Br. 3.

abandonment, as it had applied to the SJGS abandonment.[265] PNM adds that the Legislature, in drafting the ETA expressly contemplated that an abandonment could occur after January 1, 2023 pursuant to Section 62-18-2(S)(4), which provides that the qualifying utility could abandon a qualifying generating it did not operate before the effective date of the act, "prior to January 1, 2032."[266]

In interpreting a statute as the Commission must do to resolve this issue, the Supreme Court has observed the "guiding principle is to determine and give effect to legislative intent."[267] To determine the Legislature's intent, the Commission is "aided by classic canons of statutory construction."[268] In New Mexico law, there are "two themes or approaches . . . relating to how a court [and, by extension, the Commission] performs the task of applying a statute when the parties to a case disagree over the statute's meaning."[269]

The first approach is often simply called the "plain meaning" rule. Pursuant to the plain meaning rule, "statutes are to be given effect as written and, where they are free from ambiguity, there is no room for construction; where the meaning of the statutory language is plain, and words used by the legislature are free from ambiguity, there is no basis for interpreting the statute[.]"[270] Under this approach, the Commission should not "depart from the plain wording of a statute,

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[265] PNM Resp. 58-59.

[266] PNM Resp. 59.

[267] *N.M. Indus. Energy Consumers (NMIEC) v. N.M. Pub. Reg. Comm'n,* 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105) (citing *Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm'n (NMPUC)*, 1999-NMSC-040, ¶ 18, 128 N.M. 309, 992 P.2d 860).

[268] *NMIEC*, 2007-NMSC-053, ¶ 20.

[269] *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 2, 117 N.M. 346, 871 P.2d 1352. Writing for the Court, Chief Justice Seth Montgomery observed that the two "approaches, though probably intended to be complementary, often seem to work at cross purposes and to call for different answers to the question." *Id*.

[270] *Gallegos*, 1994-NMSC-023, ¶ 2 (internal quotation marks and citation omitted).

unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions."[271]

Under the second "rejection-of-literal-language" approach, "where the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others."[272]

In this instance, application of the plain meaning rule resolves the issue. While Section 62-18-3(F) defines "replacement resources" as used in that section, the replacement resources are for a "qualifying utility that abandons a qualifying generating facility in New Mexico prior to January 1, 2023."[273] Section 62-18-3 therefore does not apply to an abandonment that will occur *after* January 1, 2023.

Moreover, the Legislature expressly provided for the abandonment of one of the two coal-fired plants covered by the ETA *after* January 1, 2023 by including in the definition of "qualifying generating facility" an abandonment that could transpire prior to January 1, 2032. That provision, Subsection (S)(4) of § 62-18-2 states:

> S. "qualifying generating facility" means a coal-fired generating facility in New Mexico that may be composed of multiple generating units that:
>
> * * *
>
> (4) if *not operated* by a qualifying utility prior to the effective date of the Energy Transition Act, is to be abandoned prior to *January 1, 2032*[.][274]

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[271] *Regents of Univ. of N.M. v. N.M. Federation of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236.

[272] *Gallegos*, 1994-NMSC-023, ¶ 3 (internal quotation marks and citation omitted).

[273] *Id*.

[274] NMSA 1978, § 62-18-2(S)(4) (emphasis added).

Logically and grammatically, Subsection (S)(4) appears tailor made for the Four Corners plant, which is not operated by the "qualifying utility," and a coal supply agreement, to which the "qualifying utility" is a party, that terminates in July 2031. Coincidentally or not, the provision immediately above, Subsection (S)(3), states that the qualifying generating facility "*operated* by the qualifying utility," may be "abandoned *prior to January 1, 2023*[,]" which leads one back to where this discussion began with Section 62-18-3(A).

Because the Hearing Examiner finds that Section 62-18-3 is not applicable to the abandonment proposed in this case, it is unnecessary to address San Juan County's argument that PNM is suggesting that the county's tax revenue lost to the transfer of its interest to NTEC, which apparently possesses "non-taxable status as an arm of the sovereign Navajo Nation," can be addressed by funds appropriated under Section 62-18-16 of the ETA, a claim the Hearing Examiner does not understand PNM to have expressly made in any event.[275]

13. PNMR's proposed merger with Avangrid as the purported "driving force" for the FCPP abandonment and transfer

ABCWUA and Bernalillo County and NEE argue that the Amened Application is not in the public interest and should be rejected because, among other reasons, PNMR's proposed merger with Avangrid subsidiary NM Green Holdings, Inc. pending before the Commission in Case No. 20-00222-UT is, allegedly, the deliberately hidden yet poorly concealed "driving force" for the

[275] *See* SJC Br. 6-8. San Juan County's only apparent evidentiary support for the argument is Mr. Fallgren's observation at hearing, quoted below, in response to SJC counsel's question "[D]oes PNM have any plan for what to do if it turns out that NTEC is going to claim potentially sovereign immunity status with respect to *state and local taxes*, if the transfer is approved?"

> I think that's the beauty of the Energy Transition Act, where our abandonment provides $16.5 million in local economic development opportunities, so I think that's through state funding, so I think that's the beauty of the Energy Transition Act in this case, and one of the net benefits to the public of going through with the abandonment.

Tr. Vol. I (Fallgren) 185 (emphasis added).

abandonment and securitization proposed in this case.[276] ABCWUA and the County assert that since the abandonment is such a such a critical component of, as put by NEE and the Attorney General, a "condition precedent" of the merger,[277] PNM's undepreciated investments in the Four Corners plant should be treated as a cost of the merger not eligible for recovery through securitized financing.[278] The Attorney General, essentially aligned with ABCWUA and the County's position, alleges that "costs included in [the Amended Application] include imprudently incurred expenses and costs associated with the merger."[279]

PNM strenuously denies the allegations and staunchly opposes the intervenors' arguments and requested modification of merger-related obligations. PNM asserts that there is no direct evidence that the proposed merger is conditioned on Commission approval of PNM's Amended Application in this case. No evidence to corroborate the merger-focused claims notwithstanding, PNM nevertheless contends that the parties' claims should be rejected because: (a) whether FCPP abandonment is a critical component or condition precedent of the merger has no legal bearing on PNM's requested approvals in this case; (b) it would violate the due process rights of Avangrid and other interest parties that were not put on notice that the merger agreement and the parties'

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[276] *See* ABCWUA/County Br. 14-19, 22; NEE Br. 32-63.

[277] NEE Br. 32; NMAG Br. 6.

[278] ABCWUA/County Br. 18-19, 22. ABCWUA and the County therefore propose proposed the following language in the Commission's order in this case:

> PNM will book an offsetting regulatory liability out of retained earnings in the same amount as any awarded securitized financing for abandonment of FCPP. The liability will accrue a carrying charge at the same rate of the securitized funds. The regulatory assets will be amortized into the regulatory liability over the life of the associated securitized debt. This treatment will hold ratepayers harmless for any of the FCPP costs.

Id. 18-19.

[279] NMAG Br. 8.

obligations under the agreement would be considered in this case; (c) the parties' claims are based on circumstantial evidence and evidence that is not part of the record in this case;[280] and (d) the only competent record evidence presented by the chief negotiator of a FCPP abandonment, PNM witness Fallgren, demonstrates that FCPP abandonment is not a critical component or condition precedent of the merger.

While the Hearing Examiner agrees that addressing merger-related agreements and cost obligations in this case would violate the due process rights of Avangrid and aligned parties in Case No. 20-00222-UT and would be wholly inappropriate without adequate notice and an opportunity to be heard – neither of which has been afforded in this proceeding – it is unnecessary to base his ruling on due process considerations or to entertain both sides' evidence related to the mergers in disposing of this issue. Simply put, even if the merger-related evidence is viewed in the intervenors' best light, whether the abandonment and sale and transfer is required by the merger has no bearing on the legal standards applicable to the proposed abandonment and transfer proposed in this proceeding, which as discussed at length above,[281] is governed by provisions of the PUA and the ETA. As PNM points out, the PUA does not prescribe a different standard for approval of an abandonment and transfer that may be required by a utility merger and the ETA does not contain any provisions that address qualifying generating facility abandonment and securitization in the context of a merger.[282] Therefore, being fundamentally irrelevant and immaterial to the matter under review, the merger-related claims and evidence should not be considered in this case.

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[280] *But see* NEE's "Limited Reply to Refute PNM's Claims in its Response Brief," at 1-2.

[281] *See supra* sections II.B.1 and II.B.2.

[282] PNM Resp. 91.

B. Sale and Transfer of PNM's Interest in the Four Corners Power Plant to NTEC

As indicated at the beginning of section IV above, because PNM's two remaining claimed benefits of the Four Corners sale and abandonment relate to the transfer of its interest to NTEC, those claims are analyzed against the no net detriment standard applicable to the sale and divestment of utility assets pursuant to Sections 62-6-12 and -13 of the PUA.[283]

1. Preservation of Navajo Nation voice in future of Four Corners through transfer of the plant to NTEC

By acquiring PNM's 13% interest, NTEC will increase its minority interest in Four Corners to 20%. PNM asserts that NTEC's acquisition of PNM's interest enhances NTEC's ability to participate in decisions impacting the Navajo Nation's interests.[284] PNM emphasizes that as part of increasing its interests, NTEC has committed that it will not transfer any of its interests to a third-party in order to block a closure vote by the other owners.[285]

PNM explains that the plant and associated Navajo Mine are important economic drivers in the area and employ approximately 700 employees, over 600 of whom are Navajo Nation members. Royalties and taxes generated by the sale of coal from the Navajo Mine total approximately $40 million to $45 million per year and account for an estimated 23.9% of Navajo Nation Fiscal Year 2021 General Fund Revenue.[286]

PNM witness Fallgren testified that the sale of PNM's interest in Four Corners, coupled with the subsequent agreements for seasonal operations, help to address the Navajo Nation's seven

[283] Of course, evaluated as a whole, the proposed sale and abandonment must also meet the net public benefit standard.

[284] Fallgren Supp. 20.

[285] Fallgren Reb. 38.

[286] Fallgren Supp. 20; Fallgren Reb. 19-20.

recommendations for achieving a Just Energy Transition as outlined in President Nez's January 24, 2020 letter to the ACC regarding the TEP rate case.[287]

The Navajo Nation leadership, including duly elected or appointed leaders, favor PNM's sale of its interest to NTEC. PNM Witness Fallgren attached to his rebuttal testimony three official documents demonstrating Navajo Nation support: the first is a resolution by the District 13 Council of the Navajo Nation (PNM Rebuttal Exhibit TGF-11); the second is a resolution by the Northern Navajo Agency Council of the Navajo Nation (PNM Rebuttal Exhibit TGF-12); and the third document is a letter from the Navajo Nation executive and legislative leadership – President, Vice President, and the 24th Navajo Nation Council Speaker and Chairman of the Resource and Development Committee – to the Commission in support of the PSA (PNM Rebuttal Exhibit TGF-13). PNM thus maintains that the abandonment and transfer of its 13% interest to NTEC are in alignment with the Navajo Nation's transition to clean energy.[288] PNM contends these resolutions and letter demonstrate clearly that the Navajo Nation leadership has been informed throughout the process and that they view the PSA as positive for the Navajo Nation and directly in alignment with a Just Transition. PNM observes, in concluding, that the Navajo Nation is the community most impacted by operations at Four Corners and its position on the PSA is best represented by its current elected leadership.[289]

Sierra Club and Community Groups argue that a sale to NTEC of PNM's interest in Four Corners will not result in a net public benefit.[290] Their criticisms of the proposed sale and transfer

[287] Fallgren Supp. 21 (citing https://docket.images.azcc.gov/E000004596.pdf).

[288] *See* Fallgren Reb., PNM Reb. Exh. TGF-13.

[289] Fallgren Reb. 60-61.

[290] *See, e.g.,* Sierra Club Br. at 43; Community Groups Br. at 9.

of PNM's interest to NTEC fall into three interrelated categories: (i) PNM's assertion that the sale and transfer will promote Navajo self-determination inappropriately conflates NTEC, a private corporation, with the entire Navajo Nation and government; (ii) the sale and transfer will not serve the interest of the Navajo people; and (iv) NTEC's intent to keep Four Corners open until 2031 mean that the sale and transfer cannot serve the public interest.

First, Sierra Club expresses the following concerns about NTEC: none of NTEC's senior management is a member of the Navajo Nation; nearly all of NTEC's senior management are people who worked at other coal companies; NTEC derives most of its revenues from coal mining; the Navajo Nation's elected government does not have direct control over the day-to-day business decisions of NTEC; NTEC does not need pre-approval from the Navajo Nation government to do anything; NTEC does not always act in ways that reflect the views of the Navajo Nation's elected government;[291] and NTEC will likely use money from the $75 million transaction to fund Wyoming coal mines, not to advance a transition to clean energy.[292]

Except for the last point regarding how NTEC might use transaction proceeds, which Sierra Club apparently asserted for the first time in its response brief, PNM responds that Sierra Club's concerns are largely addressed in the contractual agreement between the Navajo Nation and NTEC, which is the Amended and Restated Operating Agreement of the Navajo Transitional Energy Company, LLC ("NTEC Operating Agreement").[293]

The NTEC Operating Agreement states that the company's purpose is to "operate to support and improve the economic, financial, tax, and revenue interests of the Navajo Nation and

[291] Sierra Club Br. 43-44.

[292] Sierra Club Resp. 20-21.

[293] PNM Exh. 39.

the Navajo People through management and development of the Navajo Nation's resources and new sources of energy, power, transmission, and attendant resources and facilities . . .."[294] The Navajo Nation, as a sovereign entity,[295] owns NTEC. To facilitate communications with the Navajo Nation, the Navajo Nation Council is charged with establishing a Member Representative Group that consists of five representatives with one member from each of the five standing committees of the Navajo Nation Council.[296] The Member Representative Group exercises oversight of NTEC, including monitoring NTEC as an asset of the Navajo Nation.[297] While the Member Representative Group does not exercise management control over NTEC's day-to-day operations, it does have authority to remove any Management Committee Member for cause by a majority vote.[298]

NTEC's day-to-day operations are overseen by the Management Committee. The Management Committee has the authorities and responsibilities of general management and oversight of NTEC, "as a Board of Directors has over a Corporation."[299] The Management Committee members are required to perform their "responsibilities in a manner reasonably believed to be in the best

[294] PNM Exh. 39, p. 9, Art. III(A).

[295] *Id.* 8, Art. II, Definitions (defining "Navajo Nation" to mean "the sovereign governmental entity, institution, and federally acknowledged Nation or Indian Tribe that executed the Treaty between the United States of America and the Navajo Tribe ofIndians, [*sic*] Aug. 12, 1868, 15 Stat. 667, . . . when referring to the body politic; or when referring to governmental territory, all land within the territorial boundaries of the Navajo Nation, Navajo Indian Country, and the Navajo Reservation, including, without limitation, the Navajo Partitioned Land, Eastern Navajo Agency lands, the Alamo Chapter, the Tohajiilee Chapter, the Ramah Chapter, Navajo dependent Indian communities, including without limitation all lands within the Navajo Chapter governments, as-well-as all lands held in trust by the United States for the Navajo Nation, or restricted by the United States or otherwise set aside or apart under the superintendence of the United States for the Navajo Nation[.]").

[296] *Id*. 11, Art. III(C) (Navajo Nation Membership Interest and Member Representative Group).

[297] *Id*.

[298] *Id*. 12, Art. III(C)(i) (Authorities and Functions of Member Representative Group).

[299] *Id*. 13, Art. III(D) (Management Committee's Authorities, Duties, Responsibilities, Incidental Powers, and Qualifications).

interests of [NTEC] and in accordance with such standards of care, loyalty, and competence set forth in the 'Fiduciary Duties and Responsibilities and Standards of Care' adopted by NTEC."[300] Moreover, members of the Management Committee are subject to the obligation of good faith and fair dealing and have fiduciary obligations to NTEC.[301] Members of the Management Committee are required to have substantial knowledge, understanding, and competency of the energy industry, "with particular knowledge, understanding, and competency in coal and solar resources for power and energy."[302] Also, a majority of the Management Committee members must be enrolled in the Navajo Nation.[303] However, to ensure that the Navajo Nation's elected government does not have direct control over the day-to-day business decisions of NTEC, no member of the Management Committee of NTEC is permitted to be a public official of the Navajo Nation, including a Navajo Nation Council delegate, Chapter official, commissioner, or an official or employee of the federal government, or any state, county, or municipality.[304]

Given the foregoing NTEC Operating Agreement provisions, PNM argues that Sierra Club is incorrect in supposing that NTEC does not need preapproval from the Navajo Nation government to do anything. In this respect, PNM notes that the NTEC Operating Agreement sets forth very specific limitations on the authority of the Management Committee. For example, pursuant to Article III(G) of the agreement, prior approval of the Navajo Nation Council is required for NTEC's Management Committee to complete any act that would "substantially change the business of [NTEC] or make it difficult, not economically feasible, or impossible to carry on the

[300] *Id*. 22, Art. III(H) (Liability for Certain Acts).

[301] *Id*. 16-17, Art. III(D)(ii)(a), (q).

[302] *Id*. 18, Art. III(D)(iv).

[303] *Id*. 19, Art. III(D)(iv)(g).

[304] *Id*. 19, Art. III(D)(iv)(h), (i).

business of NTEC;" to exchange or transfer "all or substantially all of the assets of" [NTEC]; and to dissolve NTEC.[305]

Second, Community Groups assert that the proposed sale of PNM's interest to NTEC will not serve the interest of the Navajo people, that NTEC lacks transparency, and for those reasons and others already discussed regarding alleged impediments to beginning FCPP's closure and full decommissioning "as soon as possible," the transfer of PNM's interest would be detrimental to the public interest and will not result in a net public benefit.[306] In fact, arguing for an "expansive view of the public interest,"[307] Community Groups declare outright that "NTEC *and the Navajo Nation* Do Not Represent the Public Interest;"[308] they later appear to qualify that statement, asserting that "NTEC and the Navajo Nation are not synonymous," and urge the Commission to "resist PNM's attempt at conflation and recognize that NTEC aims to serve its corporate interests alone, and not those of the public or Navajo peoples and communities."[309] Even still, Community Groups conclude that "NTEC is not a proxy for the Navajo Nation, and neither NTEC *nor the Navajo Nation* are proxies for the public interest."[310] Sierra Club doesn't go quite so far, allowing that "[i]f PNM were proposing to transfer its interest in Four Corners directly to the Navajo Nation government, then PNM might plausibly claim that it was promoting Navajo self-determination."[311]

[305] *Id*. 22, Art. III(G) (Limitations on Authority of Management Committee).

[306] Community Groups Br. 19-20.

[307] Community Groups Br. 3.

[308] Community Groups Br. at 8, 13-14 (emphasis added).

[309] Community Groups Br. 13.

[310] Community Groups Br. 19 (emphasis added).

[311] Sierra Club Br. 44.

On the matter of promoting Navajo self-determination, PNM responds that Sierra Club and the Community Groups have set up a false dichotomy. PNM states that the Navajo Nation established NTEC for the very purpose of carrying out the Navajo Nation's interests related to resource management and energy production and further contends that contrary to Sierra Club and Community Groups' "uncited or unspecified opinions that NTEC does not always carry out the Navajo Nation's interest," the factual record demonstrates that by its charter NTEC has a fiduciary duty to the Navajo Nation.[312] PNM argues that anecdotal evidence from Community Groups witness Jessica Keetso about how she perceives NTEC to operate "in practice" does not overcome the weight of the evidence on NTEC's contractual obligations and the jobs and revenue benefits that accrue to the Navajo Nation from NTEC operations.[313] PNM adds that any potential concerns over whether PNM's transaction with NTEC furthers Navajo Nation interests are allayed because the Navajo Nation leadership expressed direct support for the transaction at issue in this case.[314] The Navajo Nation, PNM emphasizes, is the most directly impacted by operations at Four Corners, and the Navajo Nation's position on the PSA is represented by its current elected leadership, who have offered record support.[315]

Third and finally, Sierra Club and Community Groups argue that NTEC's motivation to keep Four Corners open until 2031 dictates that a sale by PNM of its interests to NTEC cannot serve the public interest.[316]

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[312] PNM Resp. 40.

[313] PNM Resp. 40-41 (quoting Community Groups Br. 11-12).

[314] PNM Resp. 41 (citing Fallgren Reb., PNM Reb. Exh. TGF-13).

[315] *Id*. (citing Fallgren Reb. 60-61).

[316] *See, e.g.,* Community Groups Br. 9 (citing Fisher Dir. 29); Sierra Club Br. at 17 ("PNM understood that NTEC wants to keep Four Corners open until 2031, and that the [PSA] would have the effect of keeping the plant open.").

PNM responds that NTEC's motivations are transparent – it has an interest in preserving jobs, economic activity, and revenue for the Navajo Nation.[317] PNM cautions, however, that preserving jobs and revenue for the Navajo Nation should not be regarded as contrary to the public interest. On this point, PNM recites the statistics set out above regarding the centrality of the Four Corners plant and the Navajo Mine to the Navajo Nation: NTEC's operation currently provides approximately 1,300 jobs;[318] the plant and mine are important economic drivers in the Four Corners area, employing employ approximately 700 employees, over 600 of whom are Navajo Nation members; royalties and taxes generated from the sale of coal from the mine total $40 million to $45 million per year and account for almost 24% of Navajo Nation revenue in 2021.[319] Given the importance of Four Corners and the Navajo Mine in terms of employment and revenue for the Navajo Nation, PNM observes that "it should come as no surprise that Navajo Nation President Nez recommends a five-year advanced notice of any planned power plant closure."[320]

The Hearing Examiner's determination of the contested issues regarding NTEC and Navajo Nation self-determination is set forth in section IV.B.4 below after addressing the benefit in mitigating the adverse economic impact of the Navajo Nation transitioning from coal and the "material adverse effect" provision in the PSA, Article 6(1)(d)(i), that among other things precludes PNM from voting to close Four Corners even if all the other co-owners with a voice in the matter unanimously agree that operations at the plant should permanently cease.

[317] Vol. II (Fallgren) 369, 499-501; PNM Exh. 39.

[318] Fallgren Dir. 12-13.

[319] Fallgren Supp. 20; Fallgren Reb. 19-20.

[320] PNM Resp. 42 (citing Fallgren Supp. 31).

2. Mitigation of adverse economic impact to local workforce and community through ETA's Section 16 funds

Section 16 of the ETA establishes three energy transition funds in the state treasury: (1) the "energy transition Indian affairs fund;"[321] (2) the "energy transition economic development assistance fund;"[322] and (3) the "energy transition displaced worker assistance fund."[323] Section 16 also requires a qualifying utility to transfer a certain percentage of bond proceeds to each fund within "thirty days of receipt of energy transition bond proceeds."[324] The proceeds to be transferred to the funds created by Section 16 are energy transition costs included in the amount to be recovered by a qualifying utility through securitized financing.[325]

PNM claims that a public benefit of the proposed sale and abandonment is provided by the ETA's securitization funds, as described in Section 16 of the ETA, for state-administered tribal and community programs that otherwise would not be available to help affected communities. Specifically, PNM proposes to transfer the following funds in accordance with the ETA: (i) $1.5 million of the proceeds of the Energy Transition Bonds for deposit in the Energy Transition Indian Affairs Fund; (ii) $5 million of the proceeds of the Energy Transition Bonds for deposit in the Transition Economic Development Assistance Fund; and (iii) $10 million of the proceeds of the Energy Transition Bonds for deposit in the Energy Transition Displaced Worker Assistance Fund.[326] Therefore, because the abandonment is being requested pursuant to the ETA, the local community will benefit from an estimated $16.5 million in funding to the Navajo Nation and its

[321] § 62-18-16(A).

[322] § 62-18-16(D).

[323] § 62-18-16(G).

[324] § 62-18-16(J).

[325] § 62-18-2(H)(4).

[326] Fallgren Reb. 7-8 (citing Sanchez Dir. 34-35).

communities through state agency programs that are intended to assist in workforce transitions and economic development.[327] PNM emphasizes that these benefits would not be available outside of abandonment pursuant to the ETA.[328]

The Community Groups contend that allowing PNM to benefit from ETA-authorized securitization without closure of the Four Corners runs counter to the ETA. While PNM touts ETA Section 16 funds as a benefit of its application, Community Groups declaim the fact that the transition funding would be made available not after closure of FCPP, but after abandonment of PNM's share in the plant and transfer to NTEC, who wants to keep running into 2031.[329] And, even if Section 16 funds were made available after abandonment instead of closure, Community Groups point out that the bonds likely would not be issued until January of 2025.[330] Community Groups also do not like the fact that the transition funds, distributed to the state agencies charged with administering them under the ETA, are not disbursed directly to affected community members and groups. Community Groups allege that use and availability of the transition funding may not be limited to impacted workers and communities and, as they put it, "there are likely several entities that do not necessarily represent local interests who would also seek to benefit from these funds."[331] "Some of these private interests," Community Groups continue, "may use Section 16 funding to engage in activities that are *contrary* to a just transition – such as the development of hydrogen as a fuel source that still relies on fossil fuels for production, or carbon capture and

[327] Fallgren Supp. 21(citing Fallgren Dir. 28-29 and Sanchez Reb. 11-12).

[328] PNM Br. 16.

[329] Community Groups Br. 24.

[330] *Id*.

[331] *Id*.

storage ('ccs') projects."[332] In any event, the bottom line for Community Groups is that the continued operation of Four Corners via transferring PNM's interest in the plant to NTEC would be "contrary to a just transition, contrary to the purpose of the ETA, and contrary to the public interest."[333] Resultantly, given the limitations on Section 16 funds they dislike, Community Groups "would rather see early closure of the Plant – and the environmental and economic justice benefits, and benefits to the health of people, communities, and the land—that early closure would entail."[334]

Sierra Club, for its part, while not denying the substance of PNM's claims regarding the nature and amount of transition funds, nevertheless points out, as the Community Groups did, that under PNM's proposal the earliest that any transition funds would be available is January 2025.[335]

A close review of PNM's response brief indicated that PNM apparently did not see the need to address Sierra Club and Community Groups' concerns with the Section 16 payments, except to observe, as it had already done in its brief in chief, that the ETA gives the Commission authority to directly address the resulting impact of a coal plant closure on local communities in the Four Corners area, including the Navajo Nation, through 'Just Transition' funding not otherwise contemplated by the Public Utility Act[,][336] and to also note that some of the positions taken by intervenors in propounding an early closure would not be in the public interest to the extent such

[332] Community Groups Br. 24-25 (emphasis in original).

[333] Community Groups Br. 25

[334] *Id*. (quoting, in n. 72, Keetso Dir. 17: "The pollution and emissions from FCPP and other coal plants and fossil fuel facilities degrade the overall region's environmental quality and directly impact the people who live on the land, including members of the Navajo Nation. The quality of our air and water, and the health of our land should be a priority. Long-term improvements in air pollution reduce mortality rates and closing FCPP, especially an early closure, would be a permanent long-term improvement.").

[335] Sierra Club Br. 44-45.

[336] PNM Resp. 1. *See* PNM Br. 1.

proposed closures would deprive affected communities irrefutably beneficial transition funding available under the ETA.[337]

3. PSA Article 6.1(d)(i) – PNM's compulsory veto of plant owners' potential unanimous consensus to cease operations or reduce production at Four Corners

As noted above, while WRA supports the proposed sale and abandonment, its support is conditional. One of WRA's conditions is the recommendation that Article 6.1(d)(i) of the PSA be stricken or modified to provide that the Four Corners plant owners should continue to have the ability to vote for early closure of the plant at any time.[338] The provisions of the PSA at issue is a material adverse effect clause that prevents PNM, pending closing of the agreement and without the consent of NTEC, from voting with the other facility co-owners (besides NTEC, which as mine owner sole supplier of coal to the plant is perceived to have a conflict of interest)[339] to either permanently shut down or reduce production from Four Corners prior to the end of the coal supply agreement term in July 2031:

> (d) **Conduct Pending Closing**. Prior to consummation of the transactions contemplated hereby or the termination or expiration of this Agreement pursuant to its terms, and except to the extent approved by Purchaser or otherwise contemplated by this Agreement, Seller shall:
>
> (i) Not: (A) sell, lease, transfer or dispose of, or make any contract for the sale, lease, transfer or disposition of, any assets or properties which would be included in the Assets, other than sales in the ordinary course of business which would not, individually or in the aggregate, have a Material Adverse Effect, (but Seller shall use Commercially Reasonable efforts to

[337] PNM Resp. 13 (noting that Sierra Club's "'breach' option would provide for no transition funds pursuant to the ETA to the affected communities.").

[338] Baatz Dir. 20.

[339] Fallgren Supp. 26 ("NTEC is restricted from voting on early plant closure and termination of the Coal Supply Agreement under Section 9.15 of the FCPP Co-Tenancy Agreement. This restriction is based on an understanding that NTEC would have a conflict of interest because it also serves as the supplier of fuel for the plant.").

> tender the Acquired Interests upon Closing under circumstances that will allow continued operation and generation of the Plant under the Facilities Contracts through the duration of the Coal Supply Agreement, which efforts shall include, for the avoidance of doubt, *making no affirmative vote as a Facilities Owner to reduce the production from or cease the operation of the Plant prior to the end of the Coal Supply Agreement term*)[.][340]

In his briefing order, the Hearing Examiner asked the parties to consider, in addressing WRA's recommendation whether the provision quoted above that effectively constitutes a compulsory "veto of a vote for early retirement" of FCPP[341] prior to the PSA's closing date (Dec. 31, 2024 or "on such other date . . . as agreed to by" PNM and NTEC):[342]

> is or is not inconsistent with the spirit and intent of the [ETA] and contrary to the public interest, particularly if early retirement of the plant is feasible or at least conceivable, i.e., all the other FCPP co-owners (APS, TEP, and SRP) unanimously vote to retire the FCPP early."[343]

WRA, joined in post-hearing briefing by CCAE, Community Groups, and Sierra Club,[344] asserts that the veto provision is inconsistent with the public interest. WRA maintains that the plant co-owners should continue to have the ability to vote for early closure of FCPP at any time and a potential early closure should not be limited because of the PSA. If the remaining plant owners agree it is in the best interest of their customers to cease operations at FCPP, they should be able to initiate an early closure. WRA further maintains that PNM customers and the public interest would

[340] Fallgren Dir., PNM Exh. TGF-2, p. 45 of 135 (emphasis added).

[341] Fallgren Dir. 21 (noting that "any veto of a vote for early retirement arises only if *all* co-owners change their current positions and vote to retire the FCPP early.") (emphasis in original).

[342] Fallgren Dir., PNM Exh. TGF-2, p. 32 of 135, Art. 3.1 ("Closing"). Section 6.2(a) of the PSA states that "no Party shall make application to FERC pursuant to sections 203 or 205 of the Federal Power Act [FPA] prior to January 1, 2023, or such other date as mutually agreed by the Parties." *Id*. PNM Exh. TGF-2, p. 47 of 135. FERC approval pursuant to Section 203 of the FPA is one of "Seller's Required Regulatory Approvals" per Schedule 1.1.73 of the PSA. *Id*. PNM Exh. TGF-2, p. 88 of 135.

[343] Briefing Order, at 6-7, ¶ 8(b).

[344] *See* CCAE Br. 13-14; Community Groups Br. 4-6; Sierra Club Br. 2, 18-19; Sierra Club Resp. 2, 10-11.

also benefit from an early closure of FCPP based on its witness's, i.e., Mr. Baatz's, review of the costs and environmental impacts of continued operation of the plant.[345]

Based on Commission precedent, WRA asserts that the Commission may have authority to approve the PSA and that such approval may be necessary for the Commission to authorize the transfer of PNM's interests in FCPP to NTEC.[346] WRA does not believe that the Commission approval is required for seasonal operations amendments, noting that Commission did not exercise approval authority over new restructuring and coal supply agreements for San Juan Generating Station in Case No. 13-00390-UT.[347] WRA believes, however, that the Commission has plenary authority to consider the impact of those amendments on PNM's rates and service and on the public interest. As they are written now, with extended periods of advance notice and substantial penalties for early closure, WRA contends they are not in the public interest.[348] WRA thus suggests that the Commission consider approving abandonment only if those amendments are modified and filed within 30-60 days of a Commission order approving abandonment.[349]

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[345] WRA Br. 21-22.

[346] WRA Br. 22 (citing *Fort Selden Order*, at 37, ¶ C (expressly approving the purchase agreement that involved a sale by a Commission-regulated water utility to an unregulated entity, the difference being that the same customers would be served by the unregulated entity)).

[347] *Id*. (citing *In the Matter of the Application of Public Service Company of New Mexico to Abandon San Juan Generating Units 2 and 3, Issuance of Certificates of Public Convenience and Necessity for Replacement Power Resources, Issuance of Accounting Orders and Determination of Related Ratemaking Principles and Treatment*, Case No. 13-00390-UT, Certification of Stipulation (Nov. 16, 2015), at 38-39 (The Commission did not exercise authority despite recognizing that "[t]he agreements are interrelated and are contingent upon the Commission approvals sought in the stipulations. The effectiveness of the restructuring agreement is subject to the Commission's approval of the abandonment of San Juan Units 2 and 3 and the issuance of a CCN for the additional 132 MW in Unit 4. The effective date of the coal supply agreement is subject to the effectiveness of the restructuring agreement.") (internal citations omitted).

[348] *Id*.

[349] WRA Br. 22-23. While the Hearing Examiner agrees that the Commission has the plenary authority WRA suggests that the Commission exercise, the Hearing Examiner declines to recommend that the seasonal operations agreements be modified as WRA suggests because, similar to the Commission's decision not to exercise approval over the new restructuring and coal supply agreements in Case No. 13-00390-UT, the seasonal operations

(*Cont'd on next page*)

PNM opposes WRA's recommended modification to the PSA. While PNM acknowledges that Article 6.1(d)(i) of the PSA prohibits PNM from making an affirmative vote as a facilities owner to reduce the production from or cease the operation of Four Corners prior to the end of the CSA term unless NTEC – the mine mouth owner whose sole customer is the plant – waives the material adverse effect provision, PNM nevertheless argues there is no evidence in the record that any other Four Corners' co-owner is seeking to exit the plant or push for an early closure of the plant and there is no evidence in the record that NTEC would accept a modification to the PSA removing this term. PNM claims that Section 6.1(d)(i) is "standard contract language that protects NTEC by providing that its expected benefit of the transaction may not be materially altered by PNM prior to the transaction closing."[350] Quoting PNM witness Fallgren's testimony, "[t]o conclude that PNM could unilaterally negotiate out standard agreement language that left NTEC exposed to potential asset modifications without any input from them prior to the execution date is simply non-sensical and contrary to standard contract provisions."[351]

PNM next points out that Section 6.1(d)(i) does not prohibit an early closure of the plant because NTEC could agree to a waiver of the provision. PNM suggests there is reason to believe NTEC would agree to such a waiver because its interest as a company is in preserving the jobs and the revenue to the Navajo Nation as opposed to continuing FCPP operations at any cost. PNM

(*Cont'd from previous page*)

agreements are interrelated, collectively comprise a condition subsequent to the PSA, and address the obligations of the Four Corners co-owners in operating the plant primarily, but not only, post-abandonment, i.e., after the closing date of the PSA. In a related vein, the Hearing Examiner also rejects, for the reasons elucidated by Mr. Fallgren at the hearing (*see* Tr. Vol. I (Fallgren) 188-200), CCAE's misplaced and unwarranted recommendation that the Commission not approve Article 7.4 of the PSA (entitled "CSA True-Up Payment Calculation," Fallgren Dir., PNM Exh. TGF-2, p. 55 of 135), and instead "require PNM to amend the agreement to require PNM to place the CSA True-Up Payment in Escrow along with the rest of the rest of the funds due and owing to NTEC for its reclamation obligations." CCAE Br. 15.

[350] PNM Br. 114.

[351] *Id*. (quoting Fallgren Reb. 16-17).

adds that despite Section 6.1(d)(i), NTEC did agree to the reduced operations of FCPP required by the seasonal operations agreement because the reduced operations maintain jobs on the Navajo Nation and revenues.[352] Quoting Mr. Fallgren again:

> [I]f that was available and the parties wanted to close the plant earlier, they could approach NTEC then to negotiate, and again those key parameters available in the negotiation, and I would represent, I believe that NTEC would engage and participate in those conversations for a further early closure as long as those jobs and revenue requirements were provided for.[353]

Moreover, reading the PSA and the agreements encompassing seasonal operations together, PNM notes that the closure of Four Corners is possible as early as January 1, 2027, which is wholly consistent with the amount of forewarning required by a just energy transition.[354] Thus, PNM reasons that no amendment to the PSA or seasonal operations agreement is required to achieve an earlier plant closure. Rather, PNM submits, plant closure will be driven by the needs of the plant's public utility co-owners for adequate capacity and energy to serve their customers and NTEC's interest in maintaining jobs and revenues on the Navajo Nation.[355]

Lastly, PNM asserts the PSA and seasonal operations agreements are wholly consistent with the carbon reduction goals of the ETA. PNM maintains that not only will approval of PNM's Amended Application result in the complete removal of coal generation from its portfolio by 2025,

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[352] *Id*. (citing Tr. Vol. II (Fallgren) 500).

[353] *Id*. (citing Tr. Vol. II (Fallgren) 501).

[354] PNM Br. 15. That is, as discussed in section II.A.5 above, a full plant closure as of January 1, 2027 could occur by providing notice in 2023 for a January 1, 2027 closure. Such a notice would require NTEC to waive the material adverse effect provision in the PSA, permitting PNM to vote for an early closure. A full plant closure could also occur on January 1, 2027, with only a two-year notice requiring a payment to NTEC of $200 million from the remaining co-owners. *See* Fallgren Reb., TGF-7, p. 12 of 27, Sec. 11, Amendment to Section 20. Advance written notice of 24 months will result in a full plant shutdown by January 1, 2027 and require a $200 million payment to NTEC. Advance written notice of 36 months will result in a full plant shutdown by January 1, 2028 and require a $100 million payment to NTEC. Advance written notice of 48 months, with a full plant shutdown on January 1, 2029, requires no additional payment to NTEC. *Id.*

[355] PNM Br. 115.

it will, with seasonal operations implemented, reduce emissions in the state equivalent to the closure of a 400 MW coal facility. Supposed inconsistency with the ETA, PNM concludes, provides no ground on which to deny or amend the Amended Application.[356]

As noted above, the Hearing Examiner's assessment of this issue focuses strictly on Article 6.1(d)(i) of the PSA; it does not cover the seasonal operations agreements that raise a host of intricate interrelated issues, comprise a condition subsequent to the PSA, and for the most part relate temporally to post-abandonment obligations among the other plant owners. Focusing, then, on the Purchase and Sale Agreement provision at hand, contrary to PNM's suggestion that Article 6.1(d)(i) represents "standard agreement language," the proposed agreement between PNM and NTEC is not a run-of-the-mill bilateral contract between private corporations. Indeed, unlike most commercial contracts that are not subject to regulatory review, PNM is requesting that the Commission approve the PSA in this case. The PSA, in short, is subject to evaluation under the PUA and, therefore, is invested with the public interest.

The Hearing Examiner finds that it would be inconsistent with the public interest to approve a contractual provision that precludes a public utility subject to its jurisdiction and actively seeking authorization to divest its interests in a major CO_2 emitting generation plant from vetoing before its exit a unanimous vote of the other co-owners to retire the plant or reduce production from the plant and thereby curtail emissions even beyond the reductions promised by seasonal operations. In short, if the other co-owners find it beneficial to their customers and shareholders to close Four Corners or curtail production from the plant before PNM abandons its interest, the Commission should not empower PNM to stand in their way, contrary to the public interest.

[356] *Id.*

Moreover, to the extent PNM is touting the emissions reductions equivalent to closing a 300 MW coal plant by virtue of seasonal operations, allowing PNM to retain veto power over the retirement of up to 1540 MW of coal plant capacity – since Units 4 and 5 each have 770 MW net maximum capacities – would be contrary to the carbon reduction goals of the ETA by prolonging generation from a regional coal-fired power plant that, ironically, the co-owners no longer needing the energy and capacity from the plant might unanimously desire to shut down.

Finally, if it is as unrealistic as PNM represents that a vote among the co-owners for closure of FCPP before 2025 is forthcoming, then, considering the tangible and less tangible relief at stake in this case, it should not constitute such a leap of faith or compromising of NTEC's vital interests for the mine owner to agree to modifying or striking the offending provision.

4. Hearing Examiner's application of the "no net detriment" standard to PNM's sale and transfer of its interest in Four Corners to NTEC

Having carefully evaluated this matter of substantial public interest, the Hearing Examiner finds that the proposed sale and transfer of PNM's interest in Four Corners to NTEC should be approved. Among other benefits of the bargain, the sale and transfer will strengthen the Navajo Nation's position in determining the future of a plant that, it should not be forgotten, has been operating on its sovereign soil and producing electricity for non-indigenous consumers and far-flung communities for nearly sixty years.[357] While NTEC, as a private corporation, does not speak for the Navajo Nation leadership or its people, it is an arm of the Navajo Nation charged with managing the Nation's energy production, whose obligations to and relationship with the Navajo Nation are defined in the NTEC Operating Agreement. As explained above, the Member Representative Group, consisting of representatives from each of the five standing committees of

[357] *See* Fallgren Reb. 61 ("The Navajo Nation is the most impacted community at Four Corners . . .." and PNM Reb. Exhs. TGF-11, TGF-12, TGF-13).

the Navajo Nation Council, oversees NTEC for the benefit of the Navajo Nation. After PNM's interest is transferred pursuant to the Purchase and Sale Agreement, NTEC adds to its existing 7% interest in Four Corners for a total 20% interest in the plant. Consequently, considering that Four Corners represents nearly a quarter of Navajo Nation general fund revenue, NTEC's 20% interest in Four Corners will provide the Navajo Nation, through NTEC, a stronger voice in a plant that is indisputably an important economic driver for the Navajo Nation.[358]

The Hearing Examiner also recognizes that even though NTEC's share of the plant will increase with the closure of the PSA, the mine mouth owner has made material concessions as part of the final bargain struck. The decision to close Four Corners early requires a unanimous vote, but as owner of the mine and the sole supplier of fuel to the plant, NTEC is not permitted to participate in such a vote.[359] Just as significantly, the seasonal operations amendments will prohibit NTEC from selling its and PNM's share without the other co-owners' consent. "This ensures," Mr. Fallgren explained, "that any potential new owner's interest as to a retirement date for Four Corners would match the existing co-owners' interests," and prevents NTEC from transferring some of its ownership interest to a third party as a ploy to block a unanimous vote of the other co-owners to retire the plant before 2031.[360] "In other words," Fallgren concluded, "if the trend becomes that APS, TEP, and SRP are all seeking early closure of FCPP, these co-owners would be unlikely to give consent to a new buyer that would seek to keep the plant open."[361]

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[358] Fallgren Reb. 68 and TGF-12 ("The Northern Navajo Agency Council understands the transfer of PNM's shares to NTEC[] gives a Navajo Enterprise and the Nation a bigger voice in future plant operations[.]")

[359] *See supra* n. 339 and accompanying text.

[360] Fallgren Reb. 38.

[361] Fallgren Reb. 38-39.

While Sierra Club and Community Groups express support for the interests of the communities surrounding the plant, their advocacy for full closure and decommissioning of the coal plant as soon as possible – which is logical from an environmental and climate benefits perspective – fails to acknowledge the Navajo Nation's expression of support "with a clear voice"[362] for PNM's sale to NTEC and the need for a planned and just transition away from coal-fired power that supports the Nation's economy and revenues.[363] Their early closure approach would also deny affected communities the $16.5 million in ETA transition funds that PNM has pledged to contribute as part and parcel of the abandonment proposal. Moreover, as found above, seasonal operations will result in meaningful emissions reductions from Four Corners so long as the plant remains in operation; this too would be a benefit denied the public at large if an abrupt closure without guardrails path were taken.

Therefore, assuming PNM and NTEC see fit to revise Section 6.1(d)(i) of the PSA to provide that PNM, while still an outgoing owner, may not unilaterally block the remaining co-owners' election to retire Four Corners early or curtail production from the plant and thereby reduce emissions even beyond the rate resulting from seasonal operations, there should be no net detriment to the public interest in approving the sale and transfer of PNM's interest in Four Corners to NTEC. In fact, when the concrete benefits of the sale and abandonment such as bolstering the Navajo Nation's position in matters vital to its core interests and the substantial economic development assistance for tribal and other locally impacted communities afforded under the ETA are factored into the larger abandonment equation – i.e., the net public benefit standard – the

[362] Fallgren Reb., PNM Reb. Exh. TGF-13.

[363] Fallgren Reb. 60-61.

preponderance of the evidence supports an affirmative finding that the proposed sale and transfer is in the public interest.

C. Recovery of Costs Ineligible for Securitization

1. PNM's proposal to recover non-securitized costs through regulatory assets

As in Case No. 19-00018-UT involving the SJGS abandonment, in addition to recovery of energy transition costs through the securitization process, PNM has identified certain one-time activities and cost items that will not be recovered through the Energy Transition Charge but will be reflected in PNM's future cost of service studies filed in general rate cases. These items include: (1) a reduction to rate base by the Accumulated Deferred Income Tax (ADIT) liability that results from the abandonment, which PNM estimates to result in an $8.3 million net benefit to ratepayers; and (2) one-time costs for recovery of stranded inventory balances and external legal counsel costs associated with contractual due diligence and negotiations to the abandonment of PNM's interest in FCPP, which will result in a 2025 revenue requirement balance of approximately $434,000. Subtracting the one-time costs from the benefit results in an estimated net benefit of approximately $7.9 million to ratepayers, according to PNM witness Thomas S. Baker's calculations.[364]

Regarding the first item, ADIT liability, Mr. Baker explained that at the time of abandonment, PNM's interest in Four Corners will be retired for tax purposes, resulting in a write-off of the remaining tax basis in the facility at that time. Baker detailed the ADIT process as follows. PNM will also remove the net book value associated with its interest in FCPP from rate base as the facility will no longer be used and useful. The abandonment of PNM's interest in FCPP for book and tax purposes will cause the associated ADIT liability to be reversed, as the deferred balances

[364] Baker Dir. 28.

will become currently payable. However, a regulatory asset will be recorded equal to the net book value that will be recovered under the Energy Transition Charge. The creation of this regulatory asset will also produce an ADIT liability balance equal to the net book value times the combined statutory tax rate because the regulatory asset will have zero tax basis. As PNM customers are paying for the Energy Transition Charge that recovers the net book value through the energy transition property, the ADIT generated from this transaction will reverse. Similar to the treatment approved by the Commission in the Case No. 19-00018-UT, PNM will include the ADIT liability balance in rate base, which will lower the Company's overall rate base and lower revenue requirements. PNM will also include the ADIT liability created associated with the other energy transition property transferred to the special-purpose entity (SPE) as a reduction to rate base. Finally, PNM will continue to return the excess deferred income taxes associated with PNM's interest in FCPP to customers through base rates, including the unamortized balance as a rate base reduction, and the return of the excess deferred income taxes as a reduction to income tax expense in future cost of service studies.[365] Mr. Baker's calculation of the 2025 ADIT benefit associated with PNM's interest in FCPP abandonment is shown in the table on the next page.[366]

[365] Baker Dir. 29.

[366] Baker Dir., PNM Exh. TSB-7.

	A	B	C
1	**PNM Exhibit TSB-7**		
2	ADIT Benefit Related to Four Corners Power Plant Abandonment		
3	*($ in millions)*		
4			
5			
6		**Recovery of Abandonment Costs**	**2025**
7		Average Principal Balance of the Energy Transition Bonds	$ 295.6
8		Combined Statutory Tax Rate	25.40%
9		ADIT (line 7 x line 8 x -1)	(75.1)
10		FCPP Related Excess Deferred Income Tax	(12.2)
11		Total ADIT Rate Base	$ (87.3)
12		Pre-Tax WACC (16-00276-UT Phase II)	8.82%
13		Return On ADIT and Income Taxes	(7.7)
14		Amortization of FCPP Related Excess Deferred Income Tax	(0.7)
15		Total ADIT Benefits Related to Abandonment of Four Corners Power Plant	$ (8.3)
16			
17		Assumptions:	
18		- Excess Deferred Income Tax balance at the end of 2024 will be amortized over	
19		the life of the bonds which is 25 years.	

Regarding the one-time costs related to Four Corners not recoverable through Energy Transition Charge, PNM's interest in the plant currently has inventory balances consisting of tools, spare equipment, and other materials and supplies that are necessary to have on hand to operate the plant. Mr. Baker said that PNM will transfer its rights to the inventory balances to NTEC at the time of the abandonment. Baker estimates a remaining balance of $3.3 million that will need to be recovered from customers as the result of the abandonment of PNM's interest in FCPP.[367]

Mr. Baker added that PNM estimates that $800,000 in external legal counsel costs associated with the abandonment of PNM's interest in FCPP will be needed to facilitate the necessary contractual negotiations with NTEC and remaining owners over the abandonment of PNM's interest in FCPP and all costs associated to the transfer of assets.[368]

[367] Baker Dir. 30.

[368] *Id*.

PNM is requesting to establish a regulatory asset for these one-time costs. PNM is proposing to recover the regulatory assets for stranded inventory and external legal costs associated with the exit of PNM's interest in Four Corners over the same period PNM will collect the energy transition charges. PNM will include the unamortized balance in rate base in its general cost of service studies.[369] The revenue requirement associated with these one-time costs is broken out in the table below:[370]

	A	B	C	D
1	**PNM Exhibit TSB-8**			
2	**One-Time Costs Related to Four Corners Power Plant Not Recovered Through Energy Transition Charge**			
3				
4		**Regulatory Asset for Stranded Inventory**	**Regulatory Asset for Legal Costs**	**Total**
5	Regulatory Asset	$ 3,328,196	$ 800,000	$ 4,128,196
6	Accumulated Amortization	(133,128)	(32,000)	(165,128)
7	Net Regulatory Asset Balance	3,195,068	768,000	3,963,068
8	Average Regulatory Asset Balance	3,261,632	784,000	4,045,632
9	Average ADIT at 25.40%	(828,454)	(199,136)	(1,027,590)
10	Total Average Rate Base	2,433,177	584,864	3,018,041
11	WACC (16-00276-UT Phase II)	7.20%	7.20%	7.20%
12	Return on Rate Base	175,189	42,110	217,299
13	Amortization (25 years)	133,128	32,000	165,128
14	Income Taxes and Revenue Tax	41,431	9,959	51,389
15	**Total 2025 Revenue Requirement**	**$ 349,747**	**$ 84,069**	**$ 433,816**

PNM's proposed treatment of the ADIT liability balance was not opposed by any party. PNM's proposed treatment of ADIT liability is reasonable and should be approved.

However, PNM's proposed recovery of the one-time stranded or obsolete inventory and legal costs was challenged by one party, NM AREA.

[369] Baker Dir. 31.

[370] Baker Dir., PNM Exh. TSB-8.

2. Analysis of contested issues and recommendations

a. Stranded materials and supplies

NM AREA witness James R. Dauphinais recommended that PNM's request for a regulatory asset be approved, but that the carrying costs "be based on PNM's cost of debt to ensure PNM does not earn a return on the costs in question just like it will not earn a return on the portion of its abandonment costs that are being funded by its energy transition bonds."[371] PNM is seeking to recover these costs at its weighted average cost of capital (WACC), which would include a return to its shareholders. NM AREA argues that given the fact that PNM will not be earning any return on the remainder of its transition costs, and the further fact that these items of utility plant would no longer be used and useful, Mr. Dauphinais' proposal is reasonable and should be adopted.[372]

Although the Hearing Examiner was unable to locate PNM's position on this issue in its post-hearing brief, PNM witness Baker did address it in his rebuttal testimony. Baker asserted that debt-only carrying charges do not represent the cost to the utility to carry materials and supplies as a regulatory asset on its balance sheet. Further, he observed that NM AREA appears to be applying the ETA standard of securitization financing to a regulatory asset that does not fall under the definition of energy transition costs in the ETA and, therefore, does not qualify for recovery through securitization financing. These assets, Baker averred, are currently in PNM's rate base at a full WACC return.

The Hearing Examiner finds that a debt-only return on stranded materials and supplies would not be reasonable given the manner this item is ordinarily treated in rate base. PNM's proposed treatment of this item as a regulatory asset is consistent with the treatment of one-time

[371] Dauphinais Dir. 7.

[372] NM AREA Br. 5.

obsolete inventory costs in Case No. 19-00018-UT;[373] it should be accorded the same treatment in this case.

b. External legal costs

Mr. Dauphinais also objected to PNM's proposed recovery of $800,000 in one-time external legal costs associated with the abandonment of Four Corners. Mr. Dauphinais asserted that these estimated costs are relatively minor in the context of the proposed $300 million transaction and should not be treated as an exception to the normal rate treatment accorded such out-of-period expenses.[374]

PNM once again appears to have not covered this issue in its post-hearing briefs, but Mr. Baker did address this one too. Mr. Baker observed these legal costs are incremental to any external legal expenses that are currently included in PNM's base rates. The fact that these costs had not yet been incurred or estimated to be incurred at the time of PNM's last rate case proves, Mr. Baker contended, that they are not included in PNM's current base rates. Baker also noted that a similar regulatory asset was approved in Case No. 19-00018-UT for external legal costs associated with the SJGS abandonment.

Consistent with the Commission's analogous approval in Case No. 19-00018-UT, the Hearing Examiner recommends that PNM be authorized to create a regulatory asset to preserve its ability to recover these one-time external legal costs in a future general rate case.[375]

Finally, consistent with the qualification emphasized in Case No. 19-00018-UT, the Hearing Examiner recommends that the authority to create the regulatory assets addressed in this

[373] *See Recommended Decision on SJGS Abandonment*, 28, 32-33.

[374] NM AREA Br. 5-6.

[375] *See Recommended Decision on SJGS Abandonment*, 28, 32-33.

decision only extend to the recording of the costs and that it not be considered an approval of any ratemaking treatment. As in Case No. 19-00018-UT, the expenses related to stranded materials and supplies and outside legal expenses have not yet been incurred, and it is appropriate to place the burden on PNM to justify the prudence and reasonableness of the costs to be incurred and to provide an incentive to minimize the costs.[376]

D. Hearing Examiner's Recommendations on the Proposed Sale and Abandonment

The Hearing Examiner finds that PNM's request to abandon and transfer through sale its interest in the Four Corners Power Plant to NTEC should be approved. Consistent with the foregoing findings, PNM has established by a preponderance of the evidence that the proposed abandonment satisfies the net public benefit and *Commuters' Committee* standards.[377] PNM has also shown that there should be no net detriment to the public interest in approving the proposed sale and transfer of its FCPP interest to NTEC; to the contrary, when the benefits of the sale and transfer are objectively weighed, the proposed transfer should produce a net public benefit.[378]

Regarding the proposed abandonment evaluated pursuant to Section 62-9-5 of the PUA, the record demonstrates that the quantifiable and non-quantifiable benefits substantially outweigh the costs associated with the proposal. The credible modeling conducted by PNM shows that the abandonment will cost ratepayers significantly less over the next 20 years than continuing in FCPP until 2031, with cost savings between $30 and $300 million on a 20-year NPV basis and expected median savings of approximately $143.7 million. If, as WRA contends, "the only reason for abandonment is economic," then the substantial savings alone should be sufficient grounds for

[376] *Id*. 32-33.

[377] *See supra* sections IV.A.1 through IV.A.11.

[378] *See supra* sections IV.B.1 through IV.B.4.

approval, as WRA's analysis confirms "under a variety of assumptions and sensitivities."[379] In fact, roughly replicating the conclusions of PNM witness Nicholas Phillips' analysis, the results of WRA's analysis indicated NPV revenue requirements savings ranging from $95.7 to $305.2 million under all the scenarios its witness, Brendon Baatz, considered.[380] Moreover, the substantial savings afforded through the securitization of investments authorized by the Legislature through the ETA is positive factor in the cost-benefit analysis of PNM's abandonment of Four Corners.

While acknowledging WRA's thesis on the economics benefits being dispositive, the Hearing Examiner nevertheless finds additional significant benefits of the proposed abandonment. For instance, offloading the inflexible generator that the Four Corners plant represents will advance PNM's position in transitioning from gross load planning to net load planning as resources with more volatile load patterns are increasingly added to PNM's system energy mix. The Four Corners abandonment will also advance PNM's progress toward implementing the ETA goal of limiting portfolio emissions through substantially reducing CO_2 on its system. Additionally, on the matter of reducing CO_2 emissions, the evidence shows that the seasonal operations effected by the June 25, 2021 amendments to the Four Corners agreements should reduce emissions at the plant between 20 to 25% beginning in the fall of 2023.

Regarding the proposed sale and transfer to NTEC pursuant to the Purchase and Sale Agreement, assuming PNM and NTEC submit a modified Section 6.1(d)(i) of the PSA to provide that PNM, while still an outgoing owner, may not unilaterally block the remaining co-owners' election to retire Four Corners early or curtail production from the plant and thereby

[379] WRA Resp. 2.

[380] *See* Baatz Dir. 6-7, 18-19, Exh. BJB-8.

reduce emissions even beyond the beneficial rate resulting from seasonal operations, the record demonstrates that there should be no net detriment to the public interest in approving the sale and transfer. In fact, expressed affirmatively, when benefits of the transfer like strengthening the Navajo Nation's position in matters intrinsic to vital interests and the significant economic development assistance for tribal and other locally impacted communities afforded under the ETA are factored into the abandonment equation, the preponderance of the evidence supports a positive finding that the proposed sale and transfer is in the public interest.

On the other hand, addressing the speculation among certain intervenors that disapproval of the abandonment could somehow spur or precipitate the early closure of Four Corners in 2023[381] or 2027 or some other year, the record does not sustain their suppositions. While the Hearing Examiner acknowledges that early closure is possible, and indeed the co-owners have crafted contractual arrangements providing for early closure as soon as 2027, barring unforeseen circumstances, the probative evidence adduced in this case indicates that Four Corners will continue to operate until 2031. In contrast to the intervenors' fervent guesswork, the quantifiable

[381] Setting aside the Navajo Nation's plea for a just energy transition, the Hearing Examiner is doubtful that a 2023 retirement of Four Corners is a realistic option. PNM has emphasized the importance of keeping Four Corners capacity and energy on its system through 2024 and has stressed that it needs the time to ensure replacement resources are available and online by the summer of 2025. *See* Tr. Vol. III (Phillips) 778-79; Fallgren Reb. at 45, 46 ("As evidenced by the recent delays in bringing San Juan replacement resources coming online, providing adequate review time and also providing adequate margin for replacement resource developers to bring resources on-line in a non-expedited manner is critical to continuing PNM's transition to a coal-free grid without jeopardizing system reliability. This [abandonment] filing is not too soon; rather, the timing of this filing provides adequate margin to ensure a smoother transition and acquisition of replacement resources.") (internal citation omitted). What's more, if retirement of the plant is not an option for PNM, it is exceedingly unlikely that a 2023 shutdown of FCPP would be viable for the other co-owners, who unlike PNM, apparently have not initiated processes to acquire replacement resources. This is consistent with the findings above that indicate the majority owner and operator of Four Corners, APS, would need 970 MW of additional firm capacity during the same period of transition and resource additions on its system and maintained in its most recent rate case before the ACC that retiring FCPP (or "4CPP" as it's known in the ACC case) would jeopardize system reliability. *See, e.g.*, Fallgren Supp. 4-5.

and unquantifiable benefits "of the action"[382] proposed include substantial savings to ratepayers, reducing PNM's portfolio emissions, reducing New Mexico and regional emissions through seasonal operations, facilitating the Navajo Nation's just transition away from coal, and providing affected communities $16.5 million in ETA transition funding. So, "while there's always a hypothetical possibility" that PNM could figure a way out of Four Corners before 2031, as PNM witness Nicholas Phillips observed, what the Commission has before it in the proposed sale and abandonment is "an actual opportunity[,]" a situation where "one in the hand is better than two in the bush."[383]

Furthermore, while the abandonment of Four Corners still would be possible in 2031 under the ETA, the benefit of the early divestiture of Four Corners through PNM's transfer to NTEC would be lost and the delay would eliminate financial benefits to customers; it would also delay by at least six years the economic development and ETA transition funding to the Navajo Nation and local communities and thus squander critical benefits that the early abandonment and transfer affords. Moreover, while PNM would still be able to comply with the REA's increasing RPS mandates and carbon requirements if FCPP continued to serve customers through 2031, the early divestiture provides benefits from the early reduction of the carbon emissions associated with PNM's generation portfolio used to serve customers between 2025 and 2031.[384]

Accordingly, for the reasons stated, the Hearing Examiner recommends that the Commission approve the abandonment and sale and transfer of PNM's interest in the Four Corners

[382] As noted above, the Commission has expressed the cost-benefit analysis to be "one of 'net benefit' to the public interest, where quantifiable and unquantifiable benefits must outweigh the costs *of the action*." *NORA Order*, at 11, ¶ 21 (emphasis added).

[383] Tr. Vol. III (Phillips) 803-04.

[384] *See* Phillips Dir. 25-26.

Power Plant proposed in the Amended Application consistent with and controlled by the following findings and conclusions.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Statement of the Case, Background, Discussion, Analysis, and all findings and conclusions contained therein, whether or not separately stated, numbered, or designated as findings and conclusions, are incorporated by reference herein as findings and conclusions. Based on the foregoing Statement of the Case, Background, and Discussion and Analysis, the Hearing Examiner recommends that the Commission further **FIND** and **CONCLUDE** as follows:

1. PNM is a New Mexico corporation that owns, operates, and controls public utility plant, property, and facilities, including generation, transmission, and distribution facilities that provide retail and wholesale electric service in New Mexico. PNM is a public utility subject to the jurisdiction of the Commission pursuant to the Public Utility Act.

2. The Commission has jurisdiction over the subject matter of this case.

3. Reasonable, proper, and adequate notice of this matter has been given.

4. PNM's continued use of the Four Corners Power Plant is unwarranted, and the present and future public convenience and necessity do not otherwise require PNM's continued use of and participation in the plant.

5. PNM's proposed abandonment of its interest in the Four Corners Power Plant results in a net public benefit, is consistent with the *Commuters' Committee* standards, and should be approved as in the public interest consistent with the provisions and requirements of this Order.

6. If the Purchase and Sale Agreement between PNM and NTEC is modified as addressed in section IV.B.3 above and required below, PNM's proposed sale and transfer of its

interest in the Four Corners Power Plant to NTEC is not unlawful nor is it inconsistent with the public interest and should be approved as in the public interest under NMSA 1978, § 62-6-13.

7. As written, Article 6.1(d)(i) of the Purchase and Sale Agreement is contrary to the public interest, at least to the extent that if all the other FCPP co-owners with a vote in the matter (APS, TEP, and SRP) wish to vote to retire or reduce production from the Four Corners Power Plant before the agreement's closing date PNM should not be permitted to block or veto such a vote.

8. PNM should provide in this docket shortly after entry of the Commission's Final Order in this case an amendment to Article 6.1(d)(i) that either strikes the offending provision from the Purchase and Sale Agreement or is modified to affirm that if the other FCPP co-owners, besides NTEC, vote unanimously to reduce the production from the plant or cease its operation before the closing date of the agreement, PNM will not have the power to veto or otherwise block the ability of the other facility co-owners to take such action.

9. PNM's request for approval to create regulatory assets to recover the costs addressed above that are not eligible for securitization under the ETA should be approved as recommended in Section IV.C above. PNM should be authorized to create regulatory assets to record the costs for which it requests recovery, but the ratemaking determinations on PNM's right to recover the costs and any associated carrying charges should be reserved until the general rate case in which PNM seeks the recovery of the costs.

VI. DECRETAL PARAGRAPHS

Based upon the Findings of Fact and Conclusions of Law set forth herein and the record as a whole, the Hearing Examiner recommends that the Commission **ORDER** as follows:

A. The findings, conclusions, analyses, determinations, and rulings made and construed herein are hereby adopted and approved as the findings, conclusions, analyses, determinations, and rulings of the Commission.

B. PNM's request for approval to abandon and sell and transfer its interest in the Four Corners Power Plant to NTEC is approved, subject to PNM fulfilling the requirements of this Order with regard to filing an amended Purchase and Sale Agreement.

C. PNM shall file in this docket within 7 days of entry of this Order an amendment to Article 6.1(d)(i) which affirms the principle that if the other Four Corners Power Plant co-owners besides NTEC unanimously desire to reduce the production from the plant or cease its operation before the closing date of the Purchase and Sale Agreement, PNM shall not have the power to block or veto the ability of the other facility co-owners to take such action.

D. Provided that the Purchase and Sale Agreement is amended and re-submitted as provided in Paragraph C above, the Purchase and Sale Agreement between PNM and NTEC shall be approved.

E. PNM's request for approval to create regulatory assets to recover the costs that are not eligible for securitization under the ETA is approved. PNM is authorized to create regulatory assets to record the costs for which it requests recovery, but the ratemaking determinations on PNM's right to recover the costs and any associated carrying charges is reserved until the general rate case in which PNM seeks the recovery of the costs.

F. In accordance with 1.2.2.35(D) NMAC, the Commission has taken administrative notice of all Commission orders, rules, decisions, and other relevant materials in all Commission proceedings cited in this Order.

G. This Order is effective immediately.

H. A copy of this Order shall be served on all parties listed on the official service list for this case.

I. This docket is closed.

ISSUED at Santa Fe, New Mexico this **12th** day of **November 2021**.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros

Anthony F. Medeiros
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER	))))))	**Case No. 21-00017-UT**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused to be sent to the individuals listed below, via e-mail only, a true and correct copy of the ***Recommended Decision on PNM's Request for Approval of the Sale and Abandonment of its Interest in the Four Corners Power Plant and to Recover Non-Securitized Costs*** issued November 12, 2021.

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DATED this **12th** day of **November 2021**.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros

Anthony F. Medeiros
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER	)	**Case No. 21-00017-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant.	)	

RECOMMENDED DECISION ON PNM'S REQUEST FOR ISSUANCE OF A FINANCING ORDER

12 November 2021

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GLOSSARY OF ACRONYMS AND DEFINED TERMS

Acronym/Defined Term	Meaning
2015 Rate Case	Case No. 15-00261-UT
2016 Rate Case	Case No. 16-00276-UT
ABCWUA	Albuquerque Bernalillo County Water Utility Authority
ACC	Arizona Corporation Commission
APS	Arizona Public Service Company
ARC	Asset retirement cost
ARO	Asset retirement obligation
ASC	Accounting Standards Codification
Agreement or PSA	Four Corners Purchase and Sale Agreement between PNM and NTEC dated as of Nov. 1, 2020
Application or App.	Amended Application filed by PNM on March 15, 2021
Attorney General or NMAG	State of New Mexico, *ex rel*. Hector H. Balderas, Attorney General
Avangrid	Avangrid Networks, Inc. and Avangrid, Inc., collectively
Br.	Brief in chief or initial brief

Acronym/Defined Term	**Meaning**
City	City of Albuquerque, New Mexico
County	Bernalillo County, New Mexico
CCAE	Coalition for Clean Affordable Energy
CCN	Certificate of Public Convenience and Necessity
CCR	Coal combustion residuals or coal ash
CCSD	Central Consolidated School District
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFRE	Citizens for Fair Rates and the Environment
CSA	Four Corners Coal Supply Agreement
CWIP	Construction work in progress
Certification of Stipulation	Certification of Stipulation in Case No. 16-00276-UT issued Oct. 31, 2017
Commission or NMPRC	New Mexico Public Regulation Commission
Community Groups	SJCA, Diné C.A.R.E., Tó Nizhóní Aní, and NAVAEP
COVID-19	Coronavirus disease
Cumbre	Cumbre Court Reporting Services, L.L.C.
Diné C.A.R.E.	Diné Citizens Against Ruining Our Environment
EPA	Environmental Protection Agency
EPE	El Paso Electric Company
ESA	Energy storage agreement
ETA	Energy Transition Act
ETBs	Energy transition bonds
ETCs	Energy transition charges

Acronym/Defined Term	Meaning
Exh.	Exhibit
FCPP or Four Corners	Four Corners Power Plant
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
Fitch	Fitch Ratings Service, Inc.
GAAP	Generally Accepted Accounting Principles
GWh	Gigawatt-hour
Iberdrola	Iberdrola, S.A., a corporation (*Sociedad Anónima*) organized under the Laws of the Kingdom of Spain and ultimate parent company of Avangrid.
kW	Kilowatt
Legislature	New Mexico Legislature
MWh	Megawatt-hour
Merger proceeding	Case No. 20-00222-UT, *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 General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement this Transaction*
Modified Revised Stipulation	Modified Revised Stipulation in Compliance with and Conforming to Commission's Orders Granting Conditional Approval in Case No. 16-00276-UT filed Jan. 23, 2018
NAVAEP	NAVA Education Project
NEE	New Energy Economy
NMAC	New Mexico Administrative Code
NM AREA	New Mexico Affordable Reliable Energy Alliance

Acronym/Defined Term	Meaning
NMCA	New Mexico Court of Appeals
NMPSC	New Mexico Public Service Commission
NMPUC	New Mexico Public Utility Commission
NMSA	New Mexico Statutes Annotated
NMSC	New Mexico Supreme Court
NPV	Net present value
NTEC	Navajo Transitional Energy Company, LLC
NTEC Operating Agreement	Amended and Restated Operating Agreement of the Navajo Transitional Energy Company, LLC.
Nation	Navajo Nation
O&M	Operations and maintenance
OEH or Onward Energy	Onward Energy Holdings, LLC
PPA	Purchased power agreement
PSA	Purchase and Sale Agreement between PNM and NTEC
Procedural Order	Procedural Order issued in this case by the Hearing Examiner on March 17, 2021
PNM	Public Service Company of New Mexico
PNMR	PNM Resources, Inc., a New Mexico corporation that wholly owns PNMR Services Company, which provides shared services to PNMR and its active subsidiaries, including PNM
PUA	Public Utility Act
PVGNS	Palo Verde Nuclear Generating Station
REA	Renewable Energy Act
Resp.	Response
Revised Final Order	*Revised Order Partially Adopting Certification of Stipulation* in Case No. 16-00276-UT issued Jan. 10, 2018.

Acronym/Defined Term	Meaning
ROO	Recommended opinion and order
S.B. 489	Senate Bill 489
SCR	Selective catalytic reduction pollution control system or "SCR controls"
SEC	Securities and Exchange Commission
SJGS	San Juan Generating Station
SJCA	San Juan Citizens Alliance
SNCR	Selective non-catalytic reduction pollution control equipment
SPE	Special-purpose entity
SPS	Southwestern Public Service Company
SRP	Salt River Project Agricultural Improvement and Power District
STEM	Science, technology, engineering, and mathematics
San Juan County or SJC	Board of County Commissioners of San Juan County, New Mexico
Staff	Commission's Utility Division Staff
TEP	Tucson Electric Power Company
TNA	Tó Nizhóní Aní
Tr.	Transcript of the evidentiary hearings conducted in this case
Vol.	Volume, as in Volumes I-VII of the evidentiary hearings held in this case between Aug. 31 – Sept. 9, 2021
WACC	Weighted average cost of capital
WRA	Western Resource Advocates
Zoom	Zoom videoconferencing platform

Anthony F. Medeiros, Hearing Examiner in this proceeding, submits this Recommended Decision to the New Mexico Public Regulation Commission ("Commission" or NMPRC) pursuant to NMSA 1978, § 8-8-14 and NMPRC Rules of Procedure 1.2.2.29(D)(4) and 1.2.2.37(B) NMAC. The Hearing Examiner recommends that the Commission adopt the following statement of the case, background, discussion, findings of fact, conclusions of law, and ordering paragraphs in an order.

I. STATEMENT OF THE CASE

On January 8, 2021, Public Service Company of New Mexico (PNM or "Company") filed an Application for the Approval of the Abandonment of the Four Corners Power Plant and Issuance of a Securitized Financing Order. PNM sought in the application the Commission's approval to abandon its ownership share in the amount of 200 megawatts (MW) of retail coal-fired generation resources at the Four Corners Power Plant ("Four Corners" or FCPP), transfer the resources to the Navajo Transitional Energy Company, LLC (NTEC), and issue energy transition bonds (ETBs) pursuant to the Energy Transition Act (ETA).[1] PNM's application expressly sought approval for two actions: (1) abandonment of PNM's 200 MW share of Four Corners, representing a minority interest of thirteen percent (13%) of the total generation capacity at the plant, and; (2) securitized financing of plant abandonment and financing costs along with funding for state-administered tribal and community programs.

On January 19, 2021, the Commission issued its Initial Order in this case. The Commission's Order initiated this abandonment proceeding pursuant to Section 62-9-5[2] of the Public

[1] NMSA 1978, §§ 62-18-1 to -23 (2019).

[2] NMSA 1978, § 62-9-5 (1941, as amended through 2005).

Utility Act (PUA);[3] extended the review of PNM's application under NMSA 1978, § 62-18-5 for an additional three months for a total of nine months; and appointed the undersigned as Hearing Examiner to preside over this matter.

On January 26, 2021, Sierra Club filed a Motion for an Order Requiring PNM to File Supplemental Testimony Addressing the Prudence of Four Corners, or, in the alternative, to Dismiss PNM's Application. Relatedly, New Energy Economy (NEE) and Citizens for Fair Rates and the Environment (CFRE) filed on January 28, 2021 their Joint Movant's Motion to Dismiss Application and Supporting Brief.

On January 28, 2021, the Hearing Examiner held a prehearing conference in this case via a Zoom videoconference. The prehearing conference was attended by representatives of PNM, the Albuquerque Bernalillo County Water Utility Authority (ABCWUA), the City of Albuquerque ("City"), Bernalillo County ("County"), CFRE, Central Consolidated School District (CCSD), Coalition for Clean Affordable Energy (CCAE), Diné C.A.R.E. and San Juan Citizens Alliance (SJCA), Interwest Energy Alliance, NEE, New Mexico Affordable Reliable Energy Alliance (NM AREA), the New Mexico Attorney General ("Attorney General" or NMAG), Onward Energy Holdings, LLC (Onward Energy or OEH), the Board of County Commissioners of San Juan County ("San Juan County" or SJC), Sierra Club, Western Resource Advocates (WRA), and Staff of the Commission's Utility Division ("Staff").

[3] NMSA 1978, §§ 62-1-1 to -7 (1909, as amended through 1993), 62-2-1 to -22 (1887, as amended through 2013), 62-3-1 to -5 (1967, as amended through 2019), 62-4-1 (1998), 62-6-4 to -28 (1941, as amended through 2018), 62-8-1 to -13-16 (1941, as amended through 2021). *See Tri-State Generation and Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013, ¶ 8 n. 1, 347 P.3d 274 (listing the foregoing statutory provisions of the "entire PUA" and noting that § 62-13-1 specifies "the range of articles in Chapter 62 that comprised the PUA in 1993.").

On February 1, 2021, the Hearing Examiner issued an Order Requesting Briefing on Sufficiency of PNM's Application and Scope of Issues in Proceeding. The Order instructed the parties to brief the following issues:

> 1) whether PNM's Application is sufficient as plead (i.e., whether the request for approval of the proposed abandonment can be granted without also requesting approval in the Application of the transfer of PNM's interest in the FCPP pursuant to NMSA 1978, §§ 62-6-12(A)(4) and 62-6-13);
>
> 2) whether, in the absence of a request in the Application for approval of the transfer of PNM's interest in the FCPP pursuant to NMSA 1978, §§ 62-6-12(A)(4) and 62-6-13, PNM's Application for approval of the proposed abandonment can be granted (i.e., or should be dismissed);
>
> 3) whether the Commission's consideration of PNM's Application for approval of the proposed abandonment should be conditioned upon its filing of an amended application in which it also requests approval of the transfer of PNM's interest in the FCPP pursuant to NMSA 1978, §§ 62-6-12(A)(4) and 62-6-13;
>
> 4) whether the statutory review period for the Commission's review of PNM's Application for both the abandonment and securitization approvals should start anew upon the filing of an amended application;
>
> 5) whether, in the alternative to starting the statutory review period anew upon the filing of an amended application, the statutory review period should be extended for some specific and reasonable period of time to account for the filing of an amended application to address the deficiencies in the current Application or, at the very minimum, to account for the additional time required to address the matters implicated herein;[4]
>
> 6) address the scope of issues that should be covered in PNM's supplemental testimony inasmuch as a) there was already discussion at the prehearing conference over whether the parties should brief the scope of issues, b) PNM has already broached its interpretation of issues to be addressed, and c) the Commission is set to consider at its February 3, 2021 Open Meeting potential orders addressing Sierra Club's related Motion to Reopen Docket No. 16-00276-UT to Implement the Revised Final Order and NEE's formal complaint against PNM in Case No. 20-00210-UT for the Company's alleged "Continued

[4] The February 1st Order also found, at 8 n. 21, that "given among other things the potential due process considerations inhering, the Hearing Examiner's self-imposed deadline to issue the Notice of Proceeding and Hearing ("Notice") in this case by February 2, 2021 in order to ensure timely publication in six newspapers of general circulation by February 12, 2021 and allow sufficient time for PNM to mail the Notice to its customers has already been compromised."

Reliance on Expensive and Climate-Altering [FCPP] Coal resulting in Unfair, Unreasonable, and Unjust Rates;" and

7) any other comments or concerns regarding PNM's proposed notice in its revised form.[5]

Subsequently, after intervenors and Staff filed briefs and PNM filed a consolidated response to those briefs and the Sierra Club and NEE/CFRE motions, the Hearing Examiner determined in his Order on Sufficiency of PNM's Application and Scope of Issues in Proceeding issued February 26, 2021 that, subject to starting the nine-month statutory review period under the Energy Transition Act to commence anew with its amended filing, PNM should be permitted to file an amended application in this docket by March 15, 2021 supported by direct testimony that, among other things, addressed the statutory standard for approval of the proposed transfer of the Company's interest in the FCPP to NTEC. Further, regarding the scope of issues to be covered in PNM's supplemental testimony, the Order adhered to the Commission's Order on Sierra Club's Motion to Re-open Docket to Implement the Revised Final Order in Case No. 16-00276-UT.[6] In denying Sierra Club's motion to reopen Case No. 16-00276-UT to conduct "the prudence review of certain [FCPP] expenditures that the Commission deferred in its Revised Order Partially Adopting Certification of Stipulation" (*Revised Final Order*) issued in Case No. 16-00276-UT (the 2016 Rate Case) on January 10, 2018,[7] the Commission concluded that its order was not intended

> to reach beyond the immediate request that the Commission order a prudence review to pre-empt PNM's possible recovery of its undepreciated

[5] Feb. 1, 2021 Order, at 7-8.

[6] *In the Matter of the Application of Public Service Company of New Mexico for Revisions of its Retail Electric Rates Pursuant to Advice Notice No. 533*, Case No. 16-00276-UT, Order on Sierra Club's Motion to Re-open Docket to Implement the Revised Final Order ("Order on Motion to Re-open") (Feb 10, 2021).

[7] Order on Motion to Re-open, at 1, ¶ 1. The Commission also noted, at 1, ¶ 2, that Sierra Club had requested, in the alternative, "an order providing 'that the deferred prudence review be conducted, and given effect as appropriate, in [PNM's] Four Corners abandonment filing.'"

> investments in FCPP. Such issues as whether the terms of the ETA may provide an opportunity for consideration of the prudence of undepreciated investments requested to be include in a financing order as energy transition costs or what the effect of the 'black box' rates approved in the Revised Final Order may have on determining energy transition costs are properly raised and considered in Case No. 21-00017-UT consistent with the due process requirements that all parties to that case have full notice and opportunity to be heard on those issues.[8]

Accordingly, in the February 26th Order the Hearing Examiner required PNM to address in supplemental testimony to be filed with the amended application the prudence of undepreciated investments for which PNM seeks inclusion in a financing order as energy transition costs as well as corollary issues such as the effect that the rates authorized by the *Revised Final Order* in Case No. 16-00276-UT may have on determining energy transition costs in this case.[9]

On March 15, 2021, PNM filed its Amended Application for Approval of the Abandonment of through the Sale of Four Corners Power Plant and Issuance of a Financing Order Pursuant to the Energy Transition Act ("Application" or "Amended Application"). The Amended Application is discussed in the next section of this decision. PNM also filed on that date a motion to withdraw its original application filed January 8, 2021 and supplemented its direct testimonies filed January 8, 2021, which PNM expressly incorporated by reference in the Amended Application, with the supplemental testimonies of Mark Fenton, Thomas G. Fallgren, Thomas S. Baker, Michael J. Settlage, and Frank C. Graves.[10]

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[8] Order on Motion to Re-open, at 7-8, ¶ 25.

[9] *See* Feb. 26, 2021 Order, at 22-25 (In sum, the Feb. 26th Order: delineated the scope of supplemental testimony the Hearing Examiner ordered PNM to file; instructed PNM to formally move to withdraw its original application in conformity with 1.2.2.10(E) NMAC; declined to re-institute the remainder of the procedural schedule tentatively set at the January 28, 2021 pre-hearing conference, as suggested by PNM, and indicated a procedural schedule for this case would be developed after consulting with the parties at the prehearing conference, scheduled by separate Order issued on that date, for March 18, 2021.).

[10] *See* App. at 34-35, ¶¶ 58-59. The direct testimonies included those of Mark Fenton, Charles N. Atkins II, Thomas S. Baker, Thomas G. Fallgren, Nicholas L. Phillips, Lauran E. Sanchez, and Michael J. Settlage. PNM (*Cont'd on next page*)

On March 18, 2021, the Hearing Examiner held a second prehearing conference in this case via a Zoom videoconference. The prehearing conference was attended by representatives of PNM, ABCWUA, the City, Bernalillo County, CFRE, CCAE, Diné C.A.R.E., SJCA and Tó Nizhóní Aní, NEE, the Attorney General, Onward Energy, SJCA, San Juan County, Sierra Club, WRA, and Staff. The Hearing Examiner and the prehearing conference participants discussed, among other things, the pending motions to dismiss or for alternative relief,[11] PNM's proposed form of notice filed on March 15, 2021, a procedure for the expedited electronic service of filings and discovery requests and responses, and the development of a procedural schedule.

On March 19, 2021, the Hearing Examiner issued a Procedural Order for this proceeding. The Procedural Order established, *inter alia*, the following schedule and requirements: (i) PNM was required to publish the Notice of Proceeding and Hearing ("Notice") appended to the Procedural Order in the *Alamogordo Daily News*, *Albuquerque Journal*, *Farmington Daily Times*, *Las Cruces Sun News*, *Navajo Times, Santa Fe New Mexican*, *Silver City Sun News*, and *Union County Leader* by April 5, 2021; (ii) PNM was required to post a copy of the Notice on its public website (http://www.PNM.com/regulatory) by April 5, 2021; (iii) PNM was instructed to send , the Notice by certified mailing to the Navajo Nation Tribal authorities listed in Attachment 2 to the Procedural Order by April 5, 2021; (iv) PNM was ordered to mail to its customers (by bill stuffer or separately) a copy of the Notice by no later than May 10, 2021; (v) made motions to intervene

(*Cont'd from previous page*)

subsequently filed errata to the Baker and Fallgren direct testimonies on July 1, 2021 and the Phillips direct testimony on July 27, 2021.

[11] Regarding the pending motions, during the March 18th prehearing conference Counsel for Sierra Club concurred that its January 26, 2021 motion was rendered moot by virtue of the Hearing Examiner's February 26, 2021 Order and PNM's subsequent filing of supplemental testimony. For their part, NEE acknowledged that the NEE/CFRE joint motion to dismiss had been superseded by PNM's filing of the Amended Application. The Hearing Examiner therefore suggested that if NEE and CFRE decided to file a motion to dismiss the Amended Application, they should also file a motion to withdraw the joint motion to dismiss pursuant to 1.2.2.10(E) NMAC.

due by May 17, 2021; (vi) made all dispositive motions and supporting legal briefs due by May 17, 2021, and responses to such motions due by May 31, 2021; (vii) required that Staff and intervenor testimony be filed by July 12, 2021; (viii) required parties requesting that administrative notice[12] be taken of parts of the evidentiary record in Case 16-00276-UT in direct testimony or otherwise to file by July 12, 2021 a pleading designating those particular portions of the record for which administrative notice is requested;[13] (ix) provided for the filing of rebuttal testimony by August 12, 2021 and, again, required that any party requesting that administrative notice be taken of parts of the evidentiary record in Case 16-00276-UT in rebuttal testimony file such designation by August 2, 2021; (x) set a prehearing conference via the Zoom videoconference platform ("Zoom") for August 26, 2021; (xi) set an oral comment hearing on August 30, 2021 to be conducted, due to the ongoing COVID-19 pandemic, via the Zoom and simultaneously livestreamed through YouTube; and (xi) set the evidentiary hearings in this matter conducted via Zoom (and also livestreamed on YouTube) beginning on August 31, 2021 and continuing, as necessary, through September 14, 2021.

The following 16 parties intervened in this proceeding:

ABCWUA
Attorney General
Bernalillo County
CCAE
CFRE
City of Albuquerque

[12] *See* 1.2.2.35(D) NMAC.

[13] The Hearing Examiner noted that "particular portions" meant that each respective designation in the pleading shall pinpoint the page and line numbers of the Case 16-00276-UT transcript or testimony or the page numbers of identified testimony or freestanding exhibits. The Hearing Examiner also provided by way of example "and illustrated . . . strictly for proper format: Tr. (9/8/2017) 322:15-325:8 (Ortiz); PNM Exh. 12 (O'Connell Reb.) at 1:2-27:9; PNM Exh. 12 (O'Connell Reb.), Exh. PJO-4, pp. 1-14; PNM Exh. 21 (Olson Stip. Dir.), Exh. CMO-3 Stip., p. 1 of 1; NEE Exh. 21 (PNM Resp. to 12th Interrogs. and RFPs), p. 2 of 2; NEE Exh. 31 ("Investor Meetings" June 2017), pp. 6, 7, 16, 46." Procedural Order at 7, ¶ A(4), and n. 10.

New Energy Economy
NM AREA
Onward Energy Holdings
San Juan Citizens Alliance, Diné C.A.R.E, NAVA Education Project, and Tó Nizhóní Aní (referenced as the "Community Groups")
San Juan County
Sierra Club
WRA

On February 2, 2021 the Hearing Examiner issued an Order granting PNM's Motion for Entry of Protective Order. The Protective Order issued was identical in substance to the Protective Order issued previously in Case No. 20-00222-UT.[14]

The Hearing Examiner issued an Order Establishing the Official Service List for this proceeding on May 18, 2021. That order was revised four times during this proceeding, i.e., on June 14, 2021, July 13, 2021, August 16, 2021, and November 12, 2021.

On June 14, 2021, the Hearing Examiner issued an Order denying the motions to dismiss PNM's Amended Application filed by CCAE and Joint Movants NEE and CFRE.[15] The Hearing Examiner also issued on this date an Order granting PNM's motion to withdraw its original application in this case.

On July 12, 2021, PNM and NEE filed pleadings designating portions of the record in Case No. 16-00276-UT for which they respectively proposed administrative notice be taken.

[14] *See* Case No. 20-00222-UT, *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 General Diversification Plan; and All Other Authorizations and Approvals Required to Consummate and Implement this Transaction*, Protective Order (Jan. 14, 2021) ("Avangrid/PNMR merger" case or proceeding).

[15] The Order also granted Joint Movants' motion to withdraw their Jan. 28, 2021 motion to dismiss PNM's original application.

On July 12-13, 2021, the following individuals filed direct testimony on behalf of the respective parties: Andrea C. Crane for the Attorney General; Brendon J. Baatz for WRA;[16] Jeremy I. Fisher for Sierra Club; Christopher K. Sandberg for NEE; Craig N. Johnston, Jessica Keetso, and Carol Davis for Community Groups; James R. Dauphinais for NM AREA; and Gabriella Dasheno, Marc A. Tupler, and Eli LaSalle on behalf of Staff.

On July 15, 2021, PNM filed a Request for Confidential Treatment of PNM discover exhibits SC-3-2, SC-4-2, SC-4-4, and SC-5-2. Sierra Club and WRA filed responses in opposition on July 21 and 22, 2021 respectively. The Hearing Examiner issued an Order denying PNM's request for confidential treatment on July 29, 2021. PNM filed unredacted copies of the documents pursuant to the July 29th Order on August 3, 2021.

On August 2, 2021, the following individuals filed rebuttal testimony on behalf of the respective parties: Elisabeth Eden, Thomas G. Fallgren, Laura E. Sanchez, Thomas S. Baker, and Frank C. Graves for PNM;[17] Christopher K. Sandberg for NEE; and Brendon J. Baatz for WRA.

On August 11, 2021, Sierra Club filed a motion to take administrative notice of a recommended opinion and order (ROO) of an administrative law judge of the Arizona Corporation Commission finding, *inter alia*, that Arizona Public Service Company's (APS) decision to install a selective catalytic reduction pollution control system on the FCPP and order APS to investigate early retirement of the plant.

On August 12, 2021, Sierra Club filed a motion to strike the rebuttal testimony of PNM witness Laura Sanchez. Community Groups also filed on this date a motion to strike certain

[16] WRA filed a notice of errata to the direct testimony of Brendon Baatz on July 15, 2021.

[17] PNM filed errata to the rebuttal testimonies of Frank Graves and Michael Settlage on August 18 and 25, 2021 respectively.

exhibits from, and portions of, the rebuttal testimony of PNM witness Thomas Fallgren. NEE filed responses in support of the motions to strike and PNM filed a response opposing the motions on August 19 and 20, 2021.

On August 16, 2021, Sierra Club filed an untimely, but nevertheless accepted, motion for leave to file surrebuttal testimony in response to the rebuttal testimony of PNM witness Frank Graves. PNM filed a response opposing the motion for surrebuttal on August 20, 2021.

The Hearing Examiner issued an Order addressing the foregoing August 12 and 16, 2021 prehearing motions of Sierra Club and Community Groups on August 24, 2021.

On August 16, 2021, the Hearing Examiner issued an Order regarding prehearing memoranda and the August 26, 2021 prehearing conference.

On August 17, 2021, NEE filed an application requesting the issuance of a subpoena to Charles Eldred, Executive Vice President, Corporate Development and Finance for PNM Resources, Inc. (PNMR). On August 24, 2021, responses in support of NEE's Application were filed by ABCWUA and Sierra Club and in opposition to the application by PNM. The Hearing Examiner issued an Orde denying NEE's application on August 27, 2021.

On August 26, 2021, the Hearing Examiner conducted a prehearing conference with counsel for the parties over Zoom.

On August 27, 2021, the Hearing Examiner issued a Prehearing Order.

On August 30, 2021, Sierra Club filed the surrebuttal testimony of Jeremy I. Fisher. PNM filed the sur-surrebuttal testimony of Frank C. Graves on September 3, 2021.

The Commission held a public comment hearing in this case on August 30, 2021. Sixteen people provided oral comment during this hearing, which was conducted via Zoom and livestreamed on YouTube. The transcript of the August 30, 2021 public comment hearing was filed

by Cumbre Court Reporting Services, L.L.C. ("Cumbre") on September 2, 2021. Written comments were filed by 8 individuals and several entities of the Navajo Nation as of the date of this decision.[18]

The evidentiary hearings were conducted in this case over seven days from August 31, 2021 to September 3, 2021 and September 7-9, 2021. The Commission received testimony from the following twenty witnesses:

PNM
Mark Fenton
Thomas G. Fallgren
Laura E. Sanchez
Nicholas L. Phillips
Charles N. Atkins
Thomas S. Baker
Michael J. Settlage
Elisabeth A. Eden
Frank C. Graves

Attorney General
Andrea C. Crane

Community Groups
Carol Davis
Craig N. Johnston
Jessica Keetso

New Energy Economy
Christopher K. Sandberg

NM AREA
James R. Dauphinais

Sierra Club
Jeremy L. Fisher

WRA
Brendon J. Baatz

[18] Specifically, letters or resolutions were filed by the Navajo Nation President and Vice President, the 24th Navajo Nation Council, the Northern Navajo Agency Council, the District 13 Council, and the Nenahnezad Chapter.

Staff
Eli LaSalle
Marc A. Tupler
Gabriella Dasheno

The transcripts of the evidentiary hearings presented in seven volumes were filed by Cumbre between September 2-10, 2021.[19]

On September 13, 2021, the Hearing Examiner issued a Briefing Order. The Order set forth a series of ten issues, several with subparts, that the parties were directed to address. The Order also confirmed the schedule for post-hearing briefs and other submissions established at the end of the hearings.

The schedule, which acknowledged the parties' participation in other proceedings such as the Avangrid/PNMR merger proceeding pending in Case No. 20-00222-UT and additional PNM proceedings such as Case Nos. 21-00083-UT and 21-00143-UT, required briefs in chief and suggested transcript corrections by October 1, 2021 and response briefs by October 13, 2021.[20]

On October 1, 2021, PNM filed a pleading containing suggested corrections to the transcript of proceedings. The Hearing Examiner issued an Order Partially Approving PNM's Suggested Corrections to the Transcript of Proceedings on November 12, 2021.

Briefs in chief or initial briefs ("Br.") were filed on October 1, 2021.[21] Response briefs ("Resp.") were filed on October 13, 2021.

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[19] E.g., Volume ("Vol.") I of the transcripts reflects day 1 of the evidentiary hearings through Vol. VII, which reflects the final day of hearings, Sept. 9, 2021.

[20] Tr. (Vol. VII) 1789-94.

[21] The Attorney General filed its initial brief on October 4, 2021 and on that date also filed a motion for leave to file its brief out of time. The motion should be deemed granted. In addition, it should be noted that Community Groups brief-in-chief is misnumbered, starting with page 1 as the cover page and then beginning again with page 1 ("II. Legal Standards to be Applied") on what would be page 2 of the body text of the brief; thus, in citing to that brief this decision uses Community Groups' pagination. The pagination glitch is not repeated in Community Groups' response brief, however.

On October 19, 2021, NEE filed a "Motion for Limited Reply to Refute PNM's Claims in its Response Brief." NEE's reply should be deemed accepted into the record.

II. BACKGROUND AND LEGAL FRAMEWORK

A. PNM's Proposed Sale and Abandonment of the Four Corners Power Plant

Pursuant to its Amended Application, PNM requests that the Commissioner approve the following actions:

(1) Abandonment of PNM's 200 MW share of the Four Corners Power Plant, representing a minority interest of thirteen percent (13%) of the total generation capacity of the plant;

(2) Sale and transfer of PNM's ownership interest in the FCPP to the Navajo Transitional Energy Company, LLC (NTEC) pursuant to the Purchase and Sale Agreement ("Agreement" or PSA);

(3) Securitized financing of abandonment and financing costs along with funding for state-administered tribal and community programs.

Unlike the abandonment of the San Juan Generating Station (SJGS) approved in Case No. 19-00018-UT, PNM is not requesting approval of replacement resources in this proceeding along the lines of the replacement resources for the SJGS subsequently approved by the Commission in Case Nos. 19-00195-UT[22] and 20-00182-UT.[23] PNM's claims that it has demonstrated with sufficient certainty that replacement resources can be deployed prior to abandonment of Four Corners.[24] That claim, contested by some parties, is addressed in section IV.A.11 of the separate

[22] *See In the Matter of Public Serv. Co. of New Mexico's Consolidated Application for Approvals of the Abandonment, Financing, and Replacement for San Juan Generating Station Pursuant to the Energy Transition Act*, Case No. 19-00915-UT, Recommended Decision on Replacement Resources – Part II (June 24, 2020), *adopted by* Final Order (July 29, 2020).

[23] *See In the Matter of the Application of Public Serv. Co. of New Mexico for Approval of Renewable Power Agreements and Energy Storage Agreements and Proposal for Demand Response Plan Pursuant to Final Order in Case No. 19-00195-UT*, Case No. 20-00182-UT, Recommended Decision (Nov. 13, 2020), *adopted by* Order Adopting Recommended Decision (Dec. 2, 2020).

[24] PNM Br. 32.

Recommended Decision being issued today on the abandonment, sale and transfer issues in this docket. It is referred to as the *Recommended Decision on FCPP Sale and Abandonment*.[25]

1. The Four Corners Power Plant

The Four Corners plant is a coal-fired generation facility located near Fruitland, New Mexico within the Navajo Nation. The plant is comprised of two 770-MW units, Units 4 and 5, which came on-line in 1969 and 1970.[26] The plant formerly consisted of five coal-fired generation units. Units 1, 2 and 3 – in which PNM had no ownership interest – were retired in 2010 for purposes of compliance with the Environmental Protection Agency's (EPA) Regional Haze Rule.[27] Since it began operating in 1963, FCPP has been and continues to be a major source of revenue as well as employment for the Navajo Nation and its members.[28]

Four Corners has been serving PNM customers since PNM acquired a 200 MW share in Units 4 and 5 in 1969 and 1970, respectively, which represents a current 13% share.[29] Arizona Public Service Company (APS) is the majority owner and operator of Four Corners. The other owners in Units 4 and 5 are APS, the Salt River Project Agricultural Improvement and Power District (SRP), Tucson Electric Power Company (TEP), and NTEC. Four Corners obtains coal exclusively from the adjacent Navajo Mine in what is referred to as a "mine mouth" configuration. The Navajo Mine has no other customers for this coal other than Four Corners.[30]

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[25] *See* Case No. 21-00017-UT, Recommended Decision on PNM's Request for Approval of the Sale and Abandonment of its Interest in the Four Corners Power Plant and to Recover Non-Securitized Costs (Nov. 12, 2021) (*Recommended Decision on FCPP Sale and Abandonment*).

[26] PNM Exh. 4 (Fallgren Dir.) 4, PNM Exh. TGF-5, p. 1 of 2.

[27] Fallgren Dir. 5; Amended Application 9.

[28] Fallgren Dir. 4.

[29] PNM Exh. 4 (Fallgren Dir.) 4.

[30] Fallgren Dir. 4-5.

From its inception, the Four Corners project has been set up as a tenancy in common ownership. The current plant ownership is as follows: APS (63%); NTEC (7%); SRP (10%); TEP (7%); and PNM (13%). Each of the participants holds an individual undivided interest in their separate shares of Four Corners. The current planned operating life of the plant is through 2031, concurrent with the coal supply agreement with NTEC.[31]

Four Corners is governed pursuant to the following main agreements: (1) Co-Tenancy Agreement, which establishes the terms and conditions relating to ownership and operation of FCPP; (2) Operating Agreement, which sets the terms, covenants, and conditions that govern the operating work of FCPP; (3) Coal Supply Agreement (CSA), which provides for NTEC to be the exclusive coal supplier until July 6, 2031; and (4) Navajo Nation Lease Agreement, which grants rights-of-way and easements within the Navajo Nation that allowed for the construction and operation of FCPP and its associated transmission system and expires on July 6, 2041.[32]

2. Proposed sale of PNM's ownership interest to NTEC

In PNM's 2016 Rate Case (Case No. 16-00276-UT), PNM along with eleven intervenors and Staff entered into a Modified Revised Stipulation in Compliance with and Conforming to Commission's Orders Granting Conditional Approval ("Modified Revised Stipulation") filed in conformity with the Commission's January 17, 2018 *Order on Notice of Acceptance* and the Hearing Examiners' *Certification of Stipulation*.[33] In regard to the Four Corners plant, the Modified Revised Stipulation included the following requirement:

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[31] Fallgren Dir. 7.

[32] *See* Fallgren Dir. 7-10 (providing a brief description of each agreement).

[33] Case No. 16-00276-UT, Modified Revised Stipulation in Compliance with and Conforming to Commission's Orders Granting Conditional Approval, at 9, ¶ 10 (Jan. 23, 2018). The cover letter to the Modified Revised Stipulation states that "[i]n compliance with the [*Order on Notice of Acceptance*] and Paragraph B of the (*Cont'd on next page*)

> PNM shall perform a cost-benefit analysis as part of its 2020 Integrated Resource Plan, on the impact of an early exit from Four Corners as a participating owner, as of 1) 2024, and 2) 2028, that includes an analysis of the cost recovery of and return on PNM's undepreciated investments in Four Corners together with full recovery of all existing contractual obligations, including default payments and penalties.[34]

PNM maintains that, in accordance with the Modified Revised Stipulation, the Company sought an opportunity to accomplish an early exit from Four Corners in 2024. An early closure and permanent shut down of Four Corners plant require unanimous agreement of participants without an interest in the coal mine. Because the stated intent of other participants is to continue operating the plant, absent a transfer of its interest, PNM would be subject to default payments and penalties if PNM attempted to unilaterally cease its participation in Four Corners.[35] Under the current agreements, PNM would be obligated to pay for its share of operating and fuel costs through 2031.[36] PNM claims that if it defaulted in this way and ceased using Four Corners, replacing it with other resources, customers would be responsible for unavoidable ongoing costs, as well as the costs of the new resources, a result which PNM contends would be an uneconomic outcome. PNM thus asserts that without a potential alternative such as the transfer of ownership to NTEC, it would not have been feasible for PNM to exit Four Corners in 2024. According to PNM's Vice President of Generation, Thomas G. Fallgren, the same is true for a 2028 exit. Without an agreement like the sale and transfer to NTEC, Mr. Fallgren stated at hearing, "[i]n

(*Cont'd from previous page*)

Certification of Revised Stipulation [which stated, "B. If the Revised Stipulation is modified in the form of Attachment B within seven days after issuance of the Order, the Modified Stipulation is approved."], PNM is submitting a *Modified Revised Stipulation in Compliance with and Conforming to Commission's Order Granting Conditional Approval*." (emphasis in original).

[34] Modified Revised Stipulation, at 9, ¶ 10.

[35] Fallgren Dir. 11.

[36] PNM Exh. 8 (Fallgren Reb.) 25.

2028, there was not a credible exit plan."[37] As will also be seen below, PNM's claims regarding the origin and basis for the proposed sale to NTEC is contested by several parties, some of whom allege the impetus for and timing of the proposed Four Corners sale and abandonment is being driven by PNM's proposed merger with Avangrid pending in Case No. 20-00222-UT.

In any event, PNM asserts that "with the negotiation of the sale and transfer of PNM's interests to NTEC and the avoidance of contractual default payments and penalties, the 2024 exit from Four Corners is more beneficial for customers than remaining a plant participant until 2031. These benefits are solidified with the agreement that PNM's shareholders will absorb the costs of the $75 million payment to NTEC related to obligations under the CSA."[38]

3. The prospective transferee: Navajo Transitional Energy Company, LLC

"NTEC was created," according to PNM witness Fallgren's testimony, "in a pioneering effort by the Navajo Nation to achieve sovereignty over its natural resources. NTEC was established under Navajo Nation law and operates as an autonomous commercial entity with an independent board of directors."[39] NTEC's operations are determined by a board of directors with a fiduciary responsibility to its sole shareholder, the Navajo Nation.[40] NTEC owns the Navajo

[37] Tr. Vol. II (Fallgren) 409.

[38] PNM Br. 5. *See also* Fallgren Supp. 14.

[39] PNM Exh. 4 (Fallgren Dir.) 12.

[40] *See* PNM Exh. 39 (NTEC Amended and Restated Operating Agreement) 13, Art. III, Sec. D ("The Management Committee shall have all the authorities and responsibilities of general management, and oversight over the Company, as a Board of Directors has over a Corporation.") and 16, Sec. D.ii.b (stating that the Management Committee and its Members shall "[h]ave the rights and responsibilities of directors of similar for-profit companies pursuant to general corporate law or policy …"); Tr. Vol. II (Fallgren) 420-21 ("It would be my understanding that the Management Committee operates much like a Board of Directors that establishes the day-to-day operations of the facilities. The Navajo Nation is a shareholder or the single shareholder of NTEC. However, the Navajo – the Management Committee would have a fiduciary responsibility, obviously, as the Board of Directors – [to] act in the best interests of their shareholder, which is the Navajo Nation.").

Mine and currently holds a 7% interest in Four Corners. It also owns and operates mines in Montana and Wyoming.[41] Mr. Fallgren described NTEC's mission as being

> to serve as a reliable, safe producer of coal while diversifying the Navajo Nation's energy resources to create economic and environmental sustainability for the Navajo people, and to develop and operate an energy company that values the Navajo Nation, its people and its resources, now and in the future. NTEC's operation currently provides approximately 1,300 jobs; supports numerous community benefit initiatives including vital free coal distribution to the Navajo and Hopi Nation for home heating; and promotes STEM fields (science, technology, engineering, and mathematics) in education and vocational training for Navajo Nation students.[42]

4. The Four Corners Purchase and Sale Agreement

Under the terms of the Four Corners Purchase and Sale Agreement dated November 1, 2020, NTEC will assume all of PNM's operating and capital ownership interests and obligations in Four Corners effective January 1, 2025.[43] PNM thereafter will not be a purchaser under any long-term energy contracts with NTEC for power from Four Corners. PNM is selling its entire 13% (200 MW) share of Four Corners to NTEC for $1, with NTEC thereafter assuming all ongoing plant operating and capital requirements with that transfer.[44] For a payment of $75 million, NTEC will assume all of PNM's obligations under the Four Corners CSA pursuant to the Coal Supply

[41] PNM Exh. 4 (Fallgren Dir.) 12.

[42] *Id*.

[43] Fallgren Dir., PNM Exh. TGF-2.

[44] Fallgren Dir. 12, 13.

Agreement Assignment, in the form attached as Exhibit H to the PSA.[45] As indicated in the quote above, PNMR shareholders are paying the entire $75 million.[46]

Pursuant the PSA, PNM will retain its current plant decommissioning and coal mine reclamation obligations. Other assets are being transferred as part of the PSA. Specifically, the limited portion of the associated FCPP switchyard equipment necessary to transport the energy from the plant across the 500kV and 345kV switchyards is also included in this transfer.[47] Fallgren assured that the switchyard assets as part of the proposed transfer "are associated with PNM's share of Four Corners and do not impact PNM's ability to deliver PNM or other market resources used to serve PNM customers."[48]

5. Four Corners seasonal operations agreements

According to agreements the Four Corners co-owners entered into during this proceeding, only a single FCPP unit will operate on a year-round basis beginning in the fall of 2023.[49] Both Units 4 and 5 will operate during the summer peak season from June through October when customer needs are the highest. Mr. Fallgren stated that seasonal operations afford APS, SRP, and TEP more flexibility in operating the plant, while allowing NTEC access to its ownership share year-round. PNM has estimated that carbon emissions from Four Corners will be reduced by 20-

[45] PNM Exh. 5 (Fallgren Supp.) 14. Mr. Fallgren notes that under Section 3.3 of the PSA, PNM paid NTEC a refundable payment of $15 million at the time of execution of the Agreement and will pay the balance of $60 million following the receipt of Commission approval in this case. NTEC will also release PNM from further obligations under the coal supply agreement pursuant to the Coal Supply Release attached as Exhibit G to the Agreement.

[46] PNM Supp. 14.

[47] *See* Fallgren Dir., Exh. A ("Acquired Interests") to PSA (PNM Exh. TGF-2) for a list of the assets and corresponding percentages proposed for transfer to NTEC, as such assets are defined in the Facilities Co-Tenancy Agreement.

[48] Fallgren Dir. 13-14.

[49] PNM Exh. 5 (Fallgren Supp.) 2.

25%.[50] The finalized agreements facilitating seasonal operations are incorporated as amendments to the Four Corners operating, co-tenancy, and coal supply agreements and they are attached to PNM witness Fallgren's rebuttal testimony.[51]

As part of the agreements for seasonal operations, the Four Corners co-owners have agreed to increase the notice period for possible early shutdown of Four Corners from two years to four years, with the opportunity to reduce the notice period upon payment for the shortened notice period.[52] The agreements for seasonal operation amend Section 20 of the Four Corners CSA so the owners would not vote for a closure of Four Corners to be effective prior to January 1, 2027. While the Four Corners owners agreed to provide four years notice for an early closure, they retain the right to give a two-year notice of early closure (the current length of the notice period) on or after January 1, 2027 by paying $200 million, and a three-year notice of early closure on or after January 1, 2028 upon payment of $100 million.[53] PNM claims the four-year notice is in alignment with the request of the Navajo Nation for adequate notice as outlined in Navajo Nation President Jonathan Nez's January 24, 2020 letter to the Arizona Corporation Commission (ACC) regarding the TEP rate case. President Nez's letter states: "The Nation recommends the ACC require utilities to provide a five-year advanced notice of any planned power plant closure."[54]

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[50] Fallgren Supp. 28.

[51] *See* Fallgren Reb., PNM Reb. Exhs. TGF-2, TGF-3, TGF-4, TGF-5, TGF-6, and TGF-7. PNM also filed the agreements in the docket in compliance with the Hearing Examiner's order denying the documents confidential treatment.

[52] NTEC is restricted from voting on early plant closure and termination of the CSA under section 9.15 of the Four Corners co-tenancy agreement. "This restriction is based," according to Mr. Fallgren "on an understanding that NTEC would have a conflict of interest because it also serves as the supplier of fuel for the plant. Fallgren Supp. 26.

[53] Fallgren Supp. 31; Fallgren Reb., PNM Reb. Exh. TGF-7, pp. 12-13 (CSA "2022/2025 Amendment," Art. III, "Early Termination for Plant Shut Down," Sec. 20.2).

[54] Fallgren Supp. 31 (citing https://docket.images.azcc.gov/E000004596.pdf).

Mr. Fallgren asserted at hearing that it is highly unlikely that any agreement to operate Four Corners seasonally can be accomplished without the sale of PNM's interest to NTEC.[55] PNM maintains that the PSA between PNM and NTEC is a condition precedent to the agreements on seasonal operations, meaning that the parties to the agreements on seasonal operations believe that the changes that will occur as part of PNM's sale to NTEC are necessary to facilitate operations on a seasonal basis.[56] Fallgren explained that the negotiations on seasonal operations were delicate and contentious with five different parties negotiating their interests. Yet, despite the parties' differences, the combination of PNM's and NTEC's interests achieves the minimum load requirements of a single unit, thereby facilitating seasonal operations.[57] PNM submits that while the Commission is not required to approve the agreements encompassing seasonal operations, the Commission's approval of the PSA, which facilitates the transition to seasonal operations,[58] will result in net benefits to New Mexico and the public at large by reducing Four Corners emissions as of 2023.[59]

[55] Tr. Vol. II (Fallgren) 477 ("Seasonal Operation[s] cannot stand on its own" without the Purchase and Sale Agreement to NTEC moving forward.); *id.* 478.

[56] PNM Br. 8. However, in a footnote addressing the matter in his rebuttal testimony, Mr. Fallgren calls the PSA "a condition *subsequent* to the seasonal operations agreement.") Fallgren Reb. 29, n. 29 (emphasis added).

[57] Tr. Vol. II (Fallgren) 478-81.

[58] Fallgren Reb. 25.

[59] PNM Br. 8-9.

B. Legal Standards Applicable to Sale and Abandonment of the FCPP

1. Energy Transition Act

The Energy Transition Act was enacted into law as part of Senate Bill (S.B.) 489 in 2019. In passing Senate Bill 489, which is also entitled "Energy Transition Act,"[60] the Legislature devised a comprehensive policy to transition the State of New Mexico away from fossil fuel burning generation sources to renewable energy and other zero-carbon resources.[61] The Energy Transition Act being applied in this proceeding establishes mechanisms to facilitate the abandonment of PNM's interests in two coal-fired generating plants – the remaining Units 1 and 4 of the San Juan Generating Station (SJGS) in 2022 and PNM's interests in the FCPP by 2031. The San Juan station and Four Corners plant are the only facilities in New Mexico that satisfy the ETA's definition of "qualifying generating facility."[62]

The ETA provides for the use of bonds, i.e., securitization, to recover for PNM: (i) the undepreciated costs of its interests in the two plants; (ii) the estimated costs of decommissioning and reclamation; (iii) the estimated costs of severance and job training for affected employees at the plants and mines; (iv) financing costs associated with the securitization; and (v) payments required to the state-administered funds for Indian affairs, energy transition economic develop-

[60] S.B. 489 (2019 N.M. Laws, ch. 65) and the ETA are often considered one and the same piece of legislation. However, the ETA is only one part of Senate Bill 489. S.B. 489 consists of 82 pages of double-spaced provisions. It contains primarily a new 49-page chapter of the PUA (i.e., the ETA proper), major revisions to the REA, an amendment to the Air Quality Control Act, NMSA 1978, § 74-2-5 (1967, as amended through 2019), and several other related amendments to the PUA.

[61] NMSA 1978, §§ 62-16-4(A)(2)-(6) (amending the renewable portfolio standard (RPS) to requiring that renewable energy comprise the following minimum percentages of each public utility's total retail sales to New Mexico customers: (i) 20% by Jan. 1, 2020; (ii) 40% by Jan. 1, 2025; (iii) 50% by Jan. 1, 2030; and (iv) 80% by Jan. 1, 2040; and (iv) by Jan. 1, 2045, "zero carbon resources shall supply" 100% of all retail sales of electricity in New Mexico).

[62] NMSA 1978, § 62-18-2(S).

ment, and the assistance of displaced workers. The bonds would be issued by a wholly owned subsidiary of PNM newly created as a special-purpose entity (SPE).

The ETA then provides for the establishment of non-bypassable charges, i.e., energy transition charges (ETCs),[63] to be paid by PNM customers to cover the bonds' debt service costs over the estimated 25-year life of the bonds. The ETA also provides for ratemaking mechanisms designed (1) to eliminate the costs of the abandoned facilities at the time the ETC rates are first collected (upon the abandonment of the units), (2) to recover for PNM, separately from the ETCs, the difference between the estimated costs recovered through the bonds and PNM's future actual costs, and (3) to adjust the ETCs throughout the life of the bonds to ensure the full and timely payment of the bonds' debt service payments.

Pursuant to the ETA, to obtain a financing order that authorizes the issuance of energy transition bonds and other actions, a qualifying utility must obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 of the Public Utility Act.[64] In addition, because this matter involves both a proposed abandonment and divestment of utility plant through sale and transfer, two provisions of the Public Utility Act with different but congruous standards of proof apply in this case, the "net public benefit" standard under Section 62-9-5 and the "no net detriment" test applicable to the transfer of utility plant or property pursuant to Sections 62-6-12 and -13 of the PUA.[65] The Commission's standards governing the abandonment and sale and

[63] NMSA 1978, § 62-18-2(G) (defining "energy transition charge" as a "non-bypassable charge paid by all customers of a qualifying utility for the recovery of energy transition costs."). "Non-bypassable," in turn, "means that the payment of any energy transition charge may not be avoided by an electric service customer located within a utility service area and shall be paid by the customer that receives electric utility service from the qualifying utility imposing the charge for as long as the energy transition bonds secured by the charge are outstanding and the related financing costs have not been recovered in full." NMSA 1978, § 62-18-2(P).

[64] NMSA 1978, § 62-18-4(A).

[65] NMSA 1978, §§ 62-6-12 and -13.

transfer of PNM's interest in the Four Corners plant are addressed in the section II.B.2 of the *Recommended Decision on FCPP Sale and Abandonment*.

As already indicated, the Commission approved the abandonment of the SJGS in Case No. 19-00018-UT in its Final Order issued April 1, 2020.[66] The Commission simultaneously issued in that case its Final Order approving PNM's request for issuance of a financing order to facilitate PNM's abandonment of the SJGS.[67]

2. Financing Order

Given that the Commission has already approved the abandonment of the San Juan Generating Station and the replacement resources for that plant in Case Nos. 19-00195-UT and 20-00182-UT, the remaining focus of the ETA is on establishing a mechanism for PNM to recover the costs of abandoning its interest in the Four Corners plant, should PNM meet its burden on the abandonment, sale and transfer and other applicable requirements of the ETA. The ETA defines the proposed securitization mechanism for the proposed abandonment with precision. It also defines with similar precision a process for Commission and potential appellate review to facilitate the adoption of a financing order.

Section 4(B) of the ETA specifies a detailed list of twelve items of information to be included in an application for a financing order.[68] Sections 4(C) and (D) also acknowledge the

[66] *In the Matter of Public Service. Co. of New Mexico's Abandonment of San Juan Generating Station Units 1 and 4*, Case No. 19-00018-UT, Recommended Decision on PNM's Request for Authority to Abandon its Interest in San Juan Units 1 and 4 and to Recover Non-Securitized Costs (Feb. 21, 2020) (*Recommended Decision on SJGS Abandonment*), *adopted by* Final Order on Request of Public Service Company of New Mexico for Authority to Abandon its Interests in San Juan Generating Station Units 1 and 4 and to Recover Non-Securitized Costs (April 1, 2020).

[67] Case No. 19-00018-UT, Recommended Decision on PNM's Request for Issuance of a Financing Order (Feb. 21, 2020) (*Recommended Decision on SJGS Financing Order*), *adopted by* Final Order on Request for Issuance of a Financing Order (Apr. 1, 2020).

[68] NMSA 1978, § 62-18-4(B).

utility's option to include its abandonment request and request for replacement resources in a consolidated application or, as PNM has opted to do in this case, defer its application for approval of new resources to a separate proceeding.[69] But the ETA nevertheless states that, regardless of the other requests in an application for a financing order, the Commission is required to issue a separate financing order.[70]

The ETA prescribes with specificity the approvals that are required to be in a financing order. Section 2(L) defines the term "financing order."[71] Sections 5(F)-(H) list the specific approvals required to be included, and Sections 5(I)-(L) list optional approvals.[72]

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[69] NMSA 1978, § 62-18-4(C) ("application may include requests for approvals for new resources") & (D) ("qualifying utility or the commission may defer applications for needed approvals for new resources to a separate proceeding").

[70] NMSA 1978, § 62-18-8(A) ("A financing order shall be issued *as a separate order from any other order issued by the commission* on a requested approval in the application proceeding and is a final order of the commission.") (emphasis added).

[71] Subsection 2(L) defines the "financing order" as "an order of the commission that authorizes the issuance of energy transition bonds, authorizes the imposition, collection and periodic adjustments of the energy transition charge and creates energy transition property." NMSA 1978, § 62-18-2(L).

[72] The mandatory approvals include the following:

F. A financing order shall include the following provisions:

(1) approval for the qualifying utility or assignee to issue energy transition bonds as requested in the application, to use energy transition bonds to finance the maximum amount of the energy transition costs as requested in the application, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, and to use the proceeds provided in Subsection A of Section 10 of the Energy Transition Act;

(2) approval for the qualifying utility to recover the energy transition costs, as may be adjusted pursuant to Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act, requested in the application through energy transition charges;

(3) approval of the energy transition charges necessary to recover the authorized energy transition costs, to be imposed through a non-bypassable energy transition charge as a separate line item on the qualifying utility's customer bills, assessed consistent with energy and demand cost allocations within each customer class, subject to update pursuant to the notice filing contemplated by Paragraph (6) of Subsection B of Section 4 of the Energy Transition Act and subject to the application of the adjustment mechanism as provided in Section 6 of the Energy Transition Act, until the energy transition bonds issued pursuant to the financing order and the financing costs related to those bonds are paid in full;

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(4) approval of the adjustment mechanism in compliance with Section 6 of the Energy Transition Act;

(5) a description of the energy transition property that is created by the financing order that may be used to pay, and secure the payment of, the energy transition bonds and financing costs authorized to be issued in the financing order;

(6) approval to enter into necessary or appropriate ancillary agreements;

(7) approval of any plans for selling, assigning, transferring or conveying, other than as a security, an interest in energy transition property; and

(8) approval of the proposed ratemaking process and method included in the application pursuant to Paragraphs (10) and (11) of Subsection B of Section 4 of the Energy Transition Act.

G. A financing order shall provide that the creation of energy transition property shall be simultaneous with the sale of the energy transition property to an assignee as provided in the application and the pledge of the energy transition property to secure energy transition bonds.

H. A financing order shall authorize the qualifying utility to issue one or more series of energy transition bonds for a scheduled final maturity of no more than twenty-five years for each series; provided that a rated final maturity may exceed twenty-five years. With such authorization, the qualifying utility shall not subsequently be required to secure a separate financing order prior to each issuance.

The optional approvals and authorizations include the following:

I. The commission may require, as a condition of the financing order and in every circumstance subject to the limitations set forth in Subsection A of Section 7 of the Energy Transition Act, that, during any period in which energy transition bonds issued pursuant to the financing order are outstanding, an assignee that is a non-utility affiliate and issues energy transition bonds shall provide in the affiliate's articles of incorporation, partnership agreement or operating agreement, as applicable, that in order for a person to file a voluntary bankruptcy petition on behalf of that assignee, the prior unanimous consent of the directors, partners, managers or members, as applicable, shall be required. Any such provision shall constitute a legal, valid and binding agreement of such shareholders, partners or members of the assignee and is enforceable against such shareholders, partners or members.

J. A financing order may require the qualifying utility to file with the commission a periodic report showing the receipt and disbursement of proceeds of energy transition bonds and any other documents necessary for the qualifying utility to implement the financing order. Upon issuance of the energy transition bonds, the qualifying utility shall file an advice notice with the commission, subject to review by the commission for errors and corrections, that identifies the actual energy transition charges to be included on customers' bills, effective fifteen days from the date the advice notice is filed.

K. A financing order may authorize the commission to review and audit the books and records of the qualifying utility and of an assignee that is a non-utility affiliate and issues energy transition bonds, relating to energy transition property and the receipt and disbursement of proceeds of energy transition bonds.

L. After review and approval by the department of finance and administration with regard to reasonableness of contracts for services, a financing order may authorize the commission to impose a fee on the qualifying utility to pay commission expenses for contract bond counsel accredited by a nationally recognized association of bond lawyers to provide advice and assistance to commission staff in reviewing an application for a financing order and the structure and marketing of the proposed energy transition bonds.

NMSA 1978, § 62-18-5(F)-(L).

The ETA requires the Commission to act on an application for a financing order within six months after filing, although it also allows the Commission to extend the time for issuing the order for an additional three months. Failure to issue the order approving the application or advising of the application's noncompliance (discussed below) within the prescribed time periods is deemed approval, and the ETA requires the Commission to issue an order acknowledging the deemed approvals within seven days after the expiration of the statutory review period.[73]

To facilitate the approval of a financing order, the ETA establishes an unusual procedure that gives PNM the opportunity to incorporate any changes the Commission determines are required. Section 5(E) states that, if the commission finds that a qualifying utility's application does not comply with Section 4 of the ETA, the Commission shall advise the utility of any changes necessary to comply with that section and provide the applicant an opportunity to amend the application to make the changes. Upon those changes being made, the ETA requires the Commission to issue a financing order approving the application.[74]

The ETA also provides a mechanism for a narrow and potentially quicker appellate review solely of the approvals related to the securitization application. Section 8(A) provides that a party aggrieved by a financing order may apply to the Commission for a rehearing within ten calendar days after issuance of the financing order, as opposed to the customary thirty days allowed to apply for rehearing of a Commission Order pursuant to the NMSA 1978, § 62-10-16.[75] Accelerating the special process further, an application for rehearing is deemed denied under Section 8(A) if not acted upon by the Commission within ten calendar days as opposed to the twenty days prescribed

[73] NMSA 1978, §62-18-5(A)-(B).

[74] NMSA 1978, § 62-18-5(E).

[75] NMSA 1978, § 62-18-8(A).

in Section 62-10-16 of the Public Utility Act. The accelerated process is then wrapped up under Section 8(B) by requiring the aggrieved party to file a notice of appeal with the Supreme Court within ten calendar days after either denial of an application for rehearing or issuance of the financing order as opposed to the thirty days ordinarily allowed for filing notices of appeal of a final order or refusal of an application for rehearing pursuant to NMSA 1978, § 62-11-11.[76] Thus, regardless of the variety of issues the utility chooses to include in its application, the ETA requires the Commission to address the financing order and all other issues in separate orders. It thereby avoids delaying the implementation of the financing order waiting for the appellate resolution of issues unrelated to the securitization.

Accordingly, given that PNM's application in this proceeding includes requests to approve the abandonment and transfer of its interest in Four Corners, the recovery of costs eligible for securitization under the ETA, as well as the recovery of costs ineligible for securitization and thus subject to traditional ratemaking treatment, this Recommended Decision will address only the issues pertinent to the securitization and issuance of a financing order. The *Recommended Decision on FCPP Sale and Abandonment* addresses the costs ineligible for securitization in section IV.C.

3. Evidentiary Standards

As the applicant in this administrative adjudication, the PNM's burden of proof is established as a matter of law.[77] The rule in administrative proceedings in general, and adjudica-

[76] NMSA 1978, § 62-18-8(B).

[77] *See, e.g., Southwestern Public Service Company's Application Requesting: (1) Acceptance of its 2014 Annual Energy Efficiency and Load Management Report; (2) Approval of its 2016 EE/LM Plan and Associated Programs; (3) Approval of its Cost Recovery Tariff Rider; and (4) a Determination Whether a Separate Process Should be Established to Analyze a Smart-Meter Pilot Program,* Case No. 15-00119-UT, Certification of Stipulation, at 16 (Dec. 18, 2015) (*citing Gray v. State ex rel. Wyoming Workers' Safety and Compensation Div.,*

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tions before this Commission in particular, is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof.[78] The burden of proof is two-pronged: it includes both the *prima facie* burden of adducing sufficient evidence to go forward with a claim and the burden of ultimate persuasion. The quantum of proof in administrative adjudications is, again unless expressly provided otherwise, a preponderance of record evidence.[79]

III. ISSUES AND RECOMMENDATIONS

A. Summary of Recommendations

This Recommended Decision and the *Recommended Decision on FCPP Sale and Abandonment* also issued on this date apply the Energy Transition Act to a PNM request to abandon its interests in a coal-fired generation facility for the second time. This may also be the last time the current iteration of the ETA is applied by the Commission since the act, as written, contemplates the retirement and securitization of the "qualifying utility's" interests in two facilities, SJGS Units 1 and 4 – which was approved for abandonment and a financing order in Case No. 19-00018-UT and which PNM intends to abandon on July 1, 2022 – and the Four Corners plant,

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193 P.3d 246, 251 (Wyo. 2008)). *See also* NMSA 1978 § 62-8-7(A) ("At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.").

[78] 3 Davis, Kenneth Culp, Administrative Law Treatise § 16.9 at 255-57 (2d ed. 1980). *See Int'l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm'n*, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) ("Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.").

[79] *See* Davis, *supra,* § 16.9 at 256 ("One can *never* prove a fact by something less than a preponderance of the evidence") (emphasis in original). *See El Paso Electric Co. et al. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, ¶ 12 ("This Court, however, does express its deep concern regarding the reasonableness of this heightened standard of proof ['clear and convincing evidence'], especially *since a 'preponderance of evidence' standard is customary in administrative and other civil proceedings*.") (emphasis added); *Re Southwestern Public Service Co.,* Case No. 2678, Recommended Decision (Nov. 15, 1996) ("No matter how the Commission describes its standard of review, SPS bears the burden of proof in this case. SPS must demonstrate that a preponderance of evidence exists in the record on which to base approval of the requested authorizations surrounding the merger.").

which PNM proposes to exit on December 31, 2024 pursuant to its Amended Application in this proceeding.

This Recommended Decision addresses five primary issues and, as can be gathered by glancing at the table of contents above, a host of sub-issues. This summary addresses the primary issues. First, if the *Recommended Decision on FCPP Sale and Abandonment* and this decision are approved by the Commission, PNM would be authorized to securitize – i.e., include in Energy Transition Bonds issued by a special-purpose entity (SPE) affiliate of PNM – the $299.7 million PNM estimates in total upfront costs to abandon its interests in Four Corners. This would include the full $271.3 million undepreciated investments PNM estimates it will have in Four Corners as of December 31, 2024, including the disputed Four Corners selective catalytic reduction (SCR) pollution control system, or "SCR controls," and other life-extending capital expenditures (capital additions totaling $131.3 million) for which the Commission deferred its prudence review in Case No. 16-00276-UT to a subsequent rate case. While PNM argues in this case that the Legislature, in enacting ETA, forever barred the Commission from conducting that prudence review, this decision concludes that, reading the ETA in harmony with related provisions of the Public Utility Act addressing the Commission's rate-setting responsibilities, the Commission retains the authority to perform the prudence review in PNM's next general rate case.

Second, this decision would authorize PNM to collect energy transition charges to pay the debt service on the energy transition bonds over a 25-year period. The energy transition bonds would be issued shortly after the abandonment date of December 31, 2024. PNM estimates the debt service on the bonds to be approximately $16.7 million per year for 24 years and $8.3 million in year 25. Pursuant to PNM's energy transition charge proposal, residential customers would be assessed an energy transition charge of $1.32 per month for customers using up to 999 kWh and

$3.44 for those using 1,000 kWh or more per month; small power customers would be assessed a charge of $2.89 per month. The energy transition charges would be trued up periodically pursuant to an adjustment mechanism over the 25-year collection period, as necessary to reflect changes in total PNM customer consumption over- or under-collections, to ensure that the debt service payments are made in full and on time. The ETCs would start being charged pursuant to an ETA Rider established to collect the ETC funds shortly after the bonds are issued. For example, if the bonds were issued on January 15, 2025, PNM anticipates the ETA Rider would become effective on February 14, 2025.

Third, as also provided for the SJGS abandonment in Case No. 19-00018-UT, this decision would establish a ratemaking process required by Section 4(B)(10) of the ETA to adjust PNM's base rates in the future to reconcile any difference between the estimated up-front costs recovered in the energy transition bonds and PNM's final, actual costs. This process includes the opportunity to review the prudence and reasonableness of costs like PNM's decommissioning costs and the SCR controls and additional life-extending capital expenditures the Commission placed in rates provisionally in the 2016 Rate Case. Other costs subject to review under the ETA would be evaluated by the Commission to determine whether they were incurred to comply with law or necessary to maintain the safe and reliable operation of the Four Corners plant prior to the abandonment.

Fourth, included in the costs going into the bond financing are $16.5 million in payments to state agency-administered energy transition funds, in percentages specified in Section 16 of the ETA, for Indian Affairs ($1.5 million), economic development ($5 million), and displaced workers ($10 million). PNM is required by the ETA to transfer the energy transition fund payments to the

state agencies within 30 days of receipt of the proceeds from the bonds in January 2025, approximately 6 ½ years prior to the currently scheduled shutdown of the Four Corners plant.

Fifth, again as in Case No. 19-00018-UT, PNM would immediately reduce its base rates to eliminate all the Four Corners capital costs at the time its starts charging the ETCs pursuant to the ratemaking method called for in Section 4(B)(11) of the ETA. The reduction would more than offset the additional cost of the ETCs. The immediate impact of the abandonment and securitization therefore should result in a net savings in customers' month bills. For example, PNM estimates that an average residential customer using 900 kWh per month would see monthly savings of either $8.50 or $8.92 depending on the resource portfolio deployed to replace the Four Corners capacity and energy, while a residential customer using 2,000 kWh would see savings of either $18.38 or $19.31 per month. For small power customers, the impacts range from an increase of $2.89 (based on 0 kWh use) to a decrease of between $1.09 (starting at 500 kWh use) to $133.12 per month (15,000 kWh use) depending again on kWh usage and the replacement resource scenario. As addressed in the *Recommended Decision on FCPP Sale and Abandonment*, PNM is deferring its request for FCPP replacement resources to a subsequent proceeding, as it is authorized to do under the ETA.

Therefore, the Section 4(B)(11) methodology – immediate credits to eliminate the full costs of Four Corners investments when the ETCs are first assessed, which is essentially identical to the method approved for the SJGS abandonment and securitization in Case No. 19-00018-UT – would produce immediate savings for customers, all other things being equal. PNM's proposal would credit the Four Corners capital costs at the time the ETCs are assessed but credit other expenses in a subsequent rate case decision. However, if pursuant to a rate case decision PNM has already adjusted base rates to reflect the abandonment of Four Corners at the same time that customers

begin to pay the energy transition charge, there would be no need for a rate rider credit to be implemented. Consequently, given all the cost factors and variables that must be evaluated in PNM's next general rate proceeding, as in Case No. 19-00018-UT, the *overall impact* on customer bills cannot be projected with reasonable certainty in this proceeding.

Finally, this decision addresses PNM's securitization request in a separate financing order as required by the ETC. As PNM represents, the financing order issued as part of this decision appears consistent in all substantive respects with the financing order the Commission issued in Case No. 19-00018-UT. Since the decision does not recommend any changes such as those found necessary and subsequently accepted by PNM in Case No. 19-00018-UT, the financing order issued at the end of this decision does not contain the ten-day change provision contained in the financing order issued in Case No. 19-00018-UT.[80] In the *Recommended Decision on FCPP Sale and Abandonment*, the Hearing Examiner recommends that PNM's request to abandon and transfer through sale its interest in Four Corners Plant to NTEC should be approved subject to PNM submitting, within seven days of the Commission's final order on that decision, an amended Purchase and Sale Agreement with NTEC that modifies a provision in the agreement that the Hearing Examiner finds to be contrary to the public interest.[81] Because the Hearing Examiner finds that modification to the Purchase and Sale Agreement necessary to satisfy the net public benefit standard applicable to the sale and abandonment and not pertinent to the provisions of the financing order, the seven-day submission requirement essential to Commission approval of the

[80] *See Recommended Decision on SJGS Financing Order*, at 161, ¶ 49 ("PNM shall have the opportunity pursuant to NMSA 1978, § 62-18-5(E) to make a filing to amend its Application to accept the changes described in this Order. PNM shall make the filing within ten calendar days after the date of this Final Order.").

[81] *See Recommended Decision on FCPP Sale and Abandonment*, Section IV.B.3 (PSA Article 6.1(d)(i) – PNM's compulsory veto of plant owners' potential unanimous consensus to cease operations or reduce production at Four Corners).

Four Corners sale and abandonment is not repeated in the financing order set forth below. The issuance of the financing order in this case is contingent, however, on PNM obtaining approval to abandon and transfer its interest in the Four Corners plant the pursuant to Sections 62-9-5, 62-6-12 and -13 of the Public Utility Act.[82]

B. Constitutional Issues

Since the Commission's ratemaking authority is challenged with respect to a sizable set of Four Corners costs in this proceeding,[83] certain core constitutional principles should be set out as a preliminary matter. Moreover, as some parties did in Case No. 19-00018-UT, several intervenors asserted constitutional challenges to the ETA or the application of the act in this case that are addressed below.

1. Article XI, Section 2 of the New Mexico Constitution: Responsibilities of the Public Regulation Commission

Among other provisions of the New Mexico Constitution addressing the Commission's creation and composition that were amended by adoption in the 2020 general election, Article XI, Section 2 was amended to read as follows:

> The public regulation commission shall have responsibility for regulating public utilities *as provided by law*. The public regulation commission may have responsibility for regulation of other public service companies in such manner as the legislature shall provide.[84]

[82] *See Recommendation Decision on FCPP Sale and Abandonment*, section II.B.2 (standards governing abandonment and sale and transfer of PNM's interest in FCPP).

[83] For example, PNM argues that the Commission "has a nondiscretionary constitutional duty to apply the ETA," which to PNM at least, includes the duty to securitize and allow the recovery, as final reconciled energy transition costs, the disputed SCR controls and life-extending investments at issue in Case No. 16-00276-UT. *See* PNM Br. 76-80. As seen below, all other parties taking a position on this issue and related ones disagree with PNM.

[84] N.M. Const., art. XI, § 2 (as amended 2020) (emphasis added).

Prior to the 2020 amendment, the first sentence of Article XI, Section 2 stated, in pertinent part, that the Commission "shall have responsibility for regulating public utilities . . . in such manner *as the legislature shall provide*."

On July 23, 2020, almost four months after the Commission had already approved the abandonment of the SJGS and granted PNM a financing order pursuant to the ETA in Case No. 19-00018-UT, the New Mexico Supreme Court issued its written opinion in *State ex rel. Egolf v. NM Pub. Reg. Comm'n*, which is discussed in the next subsection. The Court, relying in part on the version of Article XI, Section 2 then in effect, held that the Commission had a nondiscretionary duty to apply the ETA to San Juan Units 1 and 4.[85]

Although the Hearing Examiner did not frame the issue regarding Article XI, Section 2[86] to focus on whether the change from "as the legislature shall provide" to "as provided by law" altered the Commission's constitutional responsibility in regulating public utilities – assuming it did not (and, as confirmed below, does not) – one party, PNM, fairly construed the question to address whether the Court's holding in *Egolf* still applies after the 2020 amendment.[87]

2. *State ex rel. Egolf v. NMPRC*

In the *Egolf* decision, the Supreme Court found that the Commission did not have the authority, within the meaning of the "pending case" clause of Article IV, Section 34, to initiate

[85] *See, e.g., State ex rel. Egolf v. NM Pub. Reg. Comm'n*, 2020-NMSC-018, ¶¶ 17, 33, 476 P.3d 896 (*Egolf*) (stating "the Commission is constitutionally obligated to regulate public utilities 'in such manner as the legislature shall provide.' *N.M. Const. art XI, § 2*.'").

[86] Question 3 of the Briefing Order, at 4, asked: Whether the Commission is constitutionally obligated pursuant to the New Mexico Constitution, article XI, § 2 (stating, in pertinent part and as amended in 2020, that the Commission ". . . shall have responsibility for regulating public utilities as provided by law") to authorize the securitization of costs on which a prudence review was expressly deferred or reserved but subsequently not initiated or conducted prior to the enactment of the ETA.

[87] *See* PNM Br. 76 ("Thus, regarding the regulation of public utilities, the provision has changed from "as the legislature shall provide" to "as provided by law." The question, then, is whether *State ex rel. Egolf*'s holding still applies after the 2020 amendment. The answer is 'yes.'").

abandonment proceedings regarding San Juan Units 1 and 4 and that the abandonment proceedings did not effectively begin, as a matter of law, until PNM filed its application for abandonment in Case No. 19-00018-UT. Because "the ETA was in effect at the time of PNM's application," the Court ruled, "the Commission has a nondiscretionary duty to apply the ETA to San Juan abandonment proceedings."[88] After analyzing various provisions of the PUA and the separation of powers doctrine established in Article III, Section 1, the Court proceeded to conclude:

> The Commission has a constitutional duty to regulate public utilities 'in such manner as the legislature shall provide.' N.M. art. IX, § 2. In the instant case, the ETA serves as the statutory scheme that the Legislature provided for abandonment proceedings. The Commission therefore had a nondiscretionary obligation to apply the ETA to the San Juan abandonment proceedings. Equivocation by the Commission as to the ETA's applicability indicated that the Commission potentially intended to modify or ignore applicable law, in violation of Article III, Section 1 of the New Mexico Constitution. That is not within the discretion of the Commission and is instead a function of our Legislature. Allowing the Commission such discretion would permit the Commission's infringement 'upon what is the essence of legislative authority – the making of law.'[89]

Just as it did in Case No. 19-00018-UT before the Court issued the *Egolf* opinion,[90] the Commission is systematically applying the ETA in this proceeding to the proposed sale and abandonment of PNM's interest in Four Corners. Therefore, as this decision and the companion *Recommended Decision on FCPP Sale and Abandonment* reflect, the Court's holding in *Egolf* applies with equal force after the 2020 constitutional amendment. But, as will be seen below, whether the Commission is constitutionally obligated – or statutorily obligated for that matter – to

[88] *State ex. rel. Egolf*, 2020-NMSC-018, ¶ 22.

[89] *Id*. ¶ 33 (citing *State ex. rel. Clark v. Johnson*, 1995-NMSC-048, ¶ 33, 120 N.M. 562, 904 P.2d 11).

[90] On the date of the oral argument (January 29, 2020) in *State ex rel. Egolf*, the Commission had already concluded the evidentiary hearings in December 2019 in Case No. 19-00018-UT and was conducting the sixth day of evidentiary hearings in the SJGS replacement resources proceeding in Case No. 19-00195-UT. The Court thereupon issued a Writ of Mandamus in Case No. S-1-SC-38041 on January 29, 2020. *See Recommended Decision on SJGS Financing Order*, at 24-25.

authorize the final, actual, and reconciled recovery of an "Energy Transition Cost" on which a prudence review that was expressly deferred and acquiesced to by the public utility but then not conducted before the utility filed for abandonment pursuant to the ETA is an altogether different issue that directly calls into question the Commission's rate-setting authority under the Public Utility Act.

3. Other constitutional issues

ABCWUA and Bernalillo County argue that allowing PNM to rely on the ETA to void its contractual obligations in the Modified Revised Stipulation reached in Case No. 16-00276-UT violates the bill of rights and jeopardizes the constitutionality and credibility of the ETA under Article II, Section 19 of the New Mexico Constitution, which provides that "No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature."[91] They contend that a statute that denies or obstructs preexisting contract rights is constitutionally objectionable even though it professes to act only upon the remedy.[92] Therefore, in their view, approving PNM's Amended Application would create a conflict between the ETA and the constitutional prohibition of newly enacted legislation from impairing a contract.[93]

NEE, like ABCWUA and Bernalillo County, argues that approving the Amended Application as plead by PNM would impair a contractual settlement in violation of Article II, Section 19, claiming that "PNM ratepayers have a vested right in the FCPP prudence review agreed to in the Modified Stipulation in which PNM was a signatory; this was established before the ETA became law. The contractual (settlement) agreement, [*sic*] is a determination that requires the PRC to hold

[91] ABCWUA/County Br. 13 (quoting N.M. Const. art. II, § 19).

[92] ABCWUA/County Br. 13-14 (citation omitted).

[93] ABCWUA/County Br. 14.

ratepayers harmless for PNM's imprudence in FCPP investments and to fashion an appropriate remedy."[94] NEE also argues that argues that the ETA cannot nullify a stipulated settlement relied upon and upheld by this Commission because it would constitute legislative interference with ratepayers' rights by vitiating part of the Modified Revised Stipulation, in contravention of Article IV, Section 34 of the New Mexico Constitution, which states that "No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case[,]" and applies to administrative proceedings.[95]

San Juan County argues that that the ETA would constitute unconstitutional special legislation if PNM's position on Section 62-18-3 not being applicable to the Four Corners abandonment is accepted: "PNM's position comes perilously close to a contention that the statute is unconstitutional as written. Article IV, Section 24 of the New Mexico Constitution prohibits special legislation "where a general law can be made applicable."[96]

Consistent with the analogous ruling in Case No. 19-00018-UT, the Hearing Examiner believes it would be improvident to address the constitutional claims asserted by the parties in this case. Should they wish to pursue their challenges to the constitutionality of the ETA, either facially or as applied, they should be taken to district court, the tribunal with original jurisdiction over such claims in New Mexico jurisprudence.[97] Moreover, irrespective of this determination declining to

[94] NEE Br. 72-73 (internal citations omitted).

[95] NEE Br. 71-72 (citing, e.g., *U.S. West Communications v. N.M. Pub. Regulation Comm'n*, 1999-NMSC-024, ¶ 13, 127 N.M. 375, 981 P.2d 789).

[96] SJC Br. 3.

[97] *See Victor v. N.M. Dep't of Health*, 2014-NMCA-012, ¶ 24, 316 P.3d 213 (holding constitutional challenges that exceed the hearing officer's review are subject to the original jurisdiction of the district court, quoting *Schuster v. State Dep't of Taxation and Revenue*, 2012-NMSC-025, ¶¶ 20-21, 283 P.3d 288 for the legal proposition that "[A]ny constitutional challenge beyond MVD's scope of statutory review is brought for the first time in district court under its original jurisdiction.").

review their constitutional claims, reviewing the claims of ABCWUA/County and NEE here is obviated by the Hearing Examiner's recommendation below on the Commission's authority to review the prudence and reasonableness of the disputed Four Corners SCR controls and additional life-extending capital expenditures deferred in Case No. 16-00276-UT to a subsequent rate case.

C. Overview of Estimated and Final Cost Recoveries

The ETA facilitates and ensures PNM's recovery of the costs to abandon its interest in the Four Corners Power Plant. It provides for the issuance of energy transition bonds to enable PNM to recover the *estimated* costs (energy transition costs) of abandoning its interest shortly after the abandonment on December 31, 2024. It also provides for a true-up mechanism to enable PNM to recover any difference between the *estimated* costs recovered through the bonds and the *actual* costs PNM subsequently incurs. The true-up mechanism would also return to ratepayers any excess of actual costs over the previously funded estimated costs.

For ratepayers, the ETA provides for the establishment of energy transition charges (ETCs) to pay the debt service on the bonds. The ETCs will be trued-up twice each year to ensure that, despite any intervening changes in kWh sales, the ETC rates remain sufficient to fully and timely make the required debt service payments.

In addition, the future ratemaking process to ensure that PNM recovers the full amount of the energy transition costs will adjust PNM's base rates (independently from the ETCs) after the abandonment to reconcile differences between the recovery of its estimated energy transition costs and the future energy transition costs PNM actually incurs.

The ETA also requires PNM to propose a ratemaking process and method to adjust its rates at the time the abandonment occurs. This process and method are intended to remove the value of

the abandoned plants from rate base at the same time ratepayers start being charged with the ETCs to service the bonds.

Section III.D.1 discusses the estimated energy transition costs PNM proposes to recover through the energy transition bonds. Section III.F.2 describes the ETCs to be charged to collect the funds to pay the debt service on the bonds and the future true-ups through an adjustment mechanism designed to ensure the full and timely collection of the necessary debt service payments.

Section III.F.3 addresses the ratemaking process PNM proposes to adjust its base and other rates at the time of abandonment and the start date for collecting the ETCs.

Finally, III.G explains the ratemaking process PNM proposes to reconcile its actual energy transition costs with the estimated energy transition costs recovered with the bonds.

D. Recovery of Estimated Energy Transition Costs through Securitized Bonds

1. PNM's proposal

PNM asks the Commission to approve the issuance of energy transition bonds to finance the maximum amount of the estimated energy transition costs requested in PNM's Amended Application.

The estimated energy transition costs that PNM proposes to finance through the securitized bond issuance include: (1) upfront financing costs, which include financing costs and costs of obtaining an order approving abandonment of PNM's interest in Four Corners; (2) abandonment costs, which include (a) the undepreciated investment in the FCPP and (b) decommissioning costs that have yet to be collected from customers; (3) other costs, if any, required to comply with changes in law as provided in Section 2(H)(3) of the ETA, and (4) required payments to the Indian Affairs Fund, the Economic Development Fund, and the Workers Assistance Fund. The following

table, derived from the direct testimony of PNM witness Thomas S. Baker, summarizes the upfront energy transition costs.[98]

PNM Table TSB-1 Summary of Upfront Energy Transition Costs to be Financed *$ in millions*		
$	7.3	Upfront Financing Costs - Section 2(H)(1) of the ETA
	271.3	Undepreciated Investment in PNMs' interest of Four Corners power plant - Section 2(H)(2)(c)(d)
	4.6	Plant Decommissioning costs - Section 2(H)(2)(a)
	-	Other costs required to comply with law changes after 1/1/19 - Section 2(H)(3)
	1.5	Payments made to Indian Affairs Fund - Section 2(H)(4)
	5.0	Payments made to Economic Development Fund - Section 2(H)(4)
	10.0	Payments made to Workers Assistance Fund - Section 2(H)(4)
$	299.7	Total Upfront Energy Transition Costs

a. Upfront financing costs

The upfront financing costs include costs related the issuance of the energy transition bonds and the costs necessary to obtain an order approving the abandonment of PNM's interest in Four Corners.[99]

PNM Table TSB-2 Summary of Upfront Financing Costs *$ in millions*		
$	5.5	Upfront Financing Costs
	1.8	Estimated Costs to obtain abandonment order - Section 2(K)(4)
$	7.3	Total Upfront Financing Costs per PNM Exhibit LES-2

Section 2(K)(4) of the ETA defines "financing cost," in part, as "any costs, fees and expenses related to issuing, supporting, repaying, servicing, and refunding energy transition bonds, the application for a financing order, including related state board of finance expenses, or obtaining

[98] *See* PNM Exh. 10 (Baker Dir.) 5.

[99] *See* Baker Dir. 5-6.

an order approving abandonment of a qualifying generating facility" are properly included as part of the recoverable financing costs.[100]

PNM estimates PNM estimates approximately $7.3 million in fees, including the Underwriting Discount, Financial Advisor Structuring Fee, Legal Fees, Rating Agency Fees, Trustee Fees and Expenses, Accounting and Auditor Fees, Printing/Filing and Marketing Expenses, SPE Securities and Exchange Commission (SEC) Registration Fees, Organization of SPE, and Servicer Set-Up Fees, and Original Issue Discount. The largest of the fees are $2.3 million in Legal Fees and $1.5 million for the Underwriting Discount[101]

PNM estimates approximately $1.8 million will be incurred to obtain an order approving abandonment of PNM's interest in Four Corners. These costs include external legal counsel, outside consultants who are providing testimony in this proceeding, and administrative costs for witness training, postage, publications, and other costs incurred associated with this proceeding. These estimated costs are summarized in Table TSB-3 to Mr. Baker's testimony.[102]

PNM Table TSB-3 Estimated Costs to Obtain an Abandonment and Financing Order ***$ in millions***	
$ 0.6	Expert Outside Consultants, Witness Testimony
0.9	External Legal Counsel
0.3	Other Administrative Regulatory Costs
$ 1.8	Total

PNM is proposing to record the upfront financing costs through establishment of a regulatory asset for the upfront costs incurred before the proceeds from the energy transition bonds

[100] NMSA 1978, § 62-18-2(K)(4).

[101] PNM Exh. 7 (Sanchez Dir.) 27, PNM Exh. LES-2.

[102] Baker Dir. 7.

are received. PNM is not requesting carrying charges on this regulatory asset, as these costs reflect costs incurred to achieve the securitization and abandonment orders, similar to rate case expenses that are typically deferred without carrying charges.[103]

b. Undepreciated investment in Four Corners

PNM forecasted the net book value (NBV) of its interest in Four Corners to be $271.3 million as of December 31, 2024. To determine the estimated undepreciated investment included in the energy transition costs, PNM started with the net book value of its interest in Four Corners as of June 30, 2020. PNM included the PNM Retail jurisdiction share of the net book value associated with the FCPP switchyard asset that will be transferred to the purchaser, NTEC. PNM does not anticipate retiring the entire FCPP switchyard assets upon exiting the plant as it will still be used and useful in providing electric service to PNM retail customers.[104]

PNM then included capital expenditures from July 2020 through December 31, 2024, which increased the net book value. PNM projected a balance as of December 31, 2024, related to construction work in progress (CWIP). A CWIP balance will exist at the time PNM exits the power plant, according to Mr. Baker, due to capital expenditures PNM is required to make pursuant to the plant's operating agreement. Baker noted that PNM also projected the increase in accumulated depreciation to reflect the ongoing depreciation of the existing assets and projected capital expenditures through December 31, 2024.[105] PNM excluded the December 31, 2024 asset retirement cost (ARC) asset balance included in net book value because, as discussed below, those

[103] Baker Dir. 7-8.

[104] Baker Dir. 8.

[105] *Id*.

dollars are to be collected as plant decommissioning costs. The reconciliation of the net book value as of June 30, 2020 projected through December 31, 2024 is depicted in the following table.[106]

PNM Table TSB-4 Reconciliation of Four Corners Power Plant Net Book Value ***$ in millions***	
$ 223.0	Balance at 6/30/20
73.0	Capital Clearings - July 1, 2020 - December 31, 2024
3.4	Construction Work in Process Balance at December 31, 2024
(24.5)	Increase to Accumulated Depreciation Reserve - July 1, 2020 - December 31, 2024
(3.6)	Removal of Undepreciated ARC at 12/31/24
$ 271.3	Total Undepreciated Investment at December 31, 2024

To record the undepreciated investment in Four Corners, PNM is requesting authority to establish a regulatory asset equal to the undepreciated investment in Four Corners at the date of abandonment. PNM is not requesting carrying charges on this regulatory asset, as these costs will be recovered through the proceeds of the energy transition bonds.[107]

In response to the Hearing Examiner's February 26, 2021 *Order on Sufficiency of PNM's Application and Scope of Issues in Proceeding*, PNM filed supplemental testimony that provided, in pertinent part, a breakdown of the undepreciated Four Corners capital investments into four tranches: (1) investments that were made prior to the 2016 Rate Case, i.e., Case No. 16-00276-UT (investments made as of 6/30/2016); (2) investments reflected in the linkage and test periods in the 2016 Rate Case (made between 7/1/2016 and 12/31/2018); (3) investments made after the 2016 Rate Case that were in service and had cleared for accounting purposes by June 30, 2020 (made between 1/1/2019 and 6/30/2020); and (4) anticipated investments that had not cleared for

[106] *See* Baker Dir. 9, PNM Table TSB-4.

[107] Baker Dir. 9.

accounting purposes as of July 1, 2020 (made between 7/1/20 and 12/31/24).[108] The table below derived from the supplemental testimony of PNM witness Baker summarizes the FCPP capital investment tranches.[109]

PNM Table TSB-1 (3-15-21 Supplemental) FCPP Capital Investments (in millions)			
	Capital Investment	Estimated 2024 NBV	ETA Reference
Investments made as of 6/30/2016	$ 184.1	$ 61.2	Section 2(H)(2)(c)
Investment made between 7/1/16 and 12/31/18	131.3	118.0	Section 2(H)(2)(c)
Investment made between 1/1/19 and 6/30/20	23.0	20.8	Section 2(H)(2)(d)
Projected Investments made between 7/1/20 and 12/31/24	73.0	70.5	Section 2(H)(2)(d)
Total FCPP Investments		270.5	
Remove Projected ARC Asset NBV at 12/31/24		(3.6)	Section 2(H)(2)(a)
Add: CWIP Balance at 12/31/24		3.4	Section 2(H)(2)(d)
Add: Retail Share FCPP Switchyard Assets Transferred to NTEC		1.0	Section 2(H)(2)(c)
FCPP Estimated 12/31/24 NBV - PNM Table TSB-4		$ 271.3	

(1) Capital investments made as of June 30, 2016

PNM recorded $184.1 million in capital investments in Four Corners before the 2016 Rate Case. PNM estimated the 2024 net book value of the investments in the first tranche at $61.2 million. The investments are mentioned here because no party who contested the capital investments for which PNM is requesting securitization specifically opposed these reasonableness or validity of Four Corners investments made as of June 30, 2016. The remainder of the investments, however, are contested on grounds addressed under section III.D.2 below.

(2) Capital investments from July 1, 2016 and Dec. 31, 2018

Many of the most contentious issues in this case center on the capital investments PNM made in Four Corners between July 1, 2016 and December 31, 2018. In that period, PNM recorded $131.3 million in generation capital additions to Four Corners. PNM represents that the

[108] PNM Exh. 11 (Baker Supp.) 3.

[109] *See* Baker Supp. 2.

actual capital additions of $131.3 million during this period are consistent with the projected $148.7 million capital additions that PNM is currently earning a debt-only return on pursuant to the Commission's *Revised Final Order* and the follow-up *Order on Notice of Acceptance* in Case No. 16-00276-UT,[110] which are addressed in subsequent sections below. The disputed capital investments in this tranche include PNM's $90.1 investment in SCR controls and approximately $58 million in additional life-extending capital improvements that the Hearing Examiners determined PNM imprudently incurred in the *Certification of Stipulation* in Case No. 16-00276-UT,[111] but on which the Commission subsequently deferred the prudence determination in PNM's next general rate proceeding in the *Revised Final Order*.[112] This matter is discussed in more detail in section III.D.2.c below.

For present purposes of first describing the investments, the $148.7 million represented *estimated clearings* of FCPP capital investments in the 2016 rate case in PNM's linkage and test period (July 1, 2016 through December 31, 2018). PNM states that the $131.3 million represents the *actual clearings* of FCPP capital investments that were recorded during the same period. Mr. Baker explained that "clearing" an investment for accounting purposes reflects that the particular project has gone into service.[113] PNM provided an itemization of the capital investments that

[110] *In the Matter of the Application of Public Service Company of New Mexico for Revisions of its Retail Electric Rates Pursuant to Advice Notice No. 533*, Case No. 16-00276-UT, Revised Order Partially Adopting Certification of Stipulation (*Revised Final Order*) (Jan. 10, 2021); Case No. 16-00267-UT, *Order on Notice of Acceptance* (Jan. 17, 2018); Baker Supp. 3.

[111] *See* Case No. 16-00276-UT, *Certification of Stipulation* (Oct. 31, 2017), at 28-61.

[112] *See Revised Final Order*, at 22-24, ¶¶ 65-67, 35, ¶ B.

[113] Baker Supp. 4.

cleared during this time period as an exhibit to the supplemental testimony of PNM witness Thomas Fallgren.[114]

The undepreciated net book value of the $131.3 million of capital additions as of the date of the proposed abandonment has been included in PNM's estimated undepreciated investment requested to be financed through securitization.

Pursuant to paragraph 8 the Modified Revised Stipulation approved in the 2016 Rate Case, PNM placed the second tranche of capital investments in rate base in the amount of $148,710,487 at a debt-only return on the investments. The $148.7 million is reflected in Exhibit 1 to the stipulation on page 1, line 18 for phase one rates in effect February 1, 2018 through December 31, 2018, and phase two rates in effect January 1, 2019. Exhibit A in PNM's Advice Notice 545, which implemented the phase one rates, also includes the same illustrative cost of service.[115]

Mr. Baker states that PNM is required to include the full amount of the investment in its rate base and then reflect the Commission's rate disallowance by calculating the allowable debt-only return separately to prevent the application of a full debt and equity return allowed for other capital investments. This contested action by PNM is addressed in section III.D.2.d below.

As noted, PNM estimates that the December 31, 2024 net book value for these capital additions will be approximately $118.0 million. PNM proposes to true up the difference between the estimated undepreciated net book value included in the abandonment costs, and the actual undepreciated net book value to be included at the time the bonds are issued. PNM's derivation of the estimated net book value is demonstrated in the following table:[116]

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[114] *See* Fallgren Supp. 32-33, PNM Exh. TGF-4 (3-15-21 Supp.).

[115] Baker Supp. 5-6, PNM Exh. TSB-1 (3-15-21 Supp.).

[116] *See* Baker Supp. 7.

PNM Table TSB-2 (3-15-21 Supplemental) Estimated Four Corners Power Plant Net Book Value for Capital Clearings Between July 1, 2016 and December 31, 2018 *$ in millions*		
Capital Clearings - July 1, 2016 - December 31, 2018	$	131.3
Increase to Accumulated Depreciation Reserve - July 1, 2016 - June 30, 2020		(5.1)
Undepreciated Investment at 6/30/2020 for Capital Clearings July 1, 2016 - December 31, 2018		126.2
Estimated Increase to Accumulated Depreciation Reserve - July 1, 2020 - December 31, 2024		(8.2)
Estimated Undepreciated Investment at 12/31/2024 for Capital Clearings July 1, 2016 - December 31, 2018	$	118.0

Mr. Baker confirmed that PNM is already recovering the capital investments from July 1, 2016 through December 31, 2018 in rates at a debt-only return on and return of these investments through depreciation expense included in rates. As shown in Table TSB-2 above, PNM has collected from customers approximately $5.1 million related to the return of these investments as of June 30, 2020. PNM estimates the additional return of the investment estimated to be collected in rates from July 1, 2020 through December 31, 2024 is $8.2 million.[117]

(3) Capital investments from Jan. 1, 2019 to June 30, 2020

In the third tranche of FCPP capital investments, PNM recorded $23.0 million in generation capital additions to Four Corners between January 1, 2019 and June 30, 2020. PNM witness Fallgren testified that the projects during this time period were mainly typical normal equipment replacements for the safe and reliable operation of the plant.[118] According to Mr. Fallgren's testimony, the investments are properly included in the amount to be recovered through securitization financing under the ETA because they are necessary to maintain the safe and reliable operation of FCPP before PNM leaves the plant.[119]

[117] Baker Supp. 8.

[118] Fallgren Supp. 46. The investments and the reasons or "Justification" for each are itemized in tables at the beginning of the exhibit. *See* PNM Exh. TGF-5 (3-15-21 Supp.), pp. 1-3 of 146.

[119] Fallgren Supp. 48-49.

PNM estimates that the December 31, 2024 net book value for these capital additions will be approximately $20.8 million. PNM proposes to true up the difference between the estimated undepreciated net book value included in the abandonment costs, and the actual undepreciated net book value to be included at the time the bonds are issued.[120] The table below depicts the derivation of the estimated net book value of the third tranche of FCPP capital investments.[121]

PNM Table TSB-3 (3-15-21 Supplemental) Estimated Four Corners Power Plant Net Book Value for Capital Clearings Between January 1, 2019 and June 30, 2020 *$ in millions*		
Capital Clearings - January 1, 2019 - June 30, 2020	$	23.0
Increase to Accumulated Depreciation Reserve - January 1, 2019 - June 30, 2020		(0.7)
Undepreciated Investment at 6/30/2020 for Capital Clearings January 1, 2019 to June 30, 2020		22.3
Estimated Increase to Accumulated Depreciation Reserve - July 1, 2020 - December 31, 2024		(1.6)
Estimated Undepreciated Investment at 12/31/2024 for Capital Clearings January 1, 2019 to June 30, 2020	$	20.8

(4) Projected investments from July 1, 2020 to Dec. 31, 2024

In the fourth tranche, PNM has projected it will incur approximately $73.0 million in generation capital additions to FCPP between July 1, 2020 and December 31, 2024. Mr. Fallgren also addresses the projected capital investments in his supplemental testimony. PNM Exhibit TGF-6 (3-15-21 Supplemental) ("TGF-6 Supp.") to Fallgren's testimony lists the projects that comprise the estimated $73.0 million in capital investments for the referenced period. Also included in that exhibit are individual project justifications documents provided by the plant operating agent, APS, for those projects that have been presented for approval to the co-owners. Fallgren notes that future project estimates were also provided by APS, and project documentation will be provided to PNM at the time of the project approval request. The necessity for each of the listed projects is described at the beginning of the exhibit in the column with the heading "Justifications" and the categories

[120] Baker Supp. 10.

[121] *See id*. PNM Table TSB-3 (3-15-21 Supp.).

underneath the justifications including "Reliability," "Safety," and "Regulatory."[122] Fallgren said the projects during this time period are, again, mainly typical normal equipment replacements necessary for the safe and reliable operation of the plant.[123]

Mr. Fallgren stated that the projects listed in TGF-6 Supp. were developed using information and estimates provided by APS, based on the FCPP capital budget process. These projects will continue to go through the project review process to address variances that may arise as projects are undertaken. PNM will be invoiced and responsible for the actual costs of the projects that are completed. Fallgren noted that the proposed financing order provisions ensure that a true up between the estimated and actual amounts of the undepreciated investments at the time of PNM's exit and abandonment of FCPP.[124]

Further, Mr. Fallgren explained that PNM is required to undertake the projects listed in TGF-6 Supp. pursuant to Article 6.1(d)(ii) of the NTEC Purchase Agreement, which requires PNM to fund capital projects before PNM's exit as necessary for the plant's continued safe and reliable operation through 2024.[125]

PNM estimates that the December 31, 2024 net book value for these capital additions will be approximately $70.5 million. PNM proposes to true up the difference between the estimated undepreciated net book value included in the abandonment costs, and the actual undepreciated net

[122] *See* Fallgren Supp., PNM Exh. TGF-6 (3-15-21 Supp.), pp. 1-7 of 235.

[123] Fallgren Supp. 49-50.

[124] Fallgren Supp. 50.

[125] Fallgren Supp. 51. *See* Fallgren Dir., PNM Exh. TGF-2, p. 46 of 135.

book value to be included at the time the bonds are issued.[126] The derivation of the estimated net book value of the projected capital investments are depicted in the table below.[127]

PNM Table TSB-4 (3-15-21 Supplemental) Estimated Four Corners Power Plant Net Book Value for Capital Clearings Between July 1, 2020 and December 31, 2024 *$ in millions*		
Estimated Capital Clearings - July 1, 2020 - December 31, 2024	$	73.0
Increase to Accumulated Depreciation Reserve - July 1, 2020 - December 31, 2024		(2.4)
Estimated Undepreciated Investment at 12/31/2024 for Estimated Capital Clearings July 1, 2020 - December 31, 2024		70.5

c. Coal Mine Reclamation costs

The ETA allows the qualifying utility to recover up to $30 million per qualifying generating facility in previously uncollected plant decommissioning and mine reclamation costs, subject to limitations ordered by the Commission prior to January 1, 2019 and affirmed by the Supreme Court prior to the effective date of the ETA.[128] PNM is not seeking recovery of Four Corners surface mine reclamation costs because prior Commission decisions have capped recovery from customers for these costs. Actual coal mine reclamation costs have exceeded the cap that was put in place by the Commission.[129]

d. Plant decommissioning costs

PNM is seeking recovery of the plant decommissioning costs associated with the 2020 Four Corners Plant Decommissioning Cost Study,[130] which considers a shutdown of the Four Corners plant in 2031, and which have not yet been collected from customers through existing depreciation and accretion expense. PNM witness Baker explained that in order to understand

[126] Baker Supp. 11.

[127] *See id.* PNM Table TSB-4 (3-15-21 Supp.).

[128] NMSA 1978, § 62-18-2(H)(2)(a).

[129] Baker Dir. 9-10. *See* Fallgren Dir. 16 ("surface mine reclamation recovery for the Four Corners coal plant has been capped. That cap has been satisfied. Therefore, any additional Four Corners surface mine reclamation obligations will be Funded by PNM shareholders[.]").

[130] *See* Fallgren Dir., PNM Exh. TGF-4.

PNM's proposed recovery of the plant decommissioning cost associated with the 2020 cost study, it is necessary to discuss PNM's accounting methodology and recovery applicable to plant decommissioning.

Baker stated that PNM accounts for the plant decommissioning as an asset retirement obligation (ARO) in accordance with GAAP, Accounting Standards Codification (ASC) 410-20. AROs are legal obligations to retire a tangible long-lived asset in the future, based on cost estimates for the retirement of the asset and the settlement of the obligation. Baker said that these cost estimates are typically provided as cash flows in current dollars, which are escalated to the settlement date(s) of the retirement obligation using an appropriate escalation rate. The escalated cash flow estimates are then discounted using the current credit adjusted risk free rate to determine the present value of the legal obligation to retire the tangible long-lived asset. A corresponding ARC asset is capitalized by adjusting the carrying amount of the related tangible long-lived asset by the same amount as the ARO liability. The ARC asset is depreciated on a straight-line basis over the life of the retirement obligation. Accretion expense is recorded to recognize the time value of money, with an offset recorded as an increase to the ARO liability. Accretion expense is calculated by multiplying the present value of the ARO liability by the credit adjusted risk free rate originally used to discount the escalated cash flow estimates to their present value.[131]

If the facts and circumstances of an existing ARO change or PNM receives a new cost estimate for its AROs, Baker indicated both the ARO liability and the ARC asset are adjusted by recording a new "ARO layer" in the manner just described.[132]

[131] Baker Dir. 10-11.

[132] Baker Dir. 11.

PNM currently recovers plant decommissioning costs, according to Mr. Baker, through accretion expense based on a cost study performed in 2015 by Shaw Environmental Inc., which assumes a plant closure date of 2038. PNM also recovers depreciation expense on the ARC asset.[133]

Mr. Baker stated PNM updated its Four Corners decommissioning estimates to reflect a 2031 shutdown. Baker said APS performed an updated 2020 Four Corners Plant Decommissioning Cost Study which now includes a plant retirement date in 2031 as opposed to the 2038 target included in the 2015 decommissioning study. Baker indicated that PNM has re-measured its ARO liability based on new assumptions in the 2020 cost study, such as earlier closure of the plant and timing of decommissioning activities. He noted that PNM does not plan in future rate cases to propose updating Four Corners plant decommissioning accretion costs or ARC asset depreciation expense to reflect changes resulting from the 2020 Plant Decommissioning Cost Study. PNM is proposing instead to recover the incremental decommissioning impacts of the 2020 Four Corners Plant Decommissioning Cost Study through securitization financing.[134]

Mr. Baker reported PNM's current ARO liability to be $12.8 million as of December 31, 2020, and the undepreciated ARC asset balance totaled $4.7 million. Baker said the present value of PNM's share of the future cash flows, assuming the 2020 Four Corners Cost Study, equaled $13.6 million. Therefore, Baker explained, PNM is required to increase the ARO liability by $0.8 million ($13.6 million - $12.8 million). Baker added that the ARC asset would increase by $0.8 million to $5.5 million ($4.7 million + $0.8 million). Continuing, Baker said that between January 2021 and PNM's proposed exit on December 31, 2024, the ARO liability would accrete up to

[133] Baker Dir. 11-12.

[134] Baker Dir. 12.

$16.5 million and the ARC asset would depreciate down to $3.9 million. He observed that accretion expense increases slightly ($0.2 million increase) due to changes in the 2020 Four Corners cost study. Baker noted that under the 2015 Shaw Environmental Inc. Study and assumed closure in 2038, accretion expense equaled $2.7 million between January 2021 and PNM's proposed exit on December 31, 2024, which is assumed to be recovered in rates. Baker further noted that accretion expense over the same period will increase to $2.9 million due to changes from the new cost study. In addition, Baker stated that depreciation expense on the ARC asset increases $0.5 million from January 2021 through PNM's proposed exit on December 31, 2024. As a result of changes in the new cost study, Baker said ARC asset depreciation between January 2021 and December 2024 increased from $1.1 million currently assumed to be recovered in rates to $1.6 million over the same period.[135]

As for updating the Four Corners plant decommissioning estimates to reflect PNM's proposed exit in 2024, Mr. Baker explained that PNM did not do perform such an update because PNM's proposed exit in 2024 does not change any decommissioning estimates because the plant will continue to operate subsequent to PNM's exit in 2024.[136] However, under the PSA with NTEC, Baker noted, PNM will retain the Four Corners decommissioning obligation described in PNM witness Fallgren's direct testimony.[137]

PNM is proposing to recover $4.6 million in plant decommissioning costs through securitization financing, determined as follows:

[135] Baker Dir. 12-13.

[136] Baker Dir. 13.

[137] Fallgren Dir. 13, 16, 20-24.

- Recovery of the undepreciated ARC asset, recorded in plant-in-service estimated to be $3.9 million on December 31, 2024.

- Recovery of $0.7 million in the incremental accretion ($0.2 million increase) and depreciation expense ($0.5 million increase) resulting from the 2020 Four Corners Plant Decommissioning Cost Study. PNM is requesting authority to establish a regulatory asset for the incremental accretion and depreciation expense to be incurred as the result of the 2020 Four Corners Plant Decommissioning Cost Study from January 2021 through the PNM's 2024 exit from FCPP and for the undepreciated ARC asset. PNM is not requesting carrying charges on this regulatory asset, as these expenses represent non-cash expenses.[138]

The schedule of future accretion and depreciation expense related to FCPP plant decommissioning costs is illustrated in PNM Exhibit TSB-4 to Mr. Baker's direct testimony.

Before PNM abandons its interest in Four Corners, Mr. Baker stated that PNM will continue to include accretion expense and depreciation expense associated with the plant decommissioning costs based on amounts currently included in rates. Since PNM has requested a regulatory asset for the incremental accretion and depreciation expense, PNM will not include these amounts in its cost-of-service studies while Four Corners is still in operation and being recovered in base rates. Upon abandonment, PNM will no longer include future accretion expense or depreciation expense related to the ARC asset in rates.[139]

Finally, if PNM has not already collected the plant decommissioning expense from customers after abandonment, Mr. Baker testified that PNM anticipates that it will establish a plant decommissioning investment fund to set aside money for future plant decommissioning work. Baker said that PNM estimates that earnings from the investment fund will offset future accretion expense. PNM therefore does not anticipate a need to collect any future accretion expense

[138] Baker Dir. 14.

[139] Baker Dir. 15.

associated with plant decommissioning costs after PNM exits Four Corners in 2024. However, if future studies or final plant decommissioning costs are higher or earnings from the investment fund are not sufficient to cover future expense, which would result in additional funding requirements, Baker indicated that PNM will seek recovery of these additional funding requirements to the investment fund. If final plant decommissioning costs are lower or earnings from the investment fund exceed future costs, Baker affirmed that PNM will refund these amounts to customers.[140]

e. Other costs required by changes in law

According to Mr. Baker, PNM is not aware at this time of any additional costs expected to be incurred as required by changes in law after January 1, 2019. If, however, PNM identifies any costs related to changes in law after the issuance of a financing order for the energy transition bonds, PNM may seek an amendment to the financing order to include those additional charges in the bond financing pursuant Section 7(B)(2) of the ETA.[141]

f. Payments made to state agencies pursuant to Section 16 of the ETA

Pursuant to Section 16(J) of the ETA, PNM must transfer to the state agencies designated in the act[142] the following percentages of the financed amount of the energy transition bonds: one-half percent (0.5%) to the Indian Affairs Fund, one and sixty-five hundredths percent (1.65%) to the Economic Development Assistance Fund, and three and thirty-five hundredths percent (3.35%)

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[140] Baker Dir. 15-16.

[141] Baker Dir. 16. Section 62-18-7(B)(2) provides that a financing order may be amended at the request of the qualifying utility to commend a proceeding and issue an amended financing order that: "(2) adjusts the amount of energy transition costs to be financed by energy transition bonds that have not yet been issued to reflect updated estimated or actual costs that differ from costs estimated at the time of the initial financing order or to correct any errors."). NMSA 1978, § 62-18-7(B)(2).

[142] The Indian Affairs Department is charged with administering the "energy transition Indian affairs fund." NMSA 1978, § 62-18-16(A)-(C)(1)-(3). The Economic Development Department is charged with administering the "energy transition economic development assistance fund." NMSA 1978, § 62-18-16(D)-(F)(1)-(3). And the Workforce Solutions Department is charged with administering the "energy transition displaced worker assistance fund." NMSA 1978, § 62-18-16(G)-(I)(1)-(3).

to the Displaced Worker Assistance Fund.[143] The total payments expected to be transferred to the state agencies pursuant to Section 16 of the ETA is approximately $16.5 million,[144] with $1.5 million of the total proceeds going to the Indian affairs fund, $5 million to the economic development fund, and $10 million to the worker assistance fund.[145] The $16.5 million in Section 16 payments will be updated at the time of issuance and reported to the Commission pursuant to Section 4(B)(6) of the ETA.[146]

PNM will record the payments made to the designated state agencies pursuant to Section 16(J) of the ETA, which requires the qualifying utility to transfer the energy transition fund payments to the state agencies within 30 days of receipt of the proceeds from the bonds, which is anticipated to occur in January 2025, some 6 ½ years prior to the currently scheduled shutdown of the plant.[147]

In response to the final issue posed in the Hearing Examiner's Briefing Order regarding the mechanism or instrument for transferring the dedicated proceeds of energy transition bonds to the agencies delegated the responsibility to administer and disburse money from the Section 16 funds,[148] PNM responded that the specific transfer method by which PNM will make payment within 30 days of receipt of energy transition bond proceeds to the Section 16 funds was not addressed in the record in this proceeding. Nonetheless, PNM submits that it is reasonable to

[143] Sanchez Dir. 34.

[144] Baker Dir. 17. *See* Sanchez Dir. 11 ("Based on the amount of abandonment and financing costs as defined by the Act, approximately $16.5 million in funding will be provided to the state agencies responsible for administering these community programs.").

[145] Sanchez Dir. 34-35.

[146] Sanchez Dir. 19.

[147] Baker Dir. 17.

[148] *See* Briefing Order, at 8, ¶ A(10).

assume that the transfers will be made via wire transfer either directly from the underwriter for the energy transition bonds or from PNM upon receipt of the proceeds of the bonds, to the New Mexico Treasurer, either simultaneous with the funding of the bond proceeds or at some point after closing of the bond transaction. The Treasurer will then have the obligation to direct the payments to the funds established by Section 16. PNM says it will coordinate the transfer to confirm that the payments are deposited into the accounts created by the ETA and as specified in Section 16. Beyond that, specific procedures for access to those funds should be established by the specific state agency charged with administering those funds by the ETA.[149]

2. Analysis of contested issues and recommendations

Because the Commission's resolution of the most contentious issues analyzed in this decision hinges on defining the scope of the Commission's authority under the ETA to review certain disputed capital investments in Four Corners, the Hearing Examiner begins this discussion setting forth the basic framework for treating "abandonment costs" as defined in ETA Section 62-18-2(H), particularly the four tranches of undepreciated capital investments described above that PNM has designated energy transition costs pursuant to Sections 2(H)(2)(c) and 2(H)(2)(d).

In Case No. 19-00018-UT, the Commission addressed this question but from a different perspective because, as WRA observes,[150] this case presents the Commission with a scenario that was not directly at issue in the SJGS abandonment proceeding. There, the Commission's decision

[149] PNM Br. 122.

[150] WRA Br. 13.

was focused primarily on the recoverability of costs not yet incurred, like mine reclamation and plant decommissioning.[151] The Hearing Examiners found that:

> . . . the Commission will have the authority to review the reasonableness and prudence of PNM's actual, finally-incurred expenditures. The Commission will not have the authority to *modify the ETCs* based upon findings that some or all of the expenses that have been securitized were unreasonable or imprudently incurred. The ETCs are fixed under the ETA to ensure the complete and timely payment of the debt service costs of the Energy Transition Bonds. But the Commission will have the authority to *allow or disallow the ultimate recovery through PNM's base rates*.
>
> The ETA preserves PNM's ability to recover certain costs that the Commission has or appears to have previously determined to have been reasonable and prudently incurred. . . . But there is no such protection from Commission review for costs incurred outside those parameters, such as capital costs incurred after January 1, 2019 and costs that may not, in fact, be necessary to maintain the safe and reliable operation of the qualifying generating facility prior to its abandonment.[152]

In this case, the Commission is faced with the unique situation where costs being *provisionally* recovered in rates in 2019 by virtue of explicitly being made subject to a future prudence review are claimed by the qualifying utility as energy transition costs eligible for securitization financing. This novel problem raises the following contested issues: Are costs on which a determination of prudence and reasonableness has been deferred eligible for securitization under the ETA? If such costs are securitizable, does the Commission still retain the authority in the ETA's wake to review the prudence of those costs? And, assuming the Commission still retains prudence review authority over those costs, should that review be conducted in this abandonment/ETA financing proceeding or, as mandated in the Commission's final order deferring

[151] In Case No. 19-00018-UT, the Hearing Examiners were hesitant to establish a broad rule on the limits between the Commission's powers under the ETA and its residual authority under the Public Utility Act and, in any event, found it unnecessary to do so absent a concrete controversy. The Hearing Examiners found, however, that the Commission had the authority to make the modifications recommended in that case. *See Recommended Decision on SJGS Financing Order*, at 90.

[152] *Recommended Decision on SJGS Financing Order*, at 94 (emphasis in original).

the prudence determination, would that review be more appropriately performed in the utility's next rate case filing?

a. Commission authority and standards of review regarding the four tranches of undepreciated capital investments

The four tranches of capital investments for which PNM seeks securitization fall into the following categories of "energy transition costs" under Section 62-18-2(H)(2):

> (c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019 or are otherwise found to be recoverable through a court decision; and
>
> (d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision or rule, or necessary to maintain safe and reliable operation of the qualifying generating facility prior to the facility's abandonment[.][153]

Referring, first, to Section 2(H)(2)(c), ordinarily costs "being recovered in rates" as of a certain date are those placed in rates either because: (1) they were not challenged in a rate proceeding and the Commission assumes they were reasonably incurred because the utility met the "normal burden" of making a *prima facie* case that the costs were, in fact, incurred; or (2) the utility met the "heightened burden" of demonstrating the reasonableness of individual costs,[154] bearing in mind that some costs like rate case expenses are not accorded the presumption of prudence under the PUA and must be proven to have been expended reasonably.[155]

It is undisputed that undepreciated capital investments in PNM's first tranche, those made before the 2016 Rate Case, are eligible for securitization. It is also undisputed that those undepreciated investments in the second tranche (i.e., Four Corners investments made between July 1,

[153] NMSA 1978, §§ 62-18-2(H)(2)(c)-(d).

[154] *In re PNM Gas Services*, 2000-NMSC-012, ¶¶ 72-73, 129 N.M. 1, 1 P.3d 383.

[155] NMSA 1978, § 62-13-3(B) (1941, as amended through 1993).

2016 and December 31, 2018) that were either not challenged or withstood a challenge in the 2016 Rate Case are eligible for securitization. For costs in those categories, having either (a) gone unchallenged and satisfied the normal burden, (b) already been subject to prudence challenges in prior rate cases and met the heightened burden, or (c) been deemed reasonable through the Commission's approval of the Modified Revised Stipulation that the Commission considered a "black box" settlement,[156] it would be inappropriate pursuant to the ETA for the Commission to revisit whether those costs were prudently and reasonably incurred barring unforeseen and extraordinary circumstances. However, as for the one set of costs in the second tranche for which the determination of prudence was expressly deferred in the 2016 Rate Case (the SCR controls and additional life-extending capital expenditures) opinions among PNM and the other parties sharply diverge over whether the costs are securitizable and whether the Commission retains the authority, after passage of the ETA, to review whether those contested investments were prudently incurred.

Costs in the third tranche (undepreciated investments made between January 1, 2019 and June 30, 2020) fall under "other undepreciated investments" in Section 2(H)(d). None of the costs in this tranche were challenged in this case. But, while they are eligible for securitization and would become *unmodifiable* energy transition costs as far as the energy transition cost financing (i.e., estimated costs financed with the bonds) is concerned,[157] the Commission retains the authority

[156] In addressing exceptions on the another contested cost item apart from the Four Corners SCR controls and additional capital expenses, i.e., $46 million in SJGS capital expenditures, the Commission observed that "Even in the context of a *'black box' stipulation* that includes a $16.5 million cushion of unspecified cost reductions, the Commission declines to find that it is proper to issue PNM a 'blank check' expense account for unknown projects that the Signatories acknowledge have not been identified as included within the terms of that Stipulation." *Revised Final Order*, at 33 (emphasis added).

[157] *See Recommended Decision on SJGS Financing Order*, at 94 (recall, again: "The Commission will not have the authority to *modify the ETCs* based upon findings that some or all of the expenses that have been securitized were unreasonable or imprudently incurred. The ETCs are fixed under the ETA to ensure the (*Cont'd on next page*)

to allow or disallow the ultimate recovery through PNM's base rates depending on whether the costs are ultimately found to be incurred to comply with law or necessary to maintain the safe and reliable operation of Four Corners prior to the abandonment.

The undepreciated investments in the fourth tranche (projected investments made between July 1, 2020 and December 31, 2024) are subject to a dispute between PNM and WRA over the total amount of projected investments eligible for securitization. That dispute is taken up in section III.D.2.e below. Nevertheless, like costs in the third tranche, whatever costs in the fourth tranche the Commission determines to be eligible for securitization would also become unmodifiable for purposes of the energy transition bond financing, but such costs would still be subject to the Commission's authority, applying the Section 62-18-2(H)(2)(d) standard, to allow or disallow their final recovery through PNM's base rates pursuant to the reconciliation process under Section 4(B)(10) of the ETA.[158]

Accordingly, regarding the third and fourth tranches of undepreciated investments in the Four Corners plant, the Hearing Examiners' concluding example in Case No. 19-00018-UT still resonates:

> As an example, if the Commission were to approve for securitization PNM's $283 million estimate of undepreciated investment for San Juan Units 1 and 4 as of the date of abandonment and PNM were to expend an additional $50 million in capital costs on the units prior to their abandonment, the Commission could review whether the additional $50 million in capital costs was incurred to comply with law or whether the costs were necessary to maintain the safe and reliable operation of the units

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complete and timely payment of the debt service costs of the Energy Transition Bonds. But the Commission will have the authority to *allow or disallow the ultimate recovery through PNM's base rates*.") (emphasis in original).

[158] Section 4(B)(10) of the ETA states that the qualifying utility's application shall provide "a description of a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the Energy Transition Bonds and the actual final energy transition costs incurred by the qualifying utility or the assignee." NMSA 1978, § 61-18-4(B)(10). *See infra* section III.G (final recovery of actual versus estimated abandonment costs).

prior to their abandonment. Similarly, if the Commission were to approve for securitization $19.2 million in estimated future decommissioning costs, the Commission could review whether PNM's actual future expenditures were reasonable and prudently incurred.

The potential disallowances resulting from any imprudence findings would likely be implemented in base rates in the reconciliation process under section 4(B)(10) of the ETA for PNM's actual vs. estimated costs. The disallowances would not affect the ETCs assessed to ratepayers to recover the debt service payments on the bonds.[159]

b. Commission's deferral of prudence review of SCR controls and other Four Corners life-extending capital expenditures in Case No. 16-00276-UT

In addressing the contested revised stipulation in Case No. 16-00276-UT, the Hearing Examiners found in their October 31, 2017 *Certification of Stipulation* that PNM's decision in October 2013 to extend its participation in the Four Corner plant to July 2041, a decision that was not formally effectuated until March 2015, was imprudent.[160] Consequently, the *Certification of Stipulation* recommended disallowance of all costs associated with the capital investments that were necessary to extend the life of the plant – consisting of $90.1 million in SCR controls and $58 million in additional life-extending improvements – and ordered that the stipulation must be modified to reflect this treatment for Commission approval.[161]

In its December 20, 2017 *Order Partially Adopting Certification of Stipulation*, the Commission found that "PNM's imprudence extended not just to the decision to install SCR and

[159] *Recommended Decision on SJGS Financing Order*, at 95.

[160] *See Certification of Stipulation*, at 30, 47. While PNM executed an amended Four Corners coal supply agreement (the 2016 coal supply agreement) in December 2013, it was not until March 15, 2015 that PNM and the other co-owners signed amended co-tenancy and operating agreements that extended the term of the agreement to July 7, 2041. *Id*. 28-29, 47-48, 73.

[161] The Hearing Examiners found that the disallowance in the revised stipulation was not a sufficient or reasonable remedy for PNM's imprudence in extending its participation in Four Corners and pursuing the SCR controls and additional capital improvements. The stipulation had limited the return on the $90.1 million in SCR investment to PNM's embedded cost of debt but allowed a ***return of*** that investment plus a full ***return of and on*** the $58.1 million in additional life-extending capital improvements. *Certification of Stipulation*, at 66-67.

make additional improvements in FCPP, but to PNM's determination that continued use of FCPP as base load was necessary."[162] The Commission determined that the *Certification of Stipulation's* limited remedy of disallowing PNM's return on the SCR controls and other Four Corners capital expenditures was an appropriate remedy for that phase of the Commission's review "based on the scope of the Revised Stipulation, the limited record that was developed based on the limited scope of this proceeding, and the restricted time to conduct further proceedings in light of the statutory suspension period."[163] The Commission thus concluded that the ratemaking treatment of Four Corners plant costs not addressed in Case No. 16-00276-UT would be determined either in a continuation of the case if the Signatories did not accept the modifications approved by the Commission or in PNM's next rate proceeding.[164]

Nevertheless, after granting motions for rehearing and entertaining oral argument on January 10, 2018, the Commission issued its *Revised Final Order* later that day in which it decided "to defer the issue of imprudence to PNM's next rate case" if certain modifications were accepted by the Signatories to the revised stipulation. The Commission explained that:

> deferring, for the limited duration of the period that the revised Stipulation will be in effect, a finding on the issue of PNM's prudence in its continued participation and investment in FCPP until PNM's next rate filing … will permit consideration of the issue with the full participation of all parties without any constraints that may be placed on such Signatories associated with their current role as proponents of the proposed settlement, while also permitting a more full opportunity for the Commission to consider the

[162] *Order Partially Adopting Certification of Stipulation*, at 19-20, ¶ 66. The Commission added that the determination to continue to use the Four Corners plant as baseload generation was "especially concerning in light of evidence adduced at the hearing . . . concerning FCPP's poor operating performance and impaired availability rate, as well as PNM's prior representations to the Commission in Cases 13-00390-UT and 15-00261-UT concerning the necessity for acquiring and retaining baseload generation capacity at Palo Verde Nuclear Generating Station in [those cases]." *Id*. 20, ¶ 66.

[163] *Id*. 20, ¶ 67.

[164] *Id*. 20, ¶ 68.

> necessity and scope of any remedy in light of PNM's alleged imprudence; an option the Certification noted was not currently available to the Commission in light of the limited record on that issue developed in this proceeding. In the subsequent proceeding, administrative notice will be taken of the evidence on the issue of prudence admitted in the current proceeding.[165]

The Commission's modifications allowed a ***return <u>of</u>*** the $148.7 million in SCR controls and additional life-extending FCPP capital investments but limited the ***return <u>on</u>*** the entire amount to PNM's embedded cost of debt. The modifications also included, in light of "the magnitude of the potential benefit to PNM of deferring the issue," an increase of $9.1 million to the $16.5 million that the Hearing Examiners referred to as "unspecified" revenue reductions that were negotiated to reach the stipulated revenue increase of $62.3 million (PNM's rate application sought a $99.2 million increase). The Commission determined that this further "unspecified" revenue reduction would be necessary "to balance the interests of ratepayers and the utility."[166] PNM and the other Signatories expressly accepted the Commission's modifications,[167] filed the Modified Revised Stipulation on January 23, 2018,[168] and PNM implemented the approved stipulated rates effective February 1, 2018.[169]

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[165] *Revised Final Order*, at 23, ¶ 66.

[166] *Id*. 23-24, ¶ 67; *see also Certification of Stipulation*, at 13, 155, 173-176. The Commission's $9.1 million in further "unspecified" reductions was later adjusted downward to $4.4 million, for a total final revenue increase of $57.9 million. *See Order on Notice of Acceptance* (Jan. 17, 2018), at 3 ¶ A.

[167] Joint Notice by All Signatories of Acceptance of Commission's Modifications to Revised Stipulation ("Joint Notice") (Jan. 19, 2018).

[168] Paragraph 8 of the Modified Revised Stipulation states:

> 8. <u>[Renumbered from original paragraph 9]</u> The Signatories agree that PNM shall include in its rate base the return of its capital investment <u>of $90 million</u> in SCR equipment installed at Four Corners <u>and the additional $58 million in capital investments at Four Corners proposed for recovery in PNM's Application (referenced collectively as the "$148 Million Investment").</u> PNM shall only collect a return on its Four Corners ~~SCR Investment~~ <u>$148 Million Investment</u> equal to PNM's embedded cost of debt. Any accounting requirements under generally accepted accounting principles ("GAAP") affecting the valuation of these assets on PNM's financial

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The Commission therefore expressly conditioned its authorization for PNM to recover the Four Corners SCR controls and additional capital investments at a reduced rate of return with the proviso that a finding or determination of imprudence in the subsequent proceeding would subject or expose PNM to any appropriate remedy if PNM failed to carry its burden of proving in the subsequent proceeding that the investments were prudent and reasonable. The Commission thus authorized the recovery of the contested investments in rates only temporarily, until PNM's next rate case when continued recovery would be subject to further review of issues relating to prudence, with PNM bearing the burden of proof, and any appropriate remedies. PNM accepted these modifications and conditions and did not appeal the Commission's *Revised Final Order* and follow-up *Order on Notice of Acceptance.*

c. Whether the Commission's retains the authority post-ETA to review the prudence and reasonableness of SCR controls and other Four Corners life-extending expenditures deferred in Case No. 16-00276-UT

The Energy Transition Act was enacted into law on March 22, 2019 as part of S.B. 489. Pertinent to this discussion, the ETA provides that abandonment costs specified in Section 62-18-2(H) of the act, including undepreciated investments in rates as of January 1, 2019 plus costs necessary for the safe and reliable operation of the plant prior to its abandonment can be securitized. Despite expressly accepting "all of the modifications to the Revised Stipulation

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> statements that may result from this Paragraph shall not affect the rate base value of ~~SCR equipment~~ the $148 Million Investment at Four Corners for purposes of setting retail service rates. For purposes of demonstrating the base rate non-fuel revenue requirement in future rate cases, PNM shall separate out the presentation of the return on rate base, showing the return on the Four Corners ~~SCR investment~~ $148 Million Investment at the embedded cost of debt and the return on the remaining rate base investments based on future weighted average cost of capital determinations. If Four Corners is no longer used to serve PNM's retail customers, the Signatories reserve the right to take any position with regard to the recovery of the undepreciated balance of the Four Corners ~~SCR investment~~ $148 Million Investment.

[169] Advice Notice No. 545

contained in the Decretal Paragraphs of the Commission's [*Revised Final Order*] . . ., as further clarified by the . . . *Order on Notice of Acceptance*[,]"[170] PNM asserts that the Commission is barred by the subsequently enacted ETA from conducting a prudence review of any undepreciated investments being recovered in rates as of January 1, 2019, including the SCR controls and additional life-extending capital expenses provisionally placed in rates at PNM's embedded cost of debt.[171] PNM suggests that the "non-discretionary duty to apply the ETA" it describes the *Egolf* court as having imposed on the Commission extends to precluding a prudence review in this case or any future proceedings, arguing: "By the very terms of the ETA, given that the SCR and other capital investments costs were in rates as of January 1, 2019, such costs are securitizable 'energy transition costs' that are no longer subject to the Commission's deferral of a prudence review."[172]

PNM argues the ETA was a "deliberate change in law" that *modified* past Commission rate-setting practice – albeit through very quiet, if not silent, implication. Invoking the principle of statutory construction that the Legislature is presumed to be aware of existing law, including Commission rules and findings,[173] PNM posits that had the Legislature wanted to do so, it could have stated that prudence was at issue in any application brought pursuant to the ETA, but it did not. Citing the PUA provision discussed above that forbids applying a presumption of prudence to rate case expenses, Section 62-13-3(B), PNM observes the Legislature "certainly understands how to dictate requirements related to prudence pursuant to statute."[174] Given that the Legislature did not add to the statute language to effect of, in PNM's words, "'undepreciated investments as of the

[170] Joint Notice, at 1.

[171] PNM Br. 80-81.

[172] PNM Br. 41-42; *see id*. 80 ("the Commission must apply the ETA as written and accept it superseded the Commission's pre-ETA deferral of a prudence determination.").

[173] *In re PNM Gas Services*, 2000-NMSC-012, ¶ 73.

[174] PNM Br. 45.

date of abandonment being recovered in rates as of January 1, 2019' are subject to a prudence review or are not presumed to be prudent," PNM contends that the Commission should not add such words to the statute.[175]

PNM makes several additional arguments going to why it thinks the Commission missed its chance to perform the prudence review of the contested Four Corners investments.[176] PNM suggests, for example, if there were concerns in some quarters about the inclusion of Four Corners costs in rates, the Commission could have ordered a rate case to be filed wherein the prudence of Four Corners would be fully litigated outside of an ETA proceeding.[177] The Commission could have also used the enforcement mechanism recognized in the *Egolf* decision, Section 62-12-1 of the PUA, pursuant to which if the Commission thought PNM was "undermining its authority,"[178] The Commission could have ordered PNM to file a rate case by a date certain, and requested that the Attorney General seek an injunction in district court compelling PNM to do so had it failed to comply.[179] Still, in setting out what it purports to have been "the Commission's options in terms of compliance with the *Revised Final Order* in Case No. 16-00276-UT," PNM represents that it "does not intend to place the obligation for determining when PNM files its next rate case solely with the Commission."[180] In fact, PNM avers, but for the COVID-19 pandemic, the Company would have voluntarily filed a rate case in 2020.[181] But, "in the meantime," switching instantly back to what it

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[175] *Id*. (citing *State v. Maestas*, 2007-NMSC-001, ¶ 15, 140 N.M. 836, 149 P.3d 933, which was applying the "plain meaning of a statute" standard).

[176] *See* PNM Br. 47-51.

[177] PNM Br. 47 (citing NMSA 1978, § 62-10-1).

[178] *Egolf*, 2020-NMSC-018, ¶¶ 28.

[179] PNM Br. 47.

[180] *Id*.

[181] PNM Br. 47-48.

thinks the Commission could have done "just prior to PNM filing the Application in this case," the Commission could have granted, but did not grant, Sierra Club's motion to re-open the docket in Case No. 16-00276-UT, or the Commission could have found probable cause for, but instead dismissed, NEE's complaint that sought an investigation and hearing on the reasonableness and lawfulness of PNM's continued reliance on Four Corners.[182]

Therefore, summing up its position on the what the Commission called the "issue of PNM's FCPP prudence" in the *Revised Final Order*,[183] PNM concludes

> The existence of the new statutory construct embodied in the ETA and the manner in which the law changed provided adequate notice to the Commission and the parties of the changed circumstances as to how the Four Corners costs in rates as of January 1, 2019, would be treated. That notice was reinforced by *Egolf*, wherein the New Mexico Supreme Court unequivocally stated that the Commission has a nondiscretionary duty to apply the ETA once an application is filed. Based on the Commission's actions in Case No. 18-00016-UT regarding the Tax Cuts and Jobs Act ('TCJA'), it is known that a change in law may require quick or decisive action to ensure Commission authority is preserved. After the passage of the ETA or after *Egolf* was issued, the Commission declined to find that PNM's rates which included Four Corners costs should be reviewed prior to PNM

[182] PNM Br. 48-49. PNM, further, argues in this vein that:

> While parties to this case want the Commission to believe that PNM has rushed to file this abandonment proceeding to avoid a rate case filing and the attendant prudence review deferred in Case No. 16-00276-UT, the evidence speaks differently. First, PNM was expected to file a rate case to be effective in 2020 at the earliest. The Commission agreed with PNM that there was never any obligation for PNM to file a rate case to resolve the undepreciated Four Corners investments that are validly in rates. Second, with the pandemic, the rate case filing that was being planned for 2020 was justifiably delayed. Third and finally, after the enactment of the ETA when it became clear that the applicable statute permits securitization of undepreciated costs in rates as of January 1, 2019, the Commission could have exercised its discretion via multiple avenues (statute, a motion, or a complaint) to obligate PNM to address Four Corners costs outside of an ETA abandonment and financing proceeding. The Commission did not do so.

PNM Br. 49-50.

[183] *Revised Final Order*, at 23, ¶ 67 (in the immediately preceding paragraph 66, the Commission provides that "administrative notice will be taken of the evidence of the issue of prudence admitted in the current proceeding.").

> filing of a future rate case at its discretion. PNM has since properly exercised its rights pursuant to the ETA to seek abandonment and securitized financing for stranded costs associated with Four Corners. Put simply, this is in an ETA case and the terms of the ETA apply.[184]

None of the other parties staking out a position on the issue[185] agrees with PNM that the Commission was foreclosed by the ETA from reviewing the prudence of the SCR controls and other life-extending capital investments in Four Corners; in fact, those eight parties[186] and Staff strenuously disagree with PNM, contending that the Commission retains the authority to perform the prudence review.[187] Several parties advocate,[188] or at least seem to suggest from the context of their argument,[189] that the Commission should find in this proceeding that PNM acted imprudently with respect to extending the Company's participation in Four Corners and incurring the associated investments. Some of those parties, namely ABCWUA/Bernalillo County, NEE, and Sierra Club, propose remedies for PNM's alleged imprudence that would result in a complete $146.7 million disallowance[190] and removal of the "uneconomic" Four Corners from rate base.[191] The parties who argued that PNM acted imprudently in making its Four Corners continuation decisions and

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[184] PNM Br. 50-51 (internal citations omitted). While the Hearing Examiner certainly agrees with PNM that "this is an ETA case [as well as a PUA §§ 62-9-5, 62-6-12 and -13 case] and the terms of the ETA apply," he disagrees with PNM's interpretation of a key term of the ETA and what that ambiguous term purports to require or prohibit in relation to the Commission's rate-setting authority, as seen below.

[185] NM AREA and San Juan County abstained from addressing, among other things, the issue of PNM's FCPP prudence in their briefs.

[186] Namely, ABCWUA, Bernalillo County, CCAE, the Attorney General, Community Groups, NEE, Sierra Club, WRA.

[187] Staff Br. 4-5.

[188] *See* ABCWUA/County Br. 5-8; Community Groups Br. 28, 42-43; NEE Br. 16-22; Sierra Club 50-57.

[189] *See* NMAG Br. 8 (contending "costs included in this application include imprudently incurred expenses and costs associated with the merger" and the Commission's previous rulings as to imprudent costs are still valid.")

[190] *See* NEE Br. 47-57; Sierra Club Br. 57-61.

[191] NEE Br. 57-58; ABCWUA/County Br. 18, 22.

incurring the SCR and additional capital investments rely heavily, if not almost exclusively in most instances, on citing to the *Certification of Stipulation* for their evidence of the PNM's alleged imprudence. Sierra Club nonetheless maintains that new evidence presented in this case through the testimony of Sierra Club witness Jeremy Fisher and PNM witness Frank Graves dictate "the outcome should be the same as if the Commission also considers the evidence from Case No. 16-00276-UT: a finding that PNM acted imprudently."[192]

CCAE and WRA take no position on whether PNM acted prudently or imprudently in continuing its participation in Four Corners after 2015.[193] However, both CCAE and WRA assert that the ETA did not abrogate the prudence review ordered in Case No. 16-00276-UT. CCAE argues the ETA does not explicitly or expressly purport to preempt, supersede, take precedence over or eliminate the Commission's authority to determine if an investment is prudent.[194] To CCAE, then, at issue whether, reading the act harmoniously with provisions of the PUA, the ETA impliedly repealed the Commission's statutory authority to determine the justness, reasonableness, and prudence of an investment when the utility applies for securitization pursuant to the ETA. CCAE reads Section 62-18-2(H)(2)(c) to allow the Commission to disallow recovery for some abandonment between the time when approval is granted and when the plant is actually

[192] Sierra Club Br. 25-27.

[193] WRA Br. 15.

[194] CCAE Br. 2. CCAE concludes in its response brief that the "ETA does not state the Commission loses its ability to review the prudence of investments on utilities books and records as of January 1, 2019. It is a big leap of logic to take *a limitation* on what qualifies as an energy transition cost and apply that limitation to preemptively limit the Commission's authority to determine just and reasonable rates as per an agreed upon prudence review in a Commission Final Order. The clause, '. . . *that were either being recovered in rates as of January 1, 2019 or are otherwise found to be recoverable through a court decision*' is a 'subordinate clause' that limits which investments on PNM's books and records on the date of abandonment are Energy Transition Costs, it is not a limitation on the Commission's authority." CCAE Resp. 7 (emphasis in original).

abandoned.[195] CCAE concludes that "[t]he ETA's **silence** on permissible reasons for a change in the value of PNM's undepreciated investments on its books and records between January 1, 2019 and the actual abandonment," which could be as late as 2031, "requires a heavy lift from PNM in arguing implied repeal."[196]

WRA agrees that the ETA does not limit the Commission's power to review previously unreviewed expenditures, including the continuation of a prudence review deferred for later and further consideration. Nor does the ETA limit, in WRA's reading of the act, the Commission's power to deny recovery of imprudent or unreasonable investments in setting just and reasonable rates.[197] Nor, in WRA's understanding, is the Commission constitutionally obligated to authorize the securitization of costs on which a prudence review was expressly deferred but subsequently not initiated prior to enactment of the ETA "without ensuring that ratepayers do not ultimately pay for costs that are now or later determined to be imprudent or unreasonable. The Commission is constitutionally obligated to apply, implement and enforce both the ETA and the PUA, among other statutory enactments."[198]

Unlike CCAE, however, WRA's position is that, also construing the ETA and PUA in harmony so as to give effect to all related provisions, costs like the SCR controls and other life-extending capital expenses provisionally recovered subject to a future prudence inquiry are eligible for securitization financing, but pursuant to Section 62-18-4(B)(10), such costs should also be

[195] *See* CCAE Br. 2-6. CCAE's temporal argument, which WRA does not join in asserting the contested investments are securitizable estimated costs that are subject to being disallowed in the reconciliation process in which final, actual energy transition costs are determined, is implicitly rejected above based on the Hearing Examiner's ruling in Section III.D.2.a~~a above~~ and is inconsistent with the Commission's analogous determination in Case No. 19-00018-UT, which is quoted at the end of that section.

[196] CCAE Br. 6 (emphasis in original).

[197] WRA Br. 8-9.

[198] WRA Br. 10.

reconciled in future rates to the extent there is a future imprudence disallowance, just as estimated decommissioning reclamation costs can be reconciled in future rates based on an imprudence determination. In concluding, WRA asserts that its position

> is consistent with both the rationale of the 19-00018-UT decision that financed costs found to be imprudent can be reconciled in future rates, and the proposition that costs incurred imprudently are not 'actual' costs of a project for purposes of setting rates, but the cost of imprudent actions. It also harmonizes the ETA with the Commission's general responsibility to assure just and reasonable rates and protect the public interest. Any ambiguity in the ETA should be construed consistent with this responsibility. And finally, it reflects that PNM accepted that its Four Corners' cost recovery would be subject to a future prudence inquiry, and presumably waived its right to assert otherwise.[199]

Because the resolution of this issue requires the Commission to construe the meaning of Section 62-18-2(H)(2)(c) of the ETA, the basic principles guiding the Commission's interpretation of the statute should be elucidated. In construing statutes, the Commission's "guiding principle is to determine and give effect to legislative intent."[200] To determine the Legislature's intent, the Commission is "aided by classic canons of statutory construction."[201] In New Mexico law, there are "two themes or approaches . . . relating to how a court [and, by extension, the Commission] performs the task of applying a statute when the parties to a case disagree over the statute's meaning."[202]

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[199] WRA Br. 13-14.

[200] *N.M. Indus. Energy Consumers (NMIEC) v. N.M. Pub. Reg. Comm'n,* 2007-NMSC-053, ¶ 20, 142 N.M. 533, 168 P.3d 105) (citing *Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm'n (NMPUC)*, 1999-NMSC-040, ¶ 18, 128 N.M. 309, 992 P.2d 860).

[201] *NMIEC*, 2007-NMSC-053, ¶ 20.

[202] *State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 2, 117 N.M. 346, 871 P.2d 1352. Chief Justice Montgomery proceeded to observe that the two "approaches, though probably intended to be complementary, often seem to work at cross purposes and to call for different answers to the question." *Id*.

The first approach is often called the "plain meaning" rule. Pursuant to the plain meaning rule, "statutes are to be given effect as written and, where they are free from ambiguity, there is no room for construction; where the meaning of the statutory language is plain, and words used by the legislature are free from ambiguity, there is no basis for interpreting the statute[.]"[203] Under this approach, the Commission should not "depart from the plain wording of a statute, unless it is necessary to resolve an ambiguity, correct a mistake or an absurdity that the Legislature could not have intended, or to deal with an irreconcilable conflict among statutory provisions."[204]

Under the second "rejection-of-literal-language" approach, "where the language of the legislative act is doubtful or an adherence to the literal use of words would lead to injustice, absurdity or contradiction, the statute will be construed according to its obvious spirit or reason, even though this requires the rejection of words or the substitution of others."[205] Incidentally, a "statute is ambiguous if reasonably informed persons can understand the statute as having two or more meanings."[206]

Although the two lines of authority just summarized – "plain and unambiguous meaning" and "rejection-of-literal-language" – appear contradictory at first blush, as explained by Chief Justice Seth Montgomery in *Gallegos*, "the two approaches, correctly understood, can be viewed as complementary[.]"[207] That is, "if the meaning of a statute is truly clear – not vague, uncertain, ambiguous, or otherwise doubtful – it is of course the responsibility of the judiciary to apply the

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[203] *Gallegos*, 1994-NMSC-023, ¶ 2 (internal quotation marks and citation omitted).

[204] *Regents of Univ. of N.M. v. N.M. Federation of Teachers*, 1998-NMSC-020, ¶ 28, 125 N.M. 401, 962 P.2d 1236.

[205] *Gallegos*, 1994-NMSC-023, ¶ 3 (internal quotation marks and citation omitted).

[206] *Bd. of Educ. v. N.M. State Dep't of Pub. Educ.*, 1999-NMCA-156, ¶ 18, 128 N.M. 398, 993 P.2d 112.

[207] *Gallegos*, 1994-NMSC-023, ¶ 22.

statute as written and not to second-guess the legislature's selection from among competing policies or adoption of one of perhaps several ways of effectuating a particular legislative objectives."[208] However, Chief Justice Montgomery advised,

> courts must exercise caution in applying the plain meaning rule. Its beguiling simplicity may mask a host of reasons why a statute, apparently clear and unambiguous on its face, may for one reason or another give rise to legitimate (i.e., nonfrivolous) differences of opinion concerning the statute's meaning. In such a case, it can rarely be said that the legislation is indeed free from all ambiguity and is crystal clear in its meaning. While – as in this case – one part of the statute may appear absolutely clear and certain to the point of mathematical precision, lurking in another part of the enactment, or even in the same section, or in the history and background of the legislation, or in an apparent conflict between the statutory wording and the overall legislative intent, there may be one or more provisions giving rise to genuine uncertainty as to what the legislature was trying to accomplish. In such a case, it is part of the essence of judicial responsibility to search for and effectuate the legislative intent – the purpose or object – underlying the statute.[209]

In addition, the Commission should strive to read related statutes in harmony so as to give effect to all provisions:

> In ascertaining legislative intent, the provisions of a statute must be read together with other statutes in pari materia under the presumption that the legislature acted with full knowledge of relevant statutory and common law. . . . Thus, two statutes covering the same subject matter should be harmonized and construed together *when possible*, in a way that facilitates their operation and the achievement of their goals.[210]

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[208] *Id*.

[209] *Id*. ¶ 23.

[210] *NMIEC*, 2007-NMSC-053, ¶ 20 (quoting *State ex rel. Quintana v. Schnedar*, 115 N.M. 573, 575-76, 855 P.2d 562, 564-65 (1993) (emphasis in original) (citations omitted). *See Benavidez v. Sierra Blanca Motors,* 1996-NMSC-045, ¶ 18, 122 N.M. 209, 922 P.2d 1205 ("Therefore, when several statutes relate to the same subject matter, we will, if possible, construe them so as to give effect to every relevant provision.").

Similarly, "where several sections of a statute are involved, they must be read together so that all parts are given effect."[211] The Supreme Court is "disinclined to construe a statute to create conflicts between its provisions rather than resolve them."[212] Hence, reading the statutory provisions implicated *in pari materia*,[213] in this case the Commission must construe the provisions to give effect to related provisions of the ETA and PUA.[214]

Finally, when interpreting a statute, the Commission may look to the statute's language, in context with surrounding statutory provisions, as well as the practical implications and legislative purpose of the statute.[215] It is presumed "that the Legislature was informed as to existing law, and that the Legislature did not intend to enact a law inconsistent with any existing law."[216]

Turning next to the Commission's rate-setting authority, among the most important responsibilities the Commission must diligently discharge under the Constitution in "regulating public utilities as provided by law" is its general supervisory authority over utility costs in the ratemaking process. The Public Utility Act commands, in Section 62-8-1, that "[e]very rate made,

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[211] *Marbob Energy Corp. v. N.M. Oil and Conservation Comm'n*, 2009-NMSC-013, ¶ 11, 146 N.M. 24, 206 P.3d 135 (quoting *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-50, ¶ 5, 126 N.M. 413, 970 P.2d 599). *See Bishop v. Evangelical Good Samaritan Soc'y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473, 212 P.3d 361 ("We also consider the statutory subsection in reference to the statute as a whole and read the several sections together so that all parts are given effect.").

[212] *Marbob Energy Corp.*, 2009-NMSC-013, ¶ 18 (citing *El Paso Electric Co. v. Real Estate Mart, Inc.*, 1979-NMSC-023, ¶ 13, 92 N.M. 581, 592 P.2d 181 for "[i]t is the duty of the court, so far as practicable, to reconcile different provisions so as to make them consistent, harmonious, and sensible.").

[213] *Miller v. Bank of America, N.A.*, 2015-NMSC-022, ¶ 18, 352 P.3d 1162, 1168 ("Whenever possible, we will read statutes in harmony, to give effect to all provisions.").

[214] *Benavidez v. Sierra Blanca Motors*, 1996-NMSC-045, ¶ 18, 122 N.M. 209, 213, 922 P.2d 1205, 1209 ("Therefore, when several statutes relate to the same subject matter, we will, if possible, construe them so as to give effect to every relevant provision.").

[215] *Bishop*, 2009-NMSC-036, ¶ 11.

[216] *Pub. Serv. Co. v. N.M. PUC*, 1999-NMSC-040, ¶ 25.

demanded or received by any public utility shall be just and reasonable."[217] The Supreme Court has long held that the Commission "is vested with considerable discretion in determining the justness and reasonableness of utility rates."[218] The Court also has long emphasized, however, that "[t]o set a just and reasonable rate, the Commission must balance the investor's interest against the ratepayer's interest."[219] The utility seeking a rate increase bears the burden pursuant to Section 62-8-7(A) of demonstrating the increase is just and reasonable.[220] In setting rates the Commission is "not bound to the use of any single formula or combination of formulae in determining rates. The rate-making function involves the making of pragmatic adjustments. It is the result reached, not the method employed, which is controlling."[221]

Consistent with the foregoing rate-setting principles, the Public Utility Act contains a declaration of policy concerning public utility regulation, including the setting of "fair, just and reasonable" rates:

> B. It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication

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[217] NMSA 1978, § 62-8-1 (1941) (emphasis added).

[218] *Attorney General v. N.M. Pub. Serv. Comm'n*, 1984-NMSC-081, ¶ 12, 101 N.M. 549, 685 P.2d 957; *see id*. *Public Serv. Co. of N.M. v. N.M. Pub. Reg. Comm'n*, 2019-NMSC-012, ¶ 9, 444 P.3d 460 (*PNM v. NMPRC*).

[219] *Timberon Water Co. v. N.M. Pub. Serv. Comm'n*, 1992-NMSC-047, ¶ 29, 114, N.M. 154, 836 P.2d 73 (citing *State v. Mountain States Tel. & Tel. Co.*, 1950-NMSC-055, ¶ 39, 54, N.M. 315, 224 P.2d 155).

[220] NMSA 1978, § 62-8-7(A) (1991, as amended through 2011).

[221] *PNM v. NMPRC*, 2019-NMSC-012, ¶ 10 (citing *Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n*, 1977-NMSC-032, ¶ 70, 90 N.M. 325, 563 P.2d 588). *See Attorney General of New Mexico v. N.M. Pub. Serv. Comm'n*., 1991-NMSC-028, ¶ 26, 111 N.M. 636, 808 P.2d 606 ("Not only has the AG not contested the ultimate rate set in this tripartite case, he has failed to even in the prudence case challenge the $90 million disallowance or the performance standards imposed by the PSC. This tacit concession on the AG's part that the end result is just and fair, and illustrates, we think, the virtue and worth of the PSC final order on prudence.").

> and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.[222]

The balancing of the interests of ratepayers and the interests of investors calls for the Commission to

> ensure that rates are neither unreasonably high so as to unjustly burden ratepayers with excessive rates nor unreasonably low so as to constitute a taking of property without just compensation or a violation of due process by preventing the utility from earning a reasonable rate of return on its investment.[223]

The Supreme Court has also recognized that "'there is a significant zone of reasonableness' in which rates are neither ratepayer extortion nor utility confiscation."[224]

PNM does not deny the objective substance of the deferred prudence review provided for in the *Revised Final Order*, although it does state the Commission "could have been more specific . . . to clarify to what extent future costs or investments being placed in rates were subject to a further prudence review and when the Commission would address such prudence."[225] While the Commission could have enunciated the deferred review process in more explicit terms,[226] the

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[222] NMSA 1978, § 62-3-1(B) (1967, as amended through 2008).

[223] *In re PNM Gas Services*, 2000-NMSC-012, ¶ 8.

[224] PNM v. NMPRC, 2019-NMSC-012, ¶ 10 (citing in *In re PNM Gas Services*, 2000-NMSC-012, ¶ 8).

[225] PNM Br. 51, n. 171.

[226] *See, e.g.*, *In re the Matter of Avista Corp., d/b/a Avista Utilities Request Regarding the Recovery of Power Costs Through the Deferral Mechanism*, Sixth Supp. Order Rejecting Tariff Filing; Granting Temporary Rate Relief, Subject to Refund; and Authorizing Compliance Filing, Washington Utilities and Transportation Commission Docket No. UE-010395, 2011 Wash. UTC Lexis, *6, 213 P.U.R.4th 177 ("The rate relief we order is the minimum we believe to be immediately necessary for the Company to preserve its ability to fulfill its service obligations to the public. *These rates are to be* ***in effect for a limited period of time***. We make no ultimate judgment in today's action about the appropriateness or prudence of management decisions made by the Company to respond to this extraordinary situation. *The Company remains responsible for proving that the costs it has incurred are appropriate and prudent. The rates we order today are* ***subject to refund, should the Company fail to carry this burden in the context of a full examination of the Company's management decisions and costs****. That examination will commence* ***with the filing of a general rate case, which we order to be filed by December 1, 2001***.") (emphasis added).

Commission's order was sufficiently specific and certain[227] to put PNM squarely on notice that it bore, and as found below still bears, the burden of proving the prudence and reasonableness of the Four Corners SCR controls and additional life-extending capital expenditures in its next general rate case by expressly acquiescing to that process. In fact, PNM – which expressly accepted the deferred review in agreeing to the Commission's modifications to the revised stipulation and subsequently did not appeal the Commission's *Revised Final Order* and *Order on Notice of Acceptance* – is well-versed in this process, having already had the Supreme Court reject its argument on appeal that the Commission erred in finding PNM failed to demonstrate in its 2015 Rate Case the prudence of the costs of converting SJGS Units 1 and 4 to a balanced draft emissions control system after having joined a stipulation in Case No. 13-00390-UT that deferred a determination of the prudence and reasonableness of the balanced draft costs in a subsequent general rate case.[228] The Legislature therefore is presumed to be aware that the Commission had deferred its prudence review of the $148.7 million in costs and that PNM had expressly (i) acquiesced to the Commission's authority to conduct the review in PNM's next general rate case, (ii) borne the burden of proving the prudence and reasonableness of the costs in that case, and (iii) face therein

[227] *See Revised Final Order*, at 23 ¶ 66 ("the Commission is justified in deferring, *for the limited duration of the period that the revised Stipulation will be in effect*, a finding on the issue of PNM's prudence in its continued participation and investment in FCPP *until PNM's next rate filing* … will permit consideration of the issue with the full participation of all parties without any constraints that may be placed on such Signatories associated with their current role as proponents of the proposed settlement, while also permitting a more full opportunity for the Commission to consider the *necessity and scope of any remedy in light of PNM's alleged imprudence*[.]").

[228] *See PNM v. NMPRC*, 2019-NMSC-012, ¶ 88 ("PNM's argument ignores that it agreed in Case No. 13-00390-UT that it would bear the burden of affirmatively demonstrating the prudence of the balanced draft costs in its general rate case. Given this prior stipulation and the evidence indicating that balanced draft was in PNM's permits primarily at its own request, it was lawful for the Commission to reject PNM's argument that the balanced draft costs were entitled to a presumption of prudence." In the Case No. 13-00390-UT stipulation the Supreme Court referenced, the stipulating parties "'also agreed that the prudence and reasonableness of the costs of the balanced draft [would] be determined in a PNM general rate case' in which PNM would have the burden to 'make an affirmative demonstration that incurrence of the costs of balanced draft was prudent and reasonable'"]).

the imposition of any appropriate remedies.[229] Knowing all this, the question becomes whether the Legislature intended to deliberately constrain the Commission's rate-setting authority the way PNM purports it did in enacting the ETA.

PNM's position rests entirely on a seemingly anodyne gerund phrase appearing precisely once in the ETA, specifically in Section 62-18-2(H)(2)(c): "being recovered in rates as of January 1, 2019." PNM stretches this phrase to mean the Legislature deliberately and conclusively "modified," in PNM's discreet description, but more accurately vitiated, limited, removed, or even arrogated the Commission's supervisory authority over substantial and disputed costs placed provisionally in rates subject to a future determination of prudence and reasonableness to which PNM submitted in the process of having other parties sign on to the Modified Revised Stipulation. PNM's strained interpretation of Section 62-18-2(H)(2)(c) creates an unwarranted conflict between that statute and the Commission's broad regulatory authority under the PUA. Simply put, PNM's position carries an unacceptable and avoidable financial risk to ratepayers and is contrary to the public interest because, reading the ETA in harmony with the PUA so that all related statues are read to operate effectively, it becomes readily apparent that acceptance of PNM's position would lead to a grave injustice ***if,*** i.e., assuming without deciding, well over $100 million in coal plant investments and costs otherwise found, after a full and fair hearing, to have been imprudently incurred were nevertheless improvidently foisted on ratepayers in final, actual abandonment costs.

A judicious, fairer, and more rational approach to the troubling issue[230] that upholds the objectives of both the ETA and the Commission's regulatory authority under the PUA is the harmonizing method suggested by WRA whereby the SCR controls and additional life-extending

[229] *In re PNM Gas Services*, 2000-NMSC-012, ¶ 73.

[230] Tr. Vol. III 715-21.

capital expenditures in the second tranche of undepreciated investments are allowed to be securitized and treated akin to estimated plant decommissioning costs. Subsequently, keeping in mind that PNM voluntarily submitted to the Commission's authority to review the prudence of the costs at issue and the Commission expressly allowed PNM to recover those costs "in rates" provisionally, any potential disallowances would be implemented pursuant to the Section 62-18-4(B)(10) ratemaking process provided for in the ETA to reconcile the difference between PNM's estimated costs and its actual, final energy transition costs.[231] Ultimately, if PNM succeeds in proving the SCR controls and other contested capital additions at Four Corners were prudently incurred and otherwise reasonable, PNM will have suffered no adverse consequence having been made whole through the securitization financing and ratepayers would be responsible for their fair share of the costs in just and reasonable rates.

Likely anticipating the Commission's determination to apply the rejection-of-literal-language approach in finding PNM's aggressive interpretation of the statute would lead to (i) an unintended usurpation of supervisory authority vested in the Commission by the PUA, (ii) inordinate risk of injustice to ratepayers, (iii) injury to the vested rights of other Signatories to the Modified Revised Stipulation, and (iv) disservice to the public interest, PNM admonishes the

[231] Reading analogous Supreme Court precedent, the "ratemaking process" referred to in the ETA must be the process provided in Section 62-8-7 of the PUA. *See N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2007-NMSC-053, ¶ 22, 142 N.M. 533, 168 P.3d 105 (Construing related provisions of the REA and PUA together, the Court agreed with the Commission and concluded "that by 'ratemaking process' in Section 62-16-6(A) of the REA, the Legislature meant the process set forth in Section 62-8-7 of the PUA, i.e., both general rate cases involving a Commission notice, hearing, and approval process as well as automatic adjustment clauses, depending on the type of cost involved.").

Commission, as noted above, to not add words to the statute that the Legislature didn't intend to be placed there.[232]

PNM's argument proves too much. Upon closer inspection of its position, when PNM cited other times where the Legislature modified or curbed the Commission's rate-setting authority by defining "what costs a utility is entitled to recover in other provisions of the PUA,"[233] PNM omitted critical language the Legislature most likely would have used if it truly intended to abrogate the Commission's planned review of the prudence and reasonableness of the SCR controls and other life-extending expenditures in the Four Corners plant. In particular, when PNM reminded the Commission that the Renewable Energy Act "specifically mandates," in Sections 62-16-6(A)-(B), "that the Commission allow utilities to recover both the 'reasonable costs of complying with the renewable portfolio standard' [Section 62-16-6(A)] and the 'reasonable interconnection and transmission costs incurred by the public utility in order to deliver renewable energy to retail New Mexico customers,' [Section 62-16-6(B)]),"[234] PNM cut out the connective tissue that binds the costs in Subsections 6(A) and 6(B) together and gives meaning to the specific mandate PNM alluded to but neglected, for some reason, to include: "Costs that are consistent with commission approval of procurement plans or transitional procurement plans ***shall be deemed to be reasonable***."[235]

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[232] *See* PNM Br. 45 (Since the Legislature didn't add to the statute language to effect of, in PNM's words, "'undepreciated investments as of the date of abandonment being recovered in rates as of January 1, 2019' are subject to a prudence review or are not presumed to be prudent," PNM advises the Commission to not add such words to the statute.).

[233] PNM Br. 44.

[234] *Id*.

[235] NMSA 1978, § 62-16-6(A) (emphasis added). The Supreme Court has construed the language "costs that are consistent with commission approval of procurement plans . . . shall deemed to be reasonable" to mean costs

(*Cont'd on next page*)

What PNM's argument proves then, albeit inadvertently, is that when the Legislature has seen fit to modify or limit the Commission's authority or discretion in ratemaking, the Legislature has inserted language that makes its intention clearly and unambiguously apparent. Indeed, even more devastating to PNM's position than the connective tissue excision in its brief, in enacting the ETA the Legislature made its intention clear and unambiguous in another section of the act that mandates, when it comes to the utility's compliance with the provisions of a financing order, "[r]easonable actions taken by a qualifying utility to comply with the financing order ***shall be deemed to be just and reasonable for ratemaking purposes***."[236] That is why, when PNM argues "the better harmonizing approach is to read Section 62-18-2(H)(2)(c) as a *legislative determination* that energy transition costs under Section 62-18-2(H)(2)(c) are *just and reasonable*,"[237] the glaring omission of that legislative determination from Section 62-18-2(H)(2)(c) expressly stated in another part of the same act undermines PNM's position.[238]

(*Cont'd from previous page*)
included in the utility's approved procurement plans "are *reasonable as a matter of law*. Because these procurement costs are reasonable, SPS is entitled under Section 62-16-6(A) to recover large customer cap costs."

[236] NMSA 1978, § 62-18-11(B) (emphasis added). Relatedly, the Legislature very consciously used the future continuous tense of the verb phrase "shall be deemed" in drafting the ETA. The phrase appears no less than ***six times*** in the statute: "shall be deemed approval" in Section 62-18-5(B); "shall be deemed approved" in Sections 62-18-6(F) and 6(G); "shall be deemed denied" in Section 62-18-8; "shall be deemed to be just and reasonable for ratemaking purposes" in Section 62-18-11(B); and "shall be deemed to supersede" in Section 62-18-13(A). The Legislature also inserted "The commission *shall issue* and order acknowledging *the deemed approvals* . . ." in Section 62-18-5(B) (emphasis added). In a PNM case construing the connective tissue phrase "shall be deemed reasonable" in Section 62-16-6(A) of the REA, the Commission noted that "deemed" is defined in Black's Law Dictionary to mean "held, considered, adjudged, believe, determined, treated as if, construed." *See In the Matter of Public Service Company of New Mexico's Notice of Filing "Renewable Energy Procurement Plan for 2006*, Final Order on Recommended Decision (Dec. 9, 2005), at 5 (quoting BLACK'S LAW DICTIONARY 216 (5th ed. 1983)).

[237] PNM Resp. 70-71 (emphasis added).

[238] Moreover, it is fair to ask whether PNM would even have had the opportunity to take the position it has in this case with regard to the SCR controls and other life-extending expenditures in FCPP if the draft S.B. 489 being circulated in the House of Representatives and Senate in early 2019 had forthrightly proposed that "undepreciated investments . . . being recovered in rates as of January 1, 2019 *shall be deemed just and reasonable for ratemaking purposes*." If, in fact, some early draft of S.B. 489 included the italicized words or language to that effect but was excised somewhere along the route to ultimate passage, that too would be telling.

In sum, if the Legislature intended to alter the PUA's rate-setting paradigm to provide that hundreds of millions of dollars in coal plant costs on which the Commission's determination of prudence has been expressly deferred are to be automatically deemed just and reasonable – foreclosing any opportunity to determine whether the utility's investment decisions and expenditures were either prudently made or attributable, on the other hand, to mismanagement[239] – then the Legislature could have expressed its intention plainly and unequivocally by stating, as it did in another context in the ETA, that "undepreciated investments . . . being recovered in rates as of January 1, 2019 shall be deemed just and reasonable for ratemaking purposes." It did not include such a preclusive determination in Section 62-18-2(H)(2)(c) of the ETA; given the potentially unjust financial exposure to ratepayers and other significant considerations like fair treatment of the Signatories to the Modified Revised Stipulation and the public interest, the missing legislative determination should not be presumed to be there.

Accordingly, for the foregoing reasons, as provided for in the *Revised Final Order* in Case No. 16-00276-UT, the Commission may proceed to perform the prudence review PNM agreed to submit to in its next rate case and apply whatever remedy, if any, is appropriate and reconcile any difference between estimated abandonment costs financed by energy transition bonds and the actual, final costs incurred by PNM pursuant to 62-18-4(B)(10) of the ETA.

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[239] *See PNM v. NMPRC*, 2019-NMSC-012, ¶ 29, wherein the Court set forth the prudence standard it previously recognized in *PNM Gas Services*:

> Prudence is that standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time the decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time judgment was exercised can be considered. Hindsight review is impermissible.
>
> Imprudence cannot be sustained by substituting one's judgment for that of another. The prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being 'imprudent.'

Finally, on the matter of attempting to perform a prudence review in this proceeding, concerned as it is with applying the law of abandonment under Section 62-9-5 of the PUA, the sale and transfer of utility interests under Section 62-6-12 and -13 of the PUA, and securitization issues and a financing order under the ETA, there were several impediments to performing the sort of full and fair prudence review that is, frankly, much better suited to a general rate case. First and foremost, for the sake of consistency with the findings above, the *Revised Final Order* provided for, and the Signatories to the Modified Revised Stipulation committed to, deferring "consideration of the issue of PNM's prudence in continuing its participation in FCPP . . . until PNM's next rate case filing."[240] Therefore, the prudence review of the contested FCPP capital additions and the consideration of any appropriate remedies should be conducted in PNM's next general rate case where a full record can be made separated from and undistracted by the multiplicity of abandonment, sale and transfer, and securitization issues vetted in this proceeding.

Second, assuming – again without suggesting – that the Commission were inclined to find the disputed investments were imprudently incurred, the remedies proposed in this case were relatively limited in number and blunt in their prescription, consisting primarily of total disallowance and removal of FCPP from rate base. Given the restricted time to conduct further proceedings due to the statutory suspension period and the range and complexity of issues requiring attention and treatment in this vigorously contested abandonment/securitization financing proceeding,[241] it was simply not feasible to develop an adequate record on potential sustainable remedies.

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[240] *Revised Final Order*, at 35, ¶ B.

[241] In Case No. 19-00018-UT, which had far fewer contested issues to address (especially on the abandonment side of the proceeding), the Commission had two experienced Hearing Examiners presiding over the case and issuing the companion recommended decisions.

Third, and finally, the record the parties attempted to make on the "issue of prudence" in this case was inadequate. Although the Hearing Examiner developed early on in this case a streamlined procedure to have parties take administrative notice of evidence on the issue of prudence admitted in Case No. 16-00276-UT in observance of the *Revised Final Order's* instruction,[242] the process did not go smoothly.[243] After spending substantial hearing time trying to resolve evidentiary disputes and non-compliance with his orders, the Hearing Examiner admitted on the hearings' last day the *Certification of Stipulation*, wherein the issue of prudence was thoroughly analyzed with citations to the evidentiary record,[244] into evidence as Commission Exhibit 1. PNM has raised in post-hearing briefing legitimate evidentiary and due process concerns over using the *Certification of Stipulation* as any sort of evidentiary guide in this proceeding.[245] Since, as indicated above, the parties trying to make a case alleging PNM's imprudence relied heavily, if not almost entirely, on citations to the *Certification of Stipulation* for "evidence," the record is insufficient to support a conclusion either way on the issue of prudence.[246]

Therefore, the Hearing Examiner recommends that the Commission adhere to its original plan and perform the prudence review of PNM's decision to continue using Four Corners as base load generation, its investments in the SCR controls, and the other FCPP life-extending expenditures in PNM's next general rate case.

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[242] *See* Procedural Order, at 7- 8, ¶¶ A(4)-(6). *See* PNM Br. 54-55.

[243] *See, e.g.*, Tr. Vol. I 307-13; Tr. Vol. II 324-33; Tr. Vol IV 952-60 (Hearing Examiner's ruling on NEE's pleadings regarding taking administrative notice of documents in Case No. 16-00276-UT); Tr. Vol. VI 1440-41, 1558-98 (difficulties continue); *see also* PNM Br. 54-57.

[244] *See Certification of Stipulation*, at 19-70.

[245] *See* PNM Br. 53-58.

[246] The Hearing Examiner thus disagrees with Sierra Club that the limited additional evidence adduced through its witness, Jeremy Fisher, most of which addresses the evidence put forth by PNM witness Graves, is sufficient to base a recommendation finding that PNM acted imprudently or withstand appellate review.

d. Beginning Four Corners plant balance

WRA, joined in briefing by CCAE, recommends two adjustments to the amount PNM should be authorized to securitize.[247] Both adjustments were proposed in the testimony of WRA witness Brendon Baatz. Mr. Baatz's adjustments would result in a $71 million reduction in the total securitization amount of $300 million requested by PNM.[248] The first adjustment is addressed in this section, the second adjustment in the next below. WRA asserts that both adjustments improve the economics for a decision to abandon the plant versus continuing participation in the plant.[249]

WRA's first adjustment, which would reduce the $131.3 million undepreciated investments in the second tranche by $27.9 million, pertains to the $148.7 million in undepreciated Four Corners investments just addressed in the last section. PNM witness Thomas Baker testified that PNM recorded $27.9 million as a pre-tax impairment loss for GAAP reporting purposes only. The impairment loss represents the net present value of the future uncollectable return on equity on the $148.7 million in projected capital investments.[250] Baker stated that the Commission "required and approved" the treatment he applied, citing for justification Paragraph 8 of the Modified Revised Stipulation, which provides in relevant part that PNM

> shall collect a return on its Four Corners $148 Million Investment equal to PNM's embedded cost of debt. Any accounting requirements under [GAAP] affecting the valuation of these assets on PNM's financial statements that

[247] WRA Br. 17-21; WRA Resp. 9-10; CCAE Br. 9-13, 16-17.

[248] *See* WRA Exh. 1 (Baatz Dir.) 19 (recommending a total securitization amount of $229,945,001).

[249] WRA Br. 17.

[250] Baker Supp. 13.

> may result from this Paragraph shall not affect the rate base value of the $148 Million investment at Four Corners for setting retail service rates.[251]

Pursuant to Paragraph 8 of the stipulation, PNM has not reduced rate base for regulatory reporting purposes by the GAAP impairment loss. Therefore, Baker asserts, the full value of the capital investments are properly included in the estimated second tranche of undepreciated investment to be recovered through securitization financing pursuant to Section 2(H)(2)(c) of the ETA.[252]

Focusing on the "books and records" reference in Section 2(H)(2)(c) ("undepreciated investments as of the date of the abandonment on the qualifying utility's *book and records* . . ."), WRA and CCAE assert that PNM has not met its burden to demonstrate that it is reasonable and proper to reverse and recover the $27.9 million impairment "write-off" the Company recorded after the Commission allowed a debt-only return on the SCR controls and other life-extending capital expenses in Case No. 16-00276-UT.[253] Mr. Baatz testified that according to PNM's 2019 Form 10-K filed with the SEC, the Four Corners plant in service balance was $276,960,000 as of December 31, 2018.[254] This FCPP plant balance does not include the $27.9 million WRA and CCAE say PNM "wrote off" as a result of the Commission's 2016 Rate Case decision. Baatz noted that the same plant balances are reflected on FERC Form 1 that is included along with its SEC Form 10-K in PNM's Annual Report[255] filed pursuant to 17.3.510.12(A) NMAC.

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[251] Modified Revised Stipulation, at 8,¶ 8 (legislative formatting removed).

[252] Baker Supp. 14. Mr. Baker notes that PNM would remove these and other Four Corners investments from rates when it issues the securitized bonds that include the amount removed from rates (as discussed in section III.F.3 below); PNM earns no further debt or equity return on the Four Corners capital investments; and customers repay the bonds to bondholders at generally more favorable interest rates PNM's costs of debt, as discussed in section III.E below. Baker Supp. 14-15.

[253] Baatz Dir. 16.

[254] *Id*. (citing PNMR Form 10-K, p. B-79. pnmresources.com/~/media/Files/P/PNM-Resources/quarterly-results/2018/q4-2018-10k.pdf, attached as Exh. BJB-6).

[255] Tr. Vol. V (Baatz) 1131-32.

WRA and CCAE therefore assert the $27.9 million in dispute does not qualify as an abandonment cost securitizable under the ETA and, thus, should be removed. WRA states that during his deposition in this case, PNM witness Baker acknowledged that when the ETA was being considered by the Legislature, PNM used its 10-K plant balances as the starting point to establish SJGS costs eligible for securitization.[256] WRA reasons the same should be true for its Four Corners plant value. Mr. Baatz, for his part, believed that because PNM removed the $27.9 million from its plant balance, if the Commission were to allow PNM to nevertheless securitize those dollars (depreciated through 2024), it could result in extraordinary earnings for PNM which would negate the benefit to customers of the 2016 Rate Case disallowance.[257] WRA claims that Mr. Baker admitted that if PNM were allowed to collect this amount, it would result in "'extraordinary income'" on PNM's GAAP financials.[258] WRA contends that although Baker represented that the GAAP-only entries would not affect customer rates,[259] "the reality is that recovery of that $27.9

[256] WRA Br. 19 (citing WRA Exhs. 4 and 5 (e-mail exchanges)).

[257] Baatz Dir. 16.

[258] WRA Br. 19 (citing PNM Exh. 12 (Baker Reb.) 8). Mr. Baker's full testimony around this "extraordinary income" is as follows:

> WRA's proposal is contrary to the Modified Revised Stipulation in Case No. 16-00276-UT that PNM would continue to recover in rates the full capital investment, but only at a limited debt-only return. PNM would reverse the unamortized impairment loss previously recorded to its GAAP financials at the time the FCPP plant balances are recorded to a regulatory asset for purposes of securitization. This would result in recording "extraordinary income" on PNM's GAAP financials and would reverse the "extraordinary deduction" that was previously recorded on PNM's GAAP financials. By definition, extraordinary income or deductions are of unusual nature and infrequent occurrence; they would not impact customer rates and would not impact PNM's earned return in the year they are realized. Regardless of whether PNM records extraordinary deductions due to an impairment loss or extraordinary earnings due to the reversal of the impairment loss, these GAAP only entries are irrelevant because customers still receive the benefit of a debt-only return on these assets.

Baker Reb. 8-9.

[259] *Id*.

million increases the securitized balance and concomitantly the energy transition charge that is collected from customers."[260]

PNM urges the Commission to reject WRA and CCAE's recommended $27.9 million adjustment. PNM maintains that they are incorrect in believing that as a result of the *Revised Final Order* $27.9 million was "written off" PNM's books and records rather than recorded as an impairment to PNM's future ability to earn a return on undepreciated investments.[261] Citing Mr. Baker's explanation, PNM contends that recording the impairment did not result in a write off or write down to PNM's electric plant in service (FERC Account #101) because the Commission's order in the 2016 Rate Case limiting recovery of certain FCPP investments negatively impacted only PNM's return ***on*** those investments, not its return ***of***. Only if the Commission had issued an order in the 2016 Rate Case disallowing a return ***of*** the Four Corners investments would PNM have had to write down its electric plant in service, but, PNM emphasizes, the Commission did not order that, instead ordering recovery at a reduced rate of return ***on*** the investments equal to PNM's embedded cost of debt.[262]

Further, PNM contends that WRA and CCAE do not challenge the fact that the full $148.7 million in FCPP capital additions in the second tranche was being recovered in rates as of January 1, 2019. The record also reflects, PNM adds, that the full amount of capital additions was on PNM's books and records and is recorded in FERC Account # 101.[263]

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[260] WRA Br. 19 (citing Tr. Vol. V (Baatz) 1172).

[261] PNM Resp. 71.

[262] *Id*.

[263] PNM Resp. 71-72 (citing Baker Supp. 6, Table TSB-2; Tr. Vol. IV (Baker) 1062-63).

Responding to WRA's point that PNM used its 10-K plant balances as the starting point to establish SJGS costs eligible for securitization when the ETA was being considered by the Legislature, PNM notes that PNMR's Controller, Henry Monroy, explained to WRA in an e-mail prior to passage of the ETA that the Company considers its "books and records" to be is its general ledger for purposes of determining undepreciated investments in a qualifying generating facility to be its general ledger.[264] PNM adds that the e-mail exchange further shows that WRA's own understanding was that a utility's books and records was its Rule 530 schedules – a "line item in [a] rate case filing."[265]

Next, attempting to distinguish the general ledger from the reporting requirements PNM complies with in its 10-K reports filed with the SEC, its reports filed with FERC, and its 17.9.530 NMAC ("Rule 530") schedules filed with the Commission, PNM quotes the following explanation Mr. Baker gave at the hearing:

> Q. So Mr. Baker, can you explain the relationship between PNM's general ledger, its books and records, and certain reporting requirements, such as the 10-K?
>
> A. So PNM's general ledger is PNM's books and records. The financial reporting such as the 10-K, is basically compiled based on the books and records, or PNM's general ledger.
>
> Q. And is it compiled based on SEC reporting requirements?
>
> A. Yes, for SEC, like on the 10-K, it is compiled, based on their requirements. Kind of similarly, FERC requires financial reporting differently than the SEC. It's really more of a presentation, or how things are shown on those reports.
>
> Q. Okay. And has the New Mexico Public Regulation Commission established standards for reporting PNM's books and records?

[264] PNM Resp. 72 (citing WRA Exh. 5; Tr. Vol. IV (Baker) 1059).

[265] PNM Resp. 72, 74 (WRA Exh. 5; Tr. Vol. IV (Baker) 1061).

A. Yes, so a good example of that is a general rate case. PNM reports its books and records consistent with [R]ule 530.

Q. Okay. And for purposes of [R]ule 530, did PNM record an impairment, a $27.9 million impairment related to the Final Order in the 2016 [R]ate [C]ase?

A. No.

Q. And why is that the case?

A. Because [R]ule 530 requires PNM's plant balances to be based on original cost of plant in service, and account 116, where the impairment loss is shown for GAAP reporting, that account is not a plant in service account and so it is not included in PNM's plant balances.[266]

PNM asserts that WRA and CCAE cite no legal support for their contentions that the SEC Form 10-K plant balances should be regarded as the "books and records" on which the undepreciated investments eligible for securitization in Section 2(H)(2)(c) should be based.[267]

Finally, responding to CCAE's suggestion that PNM would not be required to reverse the $27.9 million impairment loss if the Commission reduces the energy transition cost to be securitized by the same amount,[268] PNM observes that, putting aside the fact that PNM's reversal of the impairment will have no impact on customers because it will not impact the amount to be securitized,[269] CCAE ignores the fact that recording and reversing the impairment is required by GAAP accounting rules related to recovery of a return ***on*** undepreciated investments, whereas Commission action regarding PNM's authorized return ***of*** undepreciated investments has no impact on GAAP requirements related to the recorded impairment because reversing the

[266] PNM Resp. 72-73 (citing Tr. Vol. IV (Baker) 1059-61).

[267] PNM Resp. 73-74.

[268] CCAE Br. 10.

[269] PNM Resp. 74-75 (citing Baker Supp. 14).

impairment is required by plant abandonment, not a Commission order regarding recovery of undepreciated investments.[270] To explain the accounting principles in question, PNM closes with Mr. Baker's exposition in rebuttal:

> The reversal is required for financial reporting under GAAP accounting rules, which have different impairment measures for 'recently completed plant,' such as the investments in FCPP that were at issue in Case No. 16-00276-UT, and 'abandonments,' such as PNM's proposal in this case. For recently completed plant, the accounting rules require a utility to record an impairment if it will not be able to earn a full return at its weighted average cost of capital ('WACC'). In Case No. 16-00276-UT, PNM was unable to earn a full WACC return because the Commission ordered a debt-only return and, as a result, PNM was required to record a $27.9 million impairment related to its recently completed plant additions. PNM will also earn a debt-only return through securitized financing. However, the accounting rules for abandonments only require a utility to record an impairment if its return will be less than its incremental cost of borrowing. Through securitized financing, the return to PNM's Special Purpose Entity will equal its incremental cost of issuing the bonds. For this reason, at the time the FCPP plant balances are recorded to a regulatory asset for purposes of securitization, PNM will reverse the unamortized loss recorded as a result of the Commission's decision to allow a debt-only return in Case No. 16-00276-UT.[271]

The Hearing Examiner finds PNM's explanation of what the Legislature intended in referring to "undepreciated investments" on the utility's "books and records" that were "being recovered in rates as of January 1, 2019" persuasive. It is undisputed that the $148.7 million in Four Corners plant capital additions between July 1, 2016 and December 31, 2018 – the linkage and test periods at issue in the 2016 Rate Case – was being recovered in rates, although provisionally, as of January 1, 2019.[272] It is also undisputed that the full amount of undepreciated investments is recorded in FERC Account # 101, Electric Plant in Service, consistent with FERC's

[270] PNM Resp. 75.

[271] *Id*. (citing Baker Reb. 3-4).

[272] Baker Supp. 6-7; PNM Exh. 3 (Fenton Supp.) 15; Tr. Vol. IV (Baker) 1062-63.

Uniform System of Accounts.[273] The Hearing Examiner further finds persuasive Mr. Baker's explanation of PNM's reversal of the $27.9 impairment loss for financial reporting purposes under GAAP accounting rules.[274] In this regard, WRA and CCAE's repeated allusions to a purported $27.9 million write-off appear to either confuse or conflate actual write-offs associated with PNM's ownership of 132 MW capacity and 65 MW capacity of SJGS Unit 4 that were attributed, apparently, to the Commission's decision to disallow recovery ***of*** PNM's imprudent installation of the balanced draft system on San Juan Unit 4.[275] As Mr. Baker explained,[276] the circumstances of the Four Corners impairment loss "are completely different from the SJGS write-offs."[277] Accordingly, for these reasons and finding virtue in treating consistently the Modified Revised Stipulation across issues pertaining to the Four Corners costs being recovered in rates provisionally, the Hearing Examiner recommends that the Commission reject WRA and CCAE's proposed $27.9 million adjustment.

e. Ongoing capital expenditures for FCPP between July 1, 2020 and December 31, 2024.

The second adjustment WRA and CCAE propose is to allow the securitization of only about 34% ($25 million) of the ongoing capital expenditures in the approximate amount of $73

[273] Baker Reb. 6.

[274] Baker Reb. 3-4.

[275] In the 2015 Rate Case, the Commission denied the recovery of the costs associated with the installation and operation of a balanced draft system that PNM installed at the San Juan Generating Station as part of the installation of Selective Non-Catalytic Reduction (SNCR) controls (a pollution control less expensive than the SCR controls at issue in Case No. 16-00276-UT) to comply with the EPA's Regional Haze Rule. The Commission had previously determined in Case No. 13-00390-UT that the costs of the SNCR project could be recovered from ratepayers, but it left for a future case the issue of whether the conversion of SJGS 1 and 4 to a balanced draft configuration was prudent. In Case No. 15-00261-UT, the Commission found that PNM's decision to install the $52.3 million balanced draft system was imprudent. Case No. 15-00261-UT, Final Order Partially Adopting Corrected Recommended Decision (Sept. 28, 2016), at 52. *See* Tr. Vol. IV (Baker) 1065.

[276] *See* Baker Reb. 7-8; *see also* Tr. Vol. IV 1065-66 (Baker).

[277] Baker Reb. 8.

million PNM has estimated it will need to incur between July 1, 2020 and its exit from participation in the plant on December 31, 2024. The estimated costs in this fourth tranche of undepreciated investments and the justifications for the investments provided by PNM witness Thomas Fallgren are discussed in section III.D.1.b(4) above.

WRA and CCAE believe that a significant portion of the ongoing capital expenditure costs anticipated in 2021-2024 appear to be intended to keep the plant operational well beyond the abandonment date of December 31, 2024 and all the way through to July 2031 because ongoing capital expenditures at FCPP would not be expected to exceed $70 million in the final four years of operation if the plant owners were not going to operate the plant after 2024.[278] WRA witness Baatz said it would be reasonable to expect the capital expenditure forecast to be much less, likely similar to the expected capital expenditures in 2028-2031, the final four years of expected life of the plant. In the final four years of the plant's life, PNM's share of capital expenditures would be $1.6 million. Therefore, to comply with the ETA, which in Section 2(H)(2)(d) provides for the securitization of "other undepreciated investments ... incurred to comply with law ... or necessary to maintain safe and reliable operation ... prior to the facility's abandonment[,]" WRA recommends the Commission approve a lower level of future capital expenditures to be securitized.[279]

WRA's adjustment to ongoing capital expenditures was derived by Mr. Baatz as follows. PNM should only securitize a portion of ongoing capital costs equal to the proportion of useful service the Four Corners plant would provide prior to abandonment. Baatz therefore assumed that ongoing capital costs eligible for securitization would be reduced in each year from 2021 through 2024. For example, PNM forecasts that the ongoing capital cost in 2021 is equal to $17.4 million.

[278] WRA Br. 20; CCAE Br. 17.

[279] WRA Br. 20 (citing Baatz Dir. 16-17).

While Four Corners is expected to operate for another 10 years from 2021 (retirement in 2031), securitization can only be for costs needed to operate the plant safely and reliably through 2024.[280] Accordingly, WRA assumed that only 40% (4 years of ownership divided by 10 years of useful life), or $6,945,050 should be eligible for securitization in 2021. Subsequent years followed Baatz's methodology, whereby 2022 would incur only 33% of costs (3 years of ownership divided by 9 years of useful life), or $4,827,441; 2023 would incur only 25% of costs (2 years of ownership divided by 8 years of useful life), or $3,070,313; and 2024 would incur only 14% of costs (1 year of ownership divided by 7 years of useful life), or $3,093,331.[281] In the end, the total expected recoverable ongoing capital expenditures under WRA/Baatz's method would be $25,108,035.[282] WRA's recommended adjustment thus would be a direct reduction to PNM's forecasted capital costs of approximately $73 million for the period of July 1, 2020 to December 31, 2024. In this way, WRA figures, PNM would only finance the costs to operate the plant safely and reliably for the period PNM owns the plant, and not the period after PNM exits its ownership stake.[283]

PNM recommends that the Commission reject this adjustment as well. Relying here on Mr. Fallgren's testimony, PNM maintains that the capital additions between July 1, 2020 and December 31, 2024 "are necessary for the safe and reliable operation of the plant, and that would largely remain the case regardless of any reasonably anticipated retirement date."[284] PNM contends it is not reasonable to assume that capital additions could be reduced if the plant were to close in 2024

[280] Baatz Dir. 17.

[281] WRA Br. 20-21; Baatz Dir. 17-18.

[282] WRA Br. 21.

[283] *Id*.

[284] PNM Br. 112 (citing Fallgren Reb.) 58.

because, quoting Fallgren again, that "it is easier to plan to ramp down capital spending at a generation unit when retirement is farther out on the horizon, i.e., 10 years (2031) in advance rather than four years in advance (2025)."[285] Further, PNM argues that WRA's proposed reduction in capital addition investments is not cost-based because it arbitrarily assumes that only 40% of investments in 2021 are subject to securitization (4 remaining years of PNM's participation in the plant divided by 10 years of plant life), 33% of investments in 2022 (3 years divided by 9), 29% in 2023 (2 divided by 7), and 17% in 2024.[286] PNM submits that Baatz's assumption does not constitute evidence that the investments are not needed for operations prior to December 31, 2024, and does not refute Mr. Fallgren's testimony that those investments are necessary and conform with the criteria of the ETA.[287]

PNM points out, in closing, that the estimated capital addition investments it proposes to reduce are not currently in rates and are subject to the true-up procedure described in PNM witness Baker's direct testimony. The information used to develop the estimated amounts in Mr. Fallgren's direct testimony and exhibits was unchallenged. Further, as discussed above, the Commission concluded in Case No. 19-00018-UT that it retained the authority under the ETA to review the reasonableness and prudence of yet-to-be-incurred energy transition costs under Section 62-18-4(B)(10). Such a review, however, would not impact the amount to be securitized and recovered through the energy transition charge, but would be addressed through base rates.[288] Such a review,

[285] *Id.* (quoting Fallgren Reb. 58).

[286] Baatz Dir. 17-18.

[287] PNM Br. 112-13.

[288] *Recommended Decision on SJGS Financing Order,* at 94 (February 21, 2020).

PNM concludes, must also be constrained by Section 62-18-2(H)(2)(d)'s mandate that investments necessary to comply with law or maintain safe and reliable operation are recoverable.[289]

The Hearing Examiner finds WRA's well-intentioned adjustment nevertheless inapposite and, contrasted with Mr. Fallgren's detail-oriented approach, not cost-based. WRA's adjustment appears to assume that the plant should operate safely and reliably only up to the date of PNM's abandonment. The Hearing Examiner cannot find that limitation in Section 62-18-2(H)(2)(d) of the ETA. That provision operates to allow PNM to securitize estimated investments the Company must make as a facility co-owner in maintaining the safe and reliable operation of the plant for the time that PNM is contractually obligated to contribute its share of necessary investments pursuant to Article 6.1(d)(ii) of the Purchase and Sale Agreement. As Fallgren's testimony demonstrates, PNM made the requisite showing in this case. That said, as concluded above, whether PNM ultimately recovers its estimated costs as actual abandonment costs will depend on the Company bearing its burden to show to the investments were incurred to comply with law or necessary to maintain the safe and reliable operation of the Four Corners plant prior to PNM's abandonment. The reconciliation process PNM proposes pursuant to Section 62-18-4(B)(10) is addressed in section III.G.1 below.

E. PNM's Proposed Financing Order

PNM requests that the Commission approve PNM's proposed securitization in the form of a stand-alone financing order, pursuant to section 8(A) of the ETA.[290] As noted in section II.B.2 above, the ETA prescribes mandatory and optional elements to be included in a financing order.[291]

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[289] PNM Br. 113.

[290] NMSA 1978, § 62-18-8(A).

[291] *See supra* n. 72 and accompanying text.

As it did in Case No. 19-00018-UT, PNM proposes a form of financing order with additional language that it requests the Commission to issue. Thus, included as Attachment 2 to the Amended Application is PNM's proposed form of financing order, which contains detailed findings of fact, conclusions of law, and ordering paragraphs addressing matters relating to the proposed securitization. PNM states that the provisions of the proposed financing order reflect the level of detail and scope that will be expected by investors and the rating agencies. The detailed findings and conclusions purport "to maximize the stability of the cash flows in the securitization and provide the basis for the legal opinions upon which the rating agencies will rely in assigning the highest possible ratings for the Energy Transition Bonds."[292] PNM adds that "the combination of maximized cash flow stability and the highest possible ratings will allow the Energy Transition Bonds to be structured and priced to meet the statutory requirements."[293] PNM represents, finally, that the proposed form of financing order in Attachment 2 to the Amended Application "is consistent with the financing order issued by the Commission on April 1, 2020 in Docket 19-00018-UT."[294]

PNM witness Charles Atkins[295] described the purpose of the financing order in terms of achieving the desired AAA credit rating for the energy transition bonds and the reasons for

[292] PNM Exh. 1 (Amended Application) 32.

[293] Amended Application 32-33.

[294] Amended Application 28.

[295] Mr. Atkins is CEO of Atkins Capital Strategies, LLC, in New York. Atkins is currently serving as a co-financial advisor to PNM with respect to this proceeding. Prior to that role, he served as a Senior Advisor with Guggenheim Securities, LLC, and in that previous role, he led the preparation of the Securities Memorandum by Guggenheim. In his current role as co-financial advisor to PNM, Mr. Atkins said he reviewed the Securities Firm Memorandum and concur in its results. PNM Exh. 15 (Atkins Dir.) 1. Akins remarked that he has been "heavily involved in utility securitizations and played a lead banking role in the first utility stranded cost securitization, which was the $2.9 billion transaction for Pacific Gas and Electric in 1997." Atkins Dir. 2. At Morgan Stanley, and as an independent consultant, Atkins said he "served as an advisor to utilities or as a senior Morgan Stanley banker where Morgan Stanley served as a lead or joint lead underwriter for 26 utility securitization bond issues,

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elaborating on the requirements in the ETA. Mr. Atkins said the financing order establishes in strong and definitive terms the legal right of investors to receive, in the form of ETCs, the amounts necessary to pay the interest and principal on the energy transition bonds and other ongoing expenses in full and on a timely basis. It specifies the mechanisms and structures for payments of bond interest, principal, and ongoing expenses in a manner that minimizes the amount of additional credit enhancements required by the rating agencies to achieve the highest possible ratings. In addition, the financing order will enable PNM to structure the financing in a manner reasonably consistent with investor preferences and rating agency considerations at the time of pricing, which is also necessary for the financing to achieve the desired results.[296]

Mr. Atkins described key components of the financing order that are essential to establishing the legal foundation for the securitization. Atkins stated that the most important elements go to insulating the transaction from the risk of any potential bankruptcy risk of PNM. He said the insulation is accomplished via a legal "true sale" conveyance of the Energy Transaction Property[297] to a "bankruptcy-remote" SPE, legally distinct from PNM. Atkins added that the true sale of the collateral actually supports both the bankruptcy-remoteness of the SPE and the securitization debt. He noted that to have the funds needed to purchase the collateral, the SPE issues debt securities to investors, collateralized by the property right. In exchange for the issued

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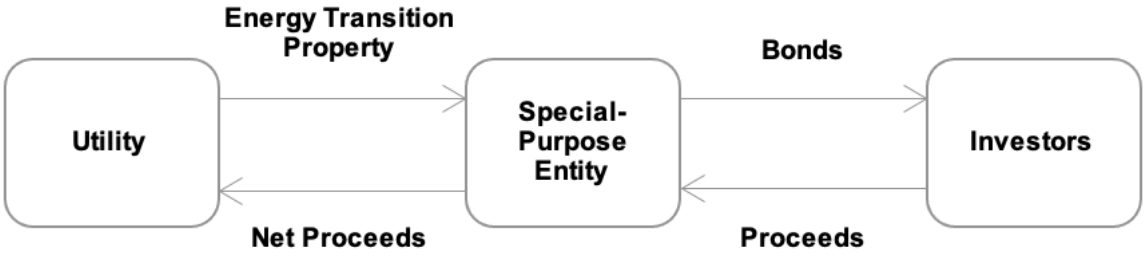
totaling more than $18 billion, plus two utility ring-fencing reorganization transactions with an associated value of $5.3 billion." Atkins Dir. 2-3. Atkins, further, stated he had "provided testimony as an expert witness on behalf of utilities before regulatory commissions in Arkansas, Louisiana, Maryland and Texas. In addition, while a Senior Advisor with Guggenheim Securities, [he] provided testimony on behalf of PNM in the proceedings before this Commission relating to PNM's request for a financing order for the issuance of $361 million of energy transition bonds in connection with the abandonment PNM's ownership interest in the San Juan coal plant[.]" Atkins Dir. 3.

[296] PNM Exh. 15 (Atkins Dir.) 42.

[297] "Energy Transition Property" is created under the Financing Order pursuant to the ETA to receive customers' ETC payments required to pay the debt service costs for the Energy Transition Bonds. *See* NMSA 1978, § 62-18-2(I).

debt, investors pay an upfront purchase price, which is passed through the SPE back to the utility.[298] Mr. Atkins provided in his direct testimony the following simplified indicative schematic of the transaction closing mechanics:[299]



Atkins explained the structure used with this and other securitizations allows the rating agencies and investors to conclude that the issuer of the securitization, the SPE, is highly unlikely to become the subject of a bankruptcy proceeding in the unlikely event of a bankruptcy of PNM.[300]

Mr. Atkins further explained that under the federal bankruptcy code, payments on the debt obligations of an issuer in a bankruptcy proceeding become subject to an automatic stay. In an automatic stay, the payments are suspended until the courts decide which creditors of the issuer are to be paid, when they will be paid, and whether they are to be paid in whole or in part. Atkins said unless the risk of an automatic stay is essentially removed from the rating agencies' credit analysis, the financing cannot achieve the highest possible ratings, since PNM's secured debt obligations are rated below "AAA."[301]

In addition to the legal structure insulating the SPE from PNM, provisions for credit enhancements are important. Mr. Atkins said the primary form of credit enhancement is the true-

[298] Atkins Dir. 10.

[299] *See id*.

[300] Atkins Dir. 42.

[301] Atkins Dir. 42-43.

up adjustment mechanism provided for under Section 6 of the ETA.[302] Atkins explained the true-up mechanism represents the most fundamental component of credit enhancement to investors and is a cornerstone of utility securitizations. True-ups provide for the adjustment of ETCs on a periodic basis to correct for any over- or under-collection of non-bypassable ETCs for any reason and to ensure that the expected collection of future ETCs is in accordance with the payment terms of the energy transition bonds. True-up adjustments will be made on a periodic basis, at least semi-annually, except that during the two years prior to the scheduled final maturity, the true-up adjustments must be conducted at least quarterly. In addition, optional adjustments are likely to be authorized to be conducted at any time.[303]

Atkins said it is critical for rating agency purposes that, insofar as Commission action is required, true-up adjustments are automatic and implemented on an immediate basis subject only to mathematical and clerical error review. Pursuant to the ETA, the true-up adjustment mechanism will remain in effect until the energy transition bonds and all associated financing costs have been fully paid and any under-collection is recovered from customers and any over-collection is returned to customers.[304]

Mr. Atkins noted that other credit enhancements include PNM's capital subaccount funding of the SPE equal to 0.50% of the initial capitalization of the Energy Transition Bond transaction. The proposed financing order also provides flexibility to include additional forms of credit enhancement, such as letters of credit, additional amounts of overcollateralization or reserve

[302] *See* NMSA 1978, § 62-18-6.

[303] Atkins Dir. 44-45.

[304] Atkins Dir. 45-46.

accounts, and surety bonds to improve the marketability of the energy transition bonds. Atkins indicated none are anticipated but it is important to have such built-in flexibility.[305]

Mr. Atkins emphasized that the non-bypassability of the ETCs is another important element of the financing order, both for the rating agency process and for investor considerations. The non-bypassable nature of the charges requires customers to pay the ETCs allocated to their customer class, regardless of the customers' degree of self-generation or electric generation supplier, and whether or not the distribution system is operated by PNM or a successor.[306]

PNM's financing order also creates a binding obligation for PNM, its successors or assignees to collect the ETCs for a servicing fee and allows that obligation to be performed by a replacement servicer appointed by the Trustee, if the Servicer does not perform. Thus, the binding obligation to collect and account for ETCs will survive any adverse event to the Servicer. Mr. Atkins noted this obligation is binding upon any other entity that provides service in the service territory or any other entity responsible for billing and collecting the ETCs on the Company's behalf.[307]

The financing order is irrevocable, and the ETCs are not subject to reduction, alteration, or impairment by any further action of the Commission, except for the mathematical and clerical error review of the formulaic true-up adjustment process. Thus, so long as the energy transition bonds are outstanding, rights and benefits arising from the Energy Transition Property created by the financing order may be definitively relied upon by investors and the rating agencies.[308]

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[305] Atkins Dir. 46.

[306] Atkins Dir. 48.

[307] Atkins Dir. 48-49.

[308] Atkins Dir. 49.

Equally important to Mr. Atkins, the ETA affirms the pledge of the State not to take or permit any action that would impair the value of the Energy Transition Property authorized by the financing order. Atkins observed that investors generally perceive that one of the greatest risks to them is that there is a change in law that affects the Energy Transition Property, thereby adversely affecting their rights under the ETA or the financing order. The Commission's affirmation in the financing order of the State pledge will enhance investor understanding that the risk of an adverse change in law or regulation is remote and will permit counsel to deliver important legal opinions that such adverse changes would not be legally valid.[309]

Finally, Mr. Atkins stated that the findings of fact, conclusions of law, and the ordering paragraphs of the financing order constitute the means through which the Commission definitively affirms the conformity of the financing with the applicable provisions of the ETA. Atkins said the provisions of the proposed financing order reflect the level of detail and scope that will be expected by investors and the rating agencies. With these findings and conclusions, counsel will have the basis that they need for the highly technical and specialized legal opinions they must issue in connection with the securitization financing, and upon which the rating agencies will rely in assigning the highest possible ratings for the energy transition bonds.[310]

In addition, the ordering paragraphs afford PNM the flexibility to establish the final terms and conditions of the energy transition bonds. Mr. Atkins believed the flexibility will allow PNM to achieve the structure and pricing that will meet the statutory requirements, including the lowest

[309] *Id*.

[310] Atkins Dir. 50.

cost objective commitment, reasonably consistent with market conditions on the day of pricing, rating agency considerations, and the terms of the financing order.[311]

F. Energy Transition Charges to Pay Debt Service on the Energy Transition Bonds

1. The securitization process and issuance of the Energy Transition Bonds

The ETA makes possible the issuance of energy transition bonds to fund the energy transition costs associated with abandoning PNM's interest in the Four Corners plant. The bonds are designed to meet the requirements for a "AAA" or equivalent credit rating and recover the ETA-defined abandonment and other energy transition costs discussed above. The ETA requires that the proposed bonds have a scheduled final maturity of not more than 25 years.[312]

Under PNM's proposal, the bonds will be issued through a SPE created by PNM as a wholly-owned subsidiary. As explained above, the structure relies upon the SPE to insulate its assets from any rights a creditor may have against PNM. An illustrative design of the utility securitization process and mechanics derived from PNM witness Atkins' direct testimony is included at the end of this discussion.[313]

The SPE will be capitalized through the issuance of the energy transition bonds and a concurrent equity capital contribution from PNM. Unless a higher equity capitalization is necessary to satisfy rating agency stress tests or other applicable requirements at the time of issuance of the Bonds, PNM will contribute equity capital to the SPE that will equal 0.5% of the total capital of the SPE (with the energy transition bonds representing the remaining 99.5% of the

[311] Atkins Dir. 50-51.

[312] *See* NMSA 1978, § 62-18-4(B)(7).

[313] *See* Atkins Dir. 31.

capitalization of the SPE).[314] For example, if the SPE issues $300 million in aggregate principal amount of energy transition bonds, PNM will be required to contribute approximately $1,500,000 to the capital subaccount from PNM's own funds, and not from customer collections. In no event will PNM's equity capital contribution be less than 0.5% of the total capital of the SPE, which is the minimum capitalization level required under Section 62-18-4(B)(8) of the ETA.[315]

The Commission will approve the establishment of energy transition charges (ETCs) in amounts sufficient to fully and timely pay the debt service (principal and interest) on the energy transition bonds.[316] The ETCs will be non-bypassable charges, to be paid by all customers receiving electric delivery service from PNM and all customers who acquire electricity from an alternative or subsequent electricity supplier in the utility service area currently served by PNM, to the extent such acquisition is permitted by New Mexico law. The right to receive the ETCs is known under the ETA as the Energy Transition Property.[317]

The SPE will issue the energy transition bonds and will receive the proceeds from their sale. The SPE will use the proceeds it receives from the sale of the energy transition bonds to: (i) pay the upfront Financing Costs incurred in connection with the issuance of the Bonds (including reimbursement to PNM of any such costs paid by PNM) and (ii) purchase the Energy Transition Property from PNM. The SPE will pledge the Energy Transition Property to the Trustee (typically a commercial bank experienced in securitization trust services) as collateral for the benefit of the holders of the energy transition bonds.[318] Pursuant to the servicing agreement with

[314] Sanchez Dir. 20.

[315] Sanchez Dir. 20-21.

[316] Amended Application 13.

[317] See NMSA 1978, § 62-18-(2)(I). *See* Atkins Dir. 9-10, 13-14.

[318] Sanchez Dir. 22.

the SPE, PNM, playing the role of servicer in the securitization process, will collect the ETCs on behalf of the SPE and remit the monies to the SPE trust account held by the Trustee, which maintains those monies until it periodically remits them to investors according to a pre-determined set of payment priorities (the "waterfall") and schedule (typically semi-annually in utility securitizations).[319] The Trustee serves as a representative of the bondholding investors and ensures that their rights are protected in accordance with the terms of the securitization transaction.

PNM proposes to use the Energy Transition Bond proceeds in accordance with Section 10 of the ETA to: (i) make any required Section 16 payments; (ii) pay decommissioning costs; (iii) make capital expenditures for the purpose of providing utility service to customers; and (iv) repay any indebtedness incurred for the purpose of making any such payments. Consistent with the Company's commitment in Case No. 19-00018-UT, PNM avers it will not use the proceeds from the Bonds for the purposes of paying dividends, making affiliate loans, or paying incentive compensation.[320] Finally, PNM will file periodic reports with the Commission showing the receipt and disbursement of the proceeds in accordance with Section 5(J) of the ETA.[321]

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[319] Atkins Dir. 10-11. If the SJGS Bonds and the Four Corners Bonds are to be issued by the same SPE, Mr. Atkins recommended that there be two separate trust indentures. In that case, PNM would separately remit collections with respect to each of these energy transition charges to the respective indenture trustee(s), and the indenture trustee(s) will deposit the amounts relating to the SJGS Charges to accounts established for the SJGS Bonds and the amounts relating to the Four Corners Charges to accounts established for the Four Corners Bonds. Atkins expects that there will be an intercreditor agreement regarding the SJGS and Four Corners indentures. Atkins Dir. 32.

[320] Sanchez Dir. 21 (citing NMSA 1978, § 62-18-10).

[321] Sanchez Dir. 23 (citing NMSA 1978, § 62-18-5(J). Further, PNM witness Lauren Sanchez noted that under the proposed form of Financing Order (Attachment 2 to the Application), PNM will file a report within 30 days following receipt of the proceeds from the sale of the energy transition bonds and annually thereafter until all bond proceeds have been disbursed (the "Disbursement Reports") specifying: (i) the gross amount of proceeds arising from the sale of the energy transition bonds; (ii) any amounts expended for payment of upfront Financing Costs (including reimbursement to PNM for such costs paid by PNM); (iii) the amount of Section 16 Payments made; (iv) the amount of proceeds used to pay decommissioning costs; (v) the amount of proceeds used to make capital expenditures for the purpose of providing utility service to customers; (vi) the amount of proceeds used to

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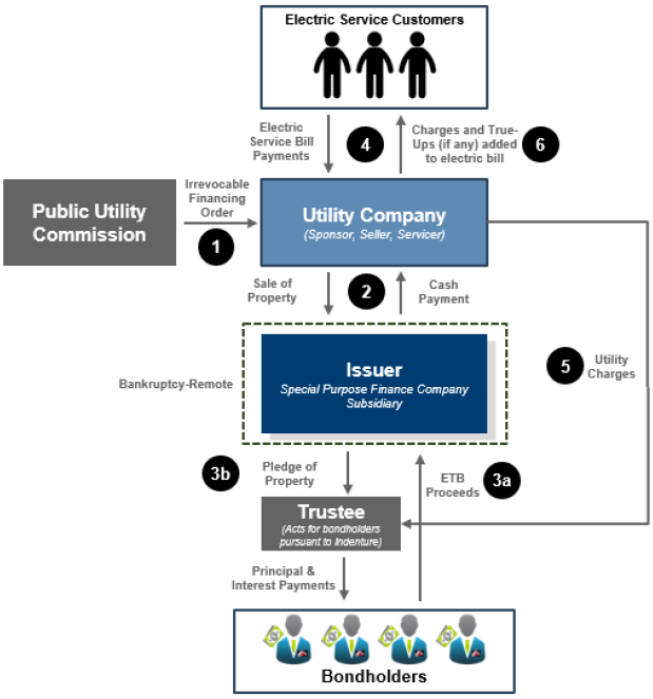

Transaction Process / Mechanics

1. After a request from a utility company, public utility commission (utility regulator) issues financing order, pursuant to state statute, that creates Property in the hands of sponsoring utility
2. Via a true sale, sponsoring utility transfers Property to bankruptcy-remote special purpose finance company (the "**Issuer**") in exchange for cash payment
3. (a) ETBs issued in exchange for cash payment from bondholders

   (b) Property is pledged to Trustee for benefit of the bondholders
4. Electric utility customers pay charge on electricity bills
5. Payments from electric utility customers used to pay P&I on ETBs
6. True-up mechanism triggered at least semi-annually, and, in some cases, more frequently, is designed to adjust charge on all electric customers to level necessary (i.e., not subject to caps) to provide for timely payment of P&I on ETBs

2. Design of the energy transition charges

The SPE formed by PNM to issue the energy transition bonds will be obligated to make semiannual payments of principal and interest on the energy transition bonds and will incur other ongoing financing expenses that are energy transition costs under Section 2(H) of the ETA. PNM proposes to establish an ETA Rider to collect the ETC funds that will be remitted to the indenture trustee and used to pay the required semi-annual debt service payments and other ongoing financing expenses.[322]

PNM anticipates the ETA Rider will become effective 30 days after issuance of the energy transition bonds. For example, if the bonds were issued on January 15, 2025, PNM anticipates the

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repay indebtedness incurred for the purpose of making any such payments; and (vii) the amount of any remaining proceeds. Sanchez Dir. 23-24.

[322] PNM Exh. 14 (Settlage Dir.) 2.

ETA Rider would become effective on February 14, 2025 and would be assessed for electric service provided thereafter.[323]

PNM estimates the need to collect $16.7 million per year for 24 years and $8.3 million in year 25 to pay the debt service on the energy transition bonds.[324] Responsibility for that amount must be allocated to PNM's various customer classes and within each class to specific customers or groups of customers. Consistent with Section 6(A) of the ETA, PNM proposes to allocate the revenues to be recovered from each customer class based on the production cost allocation methodology established by the Commission in PNM's most recent general rate case to its then current rate structure using a forecast of billing determinants.[325]

The ETA, however, does not establish the specific rates for each customer class. Section 5(F)(3) of the ETA directs PNM to recover energy transition costs through a non-bypassable ETC consistent with the energy and demand allocations within each customer class.[326] To ensure that the ETA Rider is non-bypassable and to recover ETCs consistent with energy and demand

[323] Settlage Dir. 3-4.

[324] Atkins Dir. 23, PNM Table CNA-1. The annual debt service schedules and annual revenue requirements attached to Mr. Atkin's testimony show $16.7 million per year for 24 years and $8.3 million in year 25 based on preliminary "base cash flow" and Fitch Ratings Service, Inc. ("Fitch") "no industrials stress cash flow" scenarios and $16.7 million for 24 years and $8.5 million in year 25 in a preliminary "Fitch rating sensitivity stress cash flow scenario." However, in a preliminary "Fitch AAAsf stress cash flow scenario" the debt service revenue requirement is $18.3 million for 24 years and $9.1 million year 25.

[325] Settlage Dir. 10. PNM's approach follows Section 6(A) of the ETA, which states:

A. If the commission issues a financing order, the qualifying utility for which the order is issued may charge all of the qualifying utility's customers an energy transition charge, which shall be allocated to customer classes consistent with the production cost allocation methodology established by the commission in the qualifying utility's most recent general rate case. Energy transition charges shall be assessed consistent with the production cost allocation methodology and the determination of energy and demand costs within each customer class, both of which shall be subject to the adjustment mechanism.

NMSA 1978, § 62-18-6(A).

[326] Settlage Dir., 11.

allocations within each customer class, PNM proposes different rate types suited to the specific characteristics of the PNM rate schedules and the customers served thereunder.[327]

Given the diversity of diversity of rate schedules and customers, PNM witness Michael J. Settlage stated that PNM examined a variety of energy transition charge types including customer charge, energy charge, demand charge, unit charge, block charge, and hybrids of these methods. These are the same charge types that PNM evaluated in Case No. 19-00018-UT.[328] PNM is proposing to use the same charge types approved by the Commission in Case No. 19-00018-UT.

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[327] Settlage Dir. 12, PNM Exh. MJS-5, p. 1 of 4.

[328] *See Recommended Decision on SJGS Financing Order*, at 66-68 (discussing the energy transition charge types):

A **customer charge** is a monthly charge assessed to each customer. Some advantages of a customer charge are that the charge cannot be effectively bypassed (i.e., minimized or avoided) through changes in usage or demand, and a monthly customer charge is easier for customers to understand than a more complex charge. A customer charge is well-suited to rate schedules with very few customers and to rate schedules with a homogeneous set of customers. A disadvantage of customer charges is that they are not necessarily proportional to relative customer demand and energy within the rate schedule if there are many customers served under the rate schedule.

Individual customer charges are a special case of a customer charge. They are per customer ($/bill) and each customer in the rate schedule gets a different charge based on their forecasted demand. The main advantage is that the individual customer charge cannot be effectively bypassed and is consistent with the demand and energy allocations within the rate schedule. Individual customer charges are particularly effective for rate schedules with a small number of customers. The disadvantage of these individual customer charges is that, for rate schedules with multiple customers, they require a forecast of each individual customer's demand.

A **customer block** charges are also special case of a customer charge. They represent a charge per bill, but the particular charge is based on the amount of energy a customer uses. Customers that use the most energy pay a higher charge. The advantage of the customer block charge is that it cannot be effectively bypassed and customers that use more energy pay more. The charge is also relatively simple for customers to understand on their bill. The disadvantage of this customer block charge is that it requires a forecast of the number of customers that will have billed energy in the block with the higher charge.

A **demand charge** is a per billed kW charge ($/kW) and has the advantage of being directly proportional to the customer's demand within the rate schedule. A demand charge is also relatively easy for a customer to understand. Demand charges are suited to rate schedules with demand metering that have many customers. Disadvantages of demand charges include the need to forecast the rate schedule total customer demand and the sensitivity of demand to weather. Furthermore, many customers do not have demand metering as part of the rate schedule they are served under, so demand charges are not plausible for these rate schedules.

A **light charge** is a per billed device charge ($/light) used for streetlights and area lights. The advantages include simplicity, no requirement for demand or energy forecast, and no metering is required. A light charge is well suited for street and area lighting because PNM lighting rate schedules do not require metering.

The energy transition charge types and calculation methods for each rate schedule proposed in this case are described PNM Exhibit MJS-5 to Mr. Settlage's direct testimony. The energy transition charge types are summarized in the following table.[329]

PNM Table MJS-1 - Proposed Energy Transition Charge Types

Line	Rate Schedule	Charge Type
1	1A - Residential	Customer Block ($/bill)
2	1B - Residential - TOU	Customer ($/bill)
3	2A - Small Power	Customer ($/bill)
4	2B - Small Power - TOU	Customer ($/bill)
5	3B - General Power	Demand ($/kW)
6	3C - General Power Low LF	Demand ($/kW)
7	3D - Pilot Municipalities and Counties General Power - TOU	Demand ($/kW)
8	3E - Pilot Municipalities and Counties General Power Low LF - TOU	Demand ($/kW)
9	4B - Large Power	Demand ($/kW)
10	5B - Lg. Svc. (8 MW)	Individual Customer ($/bill)
11	10A - Irrigation	Customer ($/bill)
12	10B - Irrigation - TOU	Customer ($/bill)
13	11B - Wtr/Swg Pumping	Customer ($/bill)
14	15B - Universities 115 kV	Individual Customer ($/bill)
15	30B - Manuf. (30 MW)	Individual Customer ($/bill)
16	33B - Lg. Svc. (Station Power)	Individual Customer ($/bill)
17	35B - Lg. Svc. (3 MW)	Individual Customer ($/bill)
18	36B - SSR - Renew. Energy Res.	Individual Customer ($/bill)
19	6 - Private Lighting	Light ($/bill)
20	20 - Streetlighting	Light ($/bill)

Section 6(B) of the ETA provides for an adjustment mechanism, effective upon issuance of the energy transition bonds, to make adjustments to the ETCs at least semiannually to correct for any over- or under-collection of those charges and to provide for the timely and complete payment of the bonds and recovery of financing costs.[330] The ETA requires that the adjustment mechanism remain in effect until the energy transition bonds and all financing costs have been fully paid and

[329] *See* Settlage Dir. 14.

[330] NMSA 1978, § 62-18-6(B). In addition to the six-month true-ups, PNM proposes to make non-standard true-ups to address matters such as changes to the production cost allocation methodology resulting from a general rate case. Settlage Dir. 18.

recovered, any under-collection is recovered from customers and any over-collection is returned to customers.[331] As already noted, the ETA provides for only a limited review of the ETC adjustments – whether there is a mathematical or transcription error in the calculation of the adjustment.[332]

3. Ratemaking mechanism at time of bond issuance to reduce rates to compensate for addition of ETC rates

Section 4(B)(11) of the ETA requires PNM to propose a ratemaking method to account for the reduction in the qualifying utility's cost of service associated with the amount of undepreciated investments being recovered by the energy transition charge at the time that charge becomes effective.[333]

PNM recommends the same ratemaking methodology for FCPP as approved by the Commission with respect to the San Juan Generating Station abandonment in Case No. 19-00018-

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[331] NMSA 1978, § 62-18-6(D).

[332] The limited review is defined in the ETA as follows:

F. An adjustment to the energy transition charge filed by the qualifying utility shall be deemed approved without hearing thirty days after filing the adjustment unless:

(1) no later than twenty days from the date the qualifying utility filed the calculation of the adjustment, the commission is notified of a potential mathematical or transcription error in the adjustment; provided that the notice identifies the error with specificity; and

(2) the commission determines that the calculation of the adjustment is unlikely to provide for timely payment, or is likely to result in a material overpayment, of scheduled principal of and interest on the energy transition bonds and the payment and recovery of other financing costs in accordance with the financing order and, based on that determination, suspends operation of the adjustment, pending a hearing limited to the issue of the error in the adjustment; provided that the suspension shall be for a period not to exceed sixty days from the date the qualifying utility filed the calculation of the adjustment.

G. If the commission determines that a hearing is necessary, the commission shall hold a hearing on the proposed adjustment that shall be limited to determining whether there is a mathematical or transcription error in the calculation of the adjustment. If, after a hearing, the commission determines that the calculation of the adjustment contains a mathematical or transcription error, the commission shall issue an order that rejects and corrects the adjustment. The qualifying utility shall adjust the energy transition charge in accordance with the commission's calculation within five days from issuance of the order. If the commission does not issue an order rejecting the adjustment with a determination of the corrected calculation within sixty days from the date the qualifying utility filed the adjustment, the adjustment to the energy transition charge shall be deemed approved.

NMSA 1978, § 62-18-6(F)-(G).

[333] NMSA 1978, § 62-18-4(B)(11).

UT.[334] Following abandonment of the Four Corners plant, the SPE will issue the energy transition bonds. If PNM begins to collect the energy transition charge from customers and has not adjusted its base rates charged to customers in a general rate case to reflect the abandonment of Four Corners, PNM will simultaneously apply a customer rate credit to be implemented through a rate rider on customer bills to reflect the full non-fuel revenue requirement related to the plant. The rate rider will serve as an interim rate adjustment mechanism and PNM will continue the rate rider credit for as long as Four Corners is abandoned (i.e., no longer used and useful), PNM is collecting the energy transition charge and has not adjusted its base rates to reflect the exit of FCPP.[335]

As for the timing of PNM's next rate case, PNM witness Baker stated that PNM has not made a final determination on the timing of the rate case that will include the abandonment of its interest in FCPP. Although, Baker observed, "generally speaking, the abandonment of a major generation resource, like FCPP, creates conditions that make it appropriate to file a general rate case. In the event that PNM does adjust base rates to reflect the abandonment of FCPP at the same time that customers begin to pay the energy transition charge, there would be no need for a rate rider credit to be implemented."[336] But, if there is a timing difference between starting to collect the energy transition charge from customers when bonds are issued upon the abandonment and the time that base rates are adjusted to reflect the abandonment of PNM's interest in Four Corners, Baker said rate rider credit will protect customers from double recovery of the non-fuel revenue requirement associated with the abandoned interest in Four Corners.[337]

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[334] *See Recommended Decision on SJGS Financing Order*, at 70-71.

[335] Baker Dir. 26.

[336] Baker Dir. 26-27.

[337] Baker Dir. 27.

Unlike Case No. 19-00018-UT where parties and Staff raised various concerns with PNM's proposed ratemaking mechanism,[338] there were no objections of substance lodged against the specific ratemaking methodology proposed in this case. Other contested ratemaking issues are addressed in elsewhere this decision. PNM's recovery of costs ineligible for securitization is addressed in the companion *Recommended Decision on FCPP Sale and Abandonment*.

The Hearing Examiner recommends that the Commission approve PNM's proposed ETC rate design, Section 6(B) adjustment mechanism, and Section 4(B)(11) ratemaking mechanism, all of which are consistent with the corresponding design and mechanisms approved by the Commission for the SJGS abandonment in Case No. 19-00018-UT.

G. Final Recovery of Actual versus Estimated Abandonment Costs

1. PNM's proposed ratemaking mechanism (regulatory assets and liabilities) to recover difference between actual and estimated abandonment costs recovered in the securitization

Section 4(B)(10) of the ETA states that the qualifying utility's application shall provide "a description of a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred by the qualifying utility or the assignee."[339]

PNM proposes to track and reconcile each component of the energy transition costs to be financed by the energy transition bonds.[340] Any difference between the amounts financed by the energy transition bonds and the actual, final energy transition costs will be deferred and recorded to either a regulatory asset (if the actual final energy transition costs are greater than the estimated

[338] *See Recommended Decision on SJGS Financing Order*, at 72-86.

[339] NMSA 1978, § 62-18-4(B)(10).

[340] *See, e.g.*, Baker Dir. 5, PNM Table TSB-1 for summary of upfront energy transition costs to be financed.

energy transition costs) or a regulatory liability (if the actual final energy transition costs are less than the estimated energy transition costs).

Mr. Baker testified that PNM plans to include the amortization of the regulatory asset or regulatory liability in a general rate case, after the final energy transition costs are known. PNM will propose to collect or refund the differences over the remaining life of the energy transition bonds. PNM will include the unamortized balance of the regulatory asset or regulatory liability in rate base in its general cost of service studies, to compensate PNM or its customers for the time value of money. Thus, if there is a *regulatory liability*, then PNM would include this as a *reduction to rate base* which lowers the customers' overall costs and revenue requirement, to reflect the fact that customers are *paying more through the energy transition charge* and should be compensated for the amounts that are due to be refunded to customers. PNM would request the same treatment for a regulatory asset; if there is a *regulatory asset*, PNM would include as an *increase to rate base*, which increases costs and revenue requirements to reflect the fact that customers are *paying less through the energy transition charge* and PNM should be compensated for the amounts that are still to be collected from customers.[341]

Regarding the carrying charges associated with the regulatory assets and liabilities, to compensate both customers and PNM for any difference between amounts financed through the securitization bond issuance and the final actual energy transition costs incurred by the Company, PNM will record carrying charges. Consistent with treatment approved in Case No. 19-00018-UT,[342] PNM proposes to record carrying charges based on its then approved cost of debt. Once the regulatory asset or regulatory liability is reflected in rate base in PNM's general rate case cost of

[341] Baker 24-25.

[342] *Recommended Decision on SJGS Financing Order*, at 99.

service study, PNM will terminate the calculation of carrying charges as the unamortized balance will be included in rate base.[343]

The only potentially contested issue in this space was NM AREA witness Dauphinais' recommendation that the Commission approve Section 4(B)(10) carrying charges at PNM's cost of debt.[344] However, Mr. Baker confirmed in his rebuttal testimony that PNM intends to apply a debt only carrying charge on the Section 4(B)(10) regulatory asset/liability:

> PNM's intent in this case was to always apply a debt only carrying charge to the regulatory asset or liability, even after it is included in base rates. This would be consistent with the Commission's final order in Case No. 19-00018-UT, in which it approved a debt only carrying charge on the Section 4(b)(10) regulatory asset/liability associated with SJGS abandonment.[345]

The Hearing Examiner recommends that the Commission approve PNM's proposed Section 4(B)(10) reconciliation mechanism, which is consistent with the analogous ratemaking mechanism approved in Case No. 19-00018-UT.

H. First-Year Revenue Requirement and Customer Bill Impacts

In order to provide meaningful comparison between a 2024 abandonment of PNM's interest in FCPP and continued ownership beyond 2024, PNM developed preliminary revenue requirements for the FCPP for an abandonment date of December 31, 2031. PNM witness Baker said the revenue requirements are based on a traditional cost of service model that reflects a return on rate base using the Company's weighted average cost of capital (WACC), or cost of debt for applicable capital investments, and return of PNM's investments, including recovery of operating expenses. The estimated 2025 annual revenue requirements for continued ownership past 2024 is

[343] Baker Dir. 25.

[344] Dauphinais Dir. 3-6.

[345] PNM Exh. 12 (Baker Reb.) 11.

set forth in PNM Exhibit TSB-10 to Mr. Baker's direct testimony. Baker explained that he used his revenue requirement formulation to quantify the customer benefits in 2025 as a result of the abandonment in 2024.

In assuming ownership in Four Corners past 2024, PNM included a return on rate base utilizing PNM's currently approved WACC reduced by the debt only return on adjustment consistent with the final order in Case No. 16-00276-UT, depreciation expense, operations and maintenance expense, fuel handling, costs associated with plant decommissioning, property taxes, payroll taxes, and income taxes.[346]

As discussed in detail in the *Recommended Decision on FCPP Sale and Abandonment*, PNM asserts that the abandonment and sale of its interests in the Four Corners plant will save customers on a net present value basis is estimated to range from $30 million to $300 million.[347] The median expected savings is approximately $143.7 million.[348] PNM's analysis based on proxy replacement resource scenario modeling runs performed by PNM witness Nicholas Phillips is addressed at length in the companion decision.[349]

Because PNM has deferred its request for approval of specific replacement resources to a subsequent proceeding, Mr. Baker's revenue requirements study provided the first-year revenue requirement impacts based on two likely potential replacement power scenarios presented by Mr. Phillips, a technology neutral portfolio (scenario 1) and a no new combustion resource alternative

[346] Baker Dir. 32.

[347] Fallgren Supp. 17-18 (citing PNM Exh. 9 (Phillips Dir.) 3); Fallgren Reb. 3.

[348] Phillips Dir. 3.

[349] *See Recommended Decision on FCPP Sale and Abandonment*, at Section IV.A.1.

(scenario 2).[350] Baker's study gives an estimated range of potential first-year savings based on those alternative resource portfolios.

Scenario 1 assumes PNM will replace the power from Four Corners with 80 MW of gas plant generation, 57 MW of energy storage agreements (ESAs), and 57 MW of solar purchased power agreements (PPAs). PNM estimates that the first full year non-fuel revenue requirement of the hypothetical gas resources and solar/battery hybrid to be approximately $17.6 million.[351]

Scenario 2 assumes PNM will replace the FCPP with 157 MW of ESAs and 95 MW of solar PPAs. PNM estimates that the first full year non-fuel revenue requirement of the hypothetical resources to be approximately $20.9 million.[352] PNM accounted for the cost of energy costs associated with hypothetical PPAs in scenario 2 as fuel cost that Mr. Baker treated as fuel savings in his revenue requirements study.[353]

PNM's estimated fuel savings under scenario 1 and scenario 2 based on estimated total system fuel costs for each scenario. The estimated fuel costs for each hypothetical scenario were then compared to estimated fuel costs for comparable scenarios that assume PNM does not abandon its share in FCPP.[354]

In calculating the return component for the revenue requirements for the owned replacement power in scenarios 1 and 2, PNM used the capital structure and cost of capital that was used in PNM's cost of service study in Case No. 16-00276-UT shown in the table below.[355]

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[350] *See* Phillips Dir. 26-27.

[351] Baker Dir. 33, PNM Exhs. TSB-11 and TSB-12 (calculation of revenue requirements).

[352] Baker Dir. 34, PNM Exh. TSB-13 (calculation of revenue requirements).

[353] *Id*. *See infra* PNM Table TSB-7.

[354] Baker Dir. 34-35.

[355] *See* Baker Dir. 35

PNM Table TSB-6
Schedule A-5 - Commission Final Order
Summary of Total Capitalization and the Weighted Average Cost of Capital
Test Period Ending 12/31/2018

Line No.	Capital Component	Total Capitalization Test Period	Percentage of Total Capitalization	Capital Component Cost	Weighted Average Cost
1	Long Term Debt	$ 1,465,870	50.00%	4.86%	2.43%
2	Preferred Stock	$ 11,529	0.39%	4.62%	0.02%
3	Common Equity	$ 1,454,341	49.61%	9.575%	4.75%
4	Total	2,931,739	100.00%		7.20%

Tax Rate	25.40%
	Tax gross up
Debt	2.43%
Preferred	0.02%
Common	6.37%
Total	8.82%

Mr. Baker pointed out, however, that the capital structure and cost components used in the WACC calculation were used to illustrate the potential impact on revenue requirements. Baker stated that the WACC to be actually used to establish revenue requirements and set rates will be determined in future ratemaking proceedings.[356]

Mr. Baker's revenue requirement analysis shows that scenario 1 would produce net 2025 revenue requirement savings of approximately $59 million while scenario 2 would produce $49

[356] Baker Dir. 36.

million in net savings in the first-year, post-abandonment. The results of PNM's revenue requirements study are depicted in the table below.[357]

PNM Table TSB-7 Summary of Impacts to 2025 Revenue Requirement for Scenarios* ***$ in millions***		
	Scenario 1	Scenario 2
Savings from Exit of Four Corners power plant- Non Fuel	$ (58.0)	$ (58.0)
Energy Transition Charge - Securitization	16.7	16.7
Other Costs Not Included in Energy Transition Charge	(7.9) ~~(4.3)~~	(7.9)
2025 New Resources - Non-Fuel	17.6	20.9
Fuel Costs/(Savings), net, due to change in resources	(27.1)	(20.7)
Net, 2025 Revenue Requirement Impacts (Savings)/Cost	$ (58.8) ~~(55.1)~~	$ (49.0)
* Please see the direct testimony of PNM Witness Phillips for the complete analysis and evaluation of each scenario		

PNM developed customer class impacts based on the first-year revenue requirement impact study using scenarios 1 and 2. PNM witness Settlage's customer impact analysis focused on the Residential 1A and Small Power 2A schedules, which Settlage pointed out account for over 99% of all PNM customer bills. The potential impacts of scenarios 1 and 2 on average monthly bills over a range of usage are shown in PNM Exhibit MJS-7 to Mr. Settlage's direct testimony. In sum, his analysis found for a Residential 1A customer, the impacts range from an increase of $1.32 to a decrease of $19.31 per month depending on kWh usage and the scenario. Residential customers using less than 1,000 kWh per month would be assessed a $1.32 energy transition charge pursuant to the rider, while those consuming 1,000 kWh or more per month would be assessed a $3.44 charge. All other things being equal, a residential customer using 900 kWh per month would see a monthly decrease of $8.92 (in Scenario 1) and $8.50 (in Scenario 2), while a residential customer using 2,000 kWh per month would see a decrease of $19.31 (Scenario 1) and $18.38 (Scenario 2).

[357] *See id.* PNM Table TSB-7.

For a Small Power 2A customer, the impacts range from an increase of $2.89 (based on 0 kWh use) to a decrease of between $1.09 (starting at 500 kWh use) to $133.12 per month (15,000 kWh use) depending again on kWh usage and the scenario.[358]

Of course, as with the SJGS abandonment in Case No. 19-00018-UT,[359] the total bill impact of PNM's next general rate case may or may not result in a customer bill decrease. The rate case will not be limited to the abandonment and replacement resource costs. It will be based on PNM's full estimated cost of service. Other costs PNM seeks to recover at that time could potentially yield a rate increase. Moreover, the ratemaking process and methodology required by the ETA to enable PNM to recover the difference between estimated and actual energy transition costs incurred provides the potential for future rate increases attributable to, among other things, PNM's share of Four Corners plant decommissioning costs.[360]

I. Financing Order

The Hearing Examiner finds that PNM's proposed financing order is substantially consistent in all material respects with the financing order approved by the Commission in Case No. 19-00018-UT. Therefore, in accord with the foregoing Statement of the Case, Background and Legal Framework, and discussion of Issues and Recommendations, and contingent on the Commission's approval of the abandonment and sale and transfer of PNM's interest in Four

[358] *See* Settlage Dir. 24, PNM Exh. MJS-7.

[359] *See Recommended Decision on SJGS Financing Order*, at 105-07.

[360] As discussed at the end of section III.D.1.d above, if PNM has not already collected the plant decommissioning expense from customers after abandonment, PNM proposes to create a plant decommissioning investment fund to set aside money for future plant decommissioning work. PNM estimates that earnings from the investment fund will offset future accretion expense. PNM therefore does not anticipate a need to collect any future accretion expense associated with plant decommissioning costs after PNM exits Four Corners in 2024. However, if future studies or final plant decommissioning costs are higher or earnings from the investment fund are not sufficient to cover future expense, which would result in additional funding requirements, PNM will seek to recover the additional funding requirements in the investment fund. If final plant decommissioning costs are lower or earnings from the investment fund exceed future costs, PNM will refund these amounts to customers.

Corners in the *Recommended Decision on FCPP Sale and Abandonment* issued on this date, the Hearing Examiner recommends that the Commission adopt the following Findings of Fact, Conclusions of Law, and Order Paragraphs, which are founded on PNM's proposed financing order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing statement of the case, background, discussion of issues and recommendations, and all findings and conclusions therein, whether or not separately stated, numbered, or designated as findings and conclusions, are incorporated by reference herein as findings and conclusions. Based on the statement of the case, background, and discussion of issues and recommendations, the Hearing Examiner recommends that the Commission further **FIND** and **CONCLUDE** as follows:

A. Findings of Fact

Identification of Applicant and Qualifying Generating Facility

1. PNM is a New Mexico corporation that owns, operates and controls public utility plant, property and facilities, including generation, transmission and distribution facilities that provide retail and wholesale electric service in New Mexico. PNM is a public utility subject to the jurisdiction of the Commission pursuant to the Public Utility Act.

2. Four Corners is a coal-fired generating facility operating pursuant to a certificate of public convenience and necessity ("CCN"). The plant initially consisted of five coal-fired units with 2,040 MW of electric generation capacity; the units came on-line separately in 1963 (Units 1 and 2), 1964 (Unit 3), 1969 (Unit 4) and 1970 (Unit 5). Units 1, 2 and 3 retired in 2010, and were wholly owned by Arizona Public Service Company ("APS"). PNM is a co-tenant and minority

owner in the plant's remaining Units 4 and 5.[361] The plant is operated by APS, which owns 63% of the capacity output. PNM owns 13%; Salt River Project owns 10%; Tucson Electric Power owns 7%; and NTEC owns 7% of the capacity. The facility is located in Fruitland, New Mexico, an unincorporated community in San Juan County approximately twelve miles west of Farmington. Through the Supporting Testimony,[362] a further description of Four Corners was included in the Application.

Application History

3. Pursuant to Section 4(A) of the ETA, in order to obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 of the NMSA 1978. Section 4(A) provides that the application for the financing order may be filed as part of the application for approval to abandon a qualifying generating facility. PNM filed its original Application and supporting direct testimony on January 8, 2021. Pursuant to the February Order, PNM was directed to file an amended application by March 15, 2021, addressing specific issues. On March 15, 2021, PNM filed the Application and supplemental testimony pursuant to the February Order and sought approval for three primary actions: (1) PNM's abandonment of its interest in Four Corners; (2) the sale and transfer of PNM's ownership interest in Four Corners to NTEC; and (3) the issuance of a financing order to authorize securitized financing related to such abandonment. While PNM has deferred a request for approval of replacement resources until a subsequent application, the Application and supporting testimony have identified that there are

[361] The ownership of Four Corners is governed by the Amended and Restated Four Corners Project Co-Tenancy Agreement dated September 1, 2019. The current plant owners oversee Arizona Public Service's management and operation of the plant, and the owners review and approve capital and operations budgets. The coal for the plant is supplied under the current Coal Supply Agreement.

[362] The "Supporting Testimony" includes PNM's direct testimonies filed on January 8, 2021, and supplemental testimonies filed on March 15, 2021.

adequate potential new resources that will be available to provide reasonable and proper service to retail customers when four Corners is transferred and abandoned.

4. In a separate order issued on the date hereof, the Commission authorized PNM to abandon and to sell and transfer its interest in Four Corners to NTEC effective December 31, 2024.

Energy Transition Costs to be Securitized

5. Pursuant to Section 4(A) of the ETA, a qualifying utility that is abandoning a qualifying generating facility may apply to the Commission for a financing order to recover all of its energy transition costs through the issuance of energy transition bonds. Section 4(B)(2) of the ETA requires that a qualifying utility's application for a financing order include an estimate of the "energy transition costs" (as defined in the ETA). Under Section 2(H) of the ETA, energy transition costs means the sum of: (1) financing costs (as defined in the ETA); (2) abandonment costs (as further described in Section 2(H)(2) of the ETA); (3) any other costs required to comply with changes in law enacted after January 1, 2019 incurred by the qualifying utility at the qualifying generating facility; and (4) payments required pursuant to Section 16 of the ETA (the "Section 16 Payments").

Estimated Upfront Financing Costs and Estimated Ongoing Financing Costs

6. Under Section 2(K) of the ETA, financing costs mean the costs incurred by a qualifying utility or an assignee to issue and administer energy transition bonds, including: (1) payment of the fee authorized pursuant to Section 5(L) of the ETA; (2) principal, interest, acquisition, defeasance and redemption premiums that are payable on energy transition bonds; (3) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the energy transition bonds; (4) any costs, fees and expenses related

to issuing, supporting, repaying, servicing and refunding energy transition bonds, the application for a financing order, including related state board of finance expenses, or obtaining an order approving abandonment of a qualifying generating facility; (5) any costs, fees and related expenses incurred relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility that are necessary to obtain any consent, release, waiver or approval from any holder of such an obligation to permit a qualifying utility to issue or cause the issuance of energy transition bonds; (6) any taxes, fees, charges or other assessments imposed on energy transition bonds; (7) preliminary and continuing costs associated with subsequent financing; and (8) any other related costs approved for recovery in the financing order.

7. As discussed in the Supporting Testimony, certain financing costs will constitute costs of issuing the Energy Transition Bonds and of obtaining this Financing Order and the approval of the abandonment of the San Juan coal plant. These financing costs under Section 2(K) of the ETA will be financed through the issuance of the Energy Transition Bonds and are referred to herein as "Upfront Financing Costs." As described in the Supporting Testimony, the Upfront Financing Costs will include (i) the fees and expenses of incurred by the Company in obtaining the Financing Order and the order approving the abandonment of PNM's interest in Four Corners, including the fee of bond counsel to the Commission as contemplated by Section 5(L) of the ETA, and (ii) the fees and expenses associated with issuing the Energy Transition Bonds, including underwriting discount, a financial advisor structuring fee, the fees of legal counsel, rating agency fees, trustee fees and expenses, accounting and auditing fees, printing, filing and marketing expenses, Securities and Exchange Commission ("SEC") registration fees, costs of organizing the SPE, servicer set up fees, original issue discount and miscellaneous other costs. As described in the Supporting Testimony, it is important that this Financing Order provide for flexibility to include other forms of

credit enhancement and other mechanisms (*e.g.*, letters of credit, additional amounts of overcollateralization or reserve accounts, or surety bonds) to improve the marketability of the Energy Transition Bonds. These credit enhancements are additional potential Upfront Financing Costs and Other Ongoing Financing Costs (as defined below). The Upfront Financing Costs will include amounts paid directly by the SPE and amounts paid to PNM as reimbursement for amounts paid with respect to such costs. The Upfront Financing Costs are financing costs pursuant to Section 2(K)(4) of the ETA (and Section 2(K)(1) with respect to the fee authorized by Section 5(L) of the ETA). PNM Exhibit LES-2 included estimated Upfront Financing Costs of $7.3 million. PNM Exhibit LES-2 also provided that additional Upfront Financing Costs relating to original issue discount for the Energy Transition Bonds were not expected to exceed 0.05% of the aggregate principal amount of the Energy Transition Bonds. The estimated Upfront Financing Costs are subject to change and will be updated at the time of issuance of the Energy Transition Bonds as provided in Section 4(B)(6) of the ETA.

8. In addition to the Upfront Financing Costs, which will be recovered from the proceeds of the sale of the Energy Transition Bonds, additional financing costs as defined in Section 2(K) of the ETA will be incurred while the Energy Transition Bonds remain outstanding (the "Ongoing Financing Costs" and, together with the Upfront Financing Costs, the "Financing Costs"). The Ongoing Financing Costs will be recovered through the energy transition charges approved in this Financing Order (the "Energy Transition Charges"). The Ongoing Financing Costs will include payment of principal and interest on the Energy Transition Bonds ("Debt Service Payments"), which are financing costs pursuant to Section 2(K)(2) of the ETA. PNM Exhibit CNA-4 includes an illustrative preliminary structure for the Energy Transition Bonds, including estimated Debt Service Payments. In addition to Debt Service Payments, the Ongoing

Financing Costs also will include other fees and expenses incurred during the life of the Energy Transition Bonds to service and support the Energy Transition Bonds (the "Other Ongoing Financing Costs"). As described in the Supporting Testimony, these Other Ongoing Financing Costs include servicing fees, the return on PNM's capital contribution, administration fees, auditor fees, legal fees, rating agency surveillance fees, trustee fees and expenses, independent director or manager fees, credit enhancement costs and miscellaneous other costs. These Other Ongoing Financing Costs are financing costs pursuant Section 2(K)(4) of the ETA. As set forth in the Supporting Testimony of PNM Witness Laura Sanchez and PNM Exhibit LES-3, PNM's estimated annual Other Ongoing Financing Costs are approximately $0.5 million. The estimated Ongoing Financing Costs are subject to change and will be updated at the time of issuance of the Energy Transition Bonds as provided in Section 4(B)(6) of the ETA. While the servicing fee, administration fee and return on capital contribution will be based upon fixed amounts upon issuance of the Energy Transition Bonds, other components of the Other Ongoing Financing Costs will be subject to variation over the life of the Energy Transition Bonds.

Estimated Abandonment Costs

9. Pursuant to Section 2(H)(2) of the ETA, energy transition costs include abandonment costs, which for a qualifying generating facility shall not exceed the lower of $375,000,000 or 150% of the undepreciated investment in a qualifying generating facility being abandoned, as of the date of abandonment. Section 2(H)(2) of the ETA further provides that the abandonment costs subject to this limitation include: (a) up to $30,000,000 per qualifying generating facility in costs not previously collected from the qualifying utility's customers for plant decommissioning and mine reclamation costs, subject to any limitations ordered by the Commission prior to January 1, 2019, and affirmed by the New Mexico Supreme Court prior to the effective date of the ETA,

associated with the abandoned qualifying generating facility; (b) up to $20,000,000 per qualifying generating facility in costs for severance and job training for employees losing their jobs as a result of an abandoned qualifying generating facility and any associated mine that only services the abandoned qualifying generating facility; (c) undepreciated investments as of the date of abandonment on the qualifying utility's books and records in a qualifying generating facility that were either being recovered in rates as of January 1, 2019, or are otherwise found to be recoverable through a court decision; and (d) other undepreciated investments in a qualifying generating facility incurred to comply with law, whether established by statute, court decision or rule, or necessary to maintain the safe and reliable operation of the qualifying generating facility prior to the facility's abandonment.

10. Through the Supporting Testimony, PNM provided an estimate of the undepreciated investment in PNM's ownership interest in Four Corners as of the time of the proposed abandonment (the "Undepreciated Investment"). PNM's calculation of the estimate of the Undepreciated Investment is described in the Supporting Testimony and PNM Table TSB-1. PNM's resulting estimate was $271.3 million of Undepreciated Investment. The Undepreciated Investment is an energy transition cost pursuant to Section 2(H)(2)(c) and 2(H)(2)(d) of the ETA.

11. As described in the Supporting Testimony, PNM expects Four Corners to continue to operate following PNM's abandonment of Four Corners, and PNM does not employ workers at Four Corners. As a result, PNM does not expect the abandonment to result in the acceleration of mine reclamation costs (which are capped and not included in PNM's rates); or any severance and job training for PNM employees losing their jobs. Accordingly, PNM is not requesting recovery of any mine reclamation costs or severance and job training costs through the issuance of the Energy Transition Bonds. PNM will remain responsible for plant decommissioning costs of $4.6 million.

Accordingly, PNM is requesting recovery of the decommissioning costs as described in the Supporting Testimony and PNM Exhibit TSB-4 ("Decommissioning Costs").

12. The Undepreciated Investment and the Decommissioning Costs are referred to herein as the "Abandonment Costs." As described in the paragraphs above, PNM has estimated aggregate Abandonment Costs of $276 million, consisting of the estimated Undepreciated Investment and estimated Decommissioning Costs. In accordance with Section 2(H)(2) of the ETA, the maximum amount of the Abandonment Costs that would qualify as energy transition costs subject to recovery through the issuance of the Energy Transition Bonds is limited to the lesser of (1) $375,000,000 or (2) 150% of the undepreciated investment of the San Juan coal plant as of the date of abandonment (or $407 million based on the estimated Undepreciated Investment). As a result, the Company's estimated Abandonment Costs proposed to be financed through the issuance of the Energy Transition Bonds does not exceed the limitations of Section 2(H)(2) of the ETA.

Change in Law Costs

13. Through the Application, PNM did not identify any costs that qualify as energy transition costs pursuant to Section 2(H)(3) ("Change in Law Costs").

Section 16 Payments

14. Through the Application, including the Supporting Testimony, PNM has provided an estimate of the Section 16 Payments. Section 16(J) of the ETA requires that within 30 days after receiving the proceeds of Energy Transition Bonds, PNM will be required to make payments equal to the following percentages of the financed amount of the Energy Transition Bonds as follows:

- 0.50% to the Indian affairs department for deposit in the energy transition Indian affairs fund established under the ETA;
- 1.65% to the economic development department for deposit in the energy transition economic development assistance fund established under the ETA; and

- 3.35% to the workforce solutions department in the energy transition displaced worker assistance fund established under the ETA.

The Section 16 Payments are energy transition costs pursuant to Section 2(H)(4) of the ETA. PNM's estimate of $16.5 million of Section 16 Payments is based upon its estimate of the other energy transition costs to be financed through the issuance of the Energy Transition Bonds, including $276 million of Abandonment Costs and $7.3 million of Upfront Financing Costs. The estimated Section 16 Payments are subject to change and will be updated at the time of issuance of the Energy Transition Bonds as provided in Section 4(B)(6) of the ETA.

15. Through the Application, including the Supporting Testimony, and as provided in Section 4(B)(6) of the ETA, PNM has committed to file with the Commission following the issuance of any Energy Transition Bonds: (1) a description of the final structure and pricing of the bonds; (2) updated Financing Costs and Section 16 Payment amounts, and (3) an updated calculation of the Energy Transition Charges.

Maximum Amount of Energy Transition Bonds Authorized for Issuance

16. Pursuant to Section 5(F)(1) of the ETA, a financing order shall include, among other things, approval for the qualifying utility or assignee to issue energy transition bonds as requested in the application, to use energy transition bonds to finance the maximum amount of energy transition costs as requested in the application, as may be adjusted pursuant to Section 4(B)(6) of the ETA. PNM has proposed that the maximum amount of the Energy Transition Bonds to be issued by the SPE shall be equal to the sum of (A) the $276 million of estimated Abandonment Costs set forth in the Application, (B) Section 16 Payments (updated as of the time of issuance and provided to the Commission following issuance in accordance with Section 4(B)(6) of the ETA), and (C) Upfront Financing Costs (updated as of the time of issuance and provided to the Commission following issuance in accordance with Section 4(B)(6) of the ETA). The SPE shall

not issue Energy Transition Bonds in a principal amount in excess of $300 million unless PNM shall have obtained an amendment to the Financing Order as provided in Section 7(B)(2) of the ETA. If PNM's energy transition cost estimate at the time of issuance is lower than the estimate included in the financing application, the SPE shall reduce the size of the bond issuance accordingly.

17. Through the Supporting Testimony, the Application includes a proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the Energy Transition Bonds and the actual final energy transition costs incurred by PNM or the SPE. PNM will track and reconcile each component of the energy transition costs described above. Any difference between the amounts financed by the Energy Transition Bonds and the final actual energy transition costs will be deferred and recorded to either a regulatory asset (if the actual final energy transition costs are greater than the estimated energy transition costs) or a regulatory liability (if the actual final energy transition costs are less than the estimated energy transition costs). PNM proposed to include the amortization of the regulatory asset or regulatory liability in a general rate case, after the final energy transition costs are known. PNM stated that it will propose to recover or refund the differences back to customers over the remaining life of the Energy Transition Bonds. Consistent with the Commission's decision in Docket No. 19-00018-UT, PNM has proposed that the unamortized balance of the regulatory asset or regulatory liability will incur carrying costs at PNM's then current cost of debt to compensate PNM or its customers for the time value of money.

Structure of the Energy Transition Bonds

18. PNM will form the SPE as a Delaware limited liability company, with PNM as the sole member.[363] The SPE will be formed for the limited purposes of issuing one or more series of energy transition bonds, paying the net proceeds of any such issuance to PNM to purchase energy transition property as defined in Section 2(I) of the ETA created by a financing order, and performing other activities related thereto.

19. The SPE will be managed by a board of managers with rights and duties set forth in the SPE LLC Agreement (as defined in the Application). As long as any Energy Transition Bonds remain outstanding, the SPE will have at least one independent manager with no organizational affiliation with PNM other than possibly acting as independent manager(s) for another bankruptcy-remote subsidiary of PNM or its affiliates. The SPE will not be permitted to amend the provisions of the SPE LLC Agreement or other organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent manager(s). Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert or merge without the consent of the independent managers. Other restrictions to facilitate

[363] In Docket No. 19-00018-UT, the Commission approved the issuance of a financing order that authorizes PNM to form a special purpose entity that will issue up to $361 million of energy transition bonds in connection with PNM's abandonment of the San Juan Generating Facility (the "SJGS Bonds"). Through the Supporting Testimony, PNM expects to issue the SJGS Bonds in 2022 prior to the issuance of the Energy Transition Bonds to be issued pursuant to this Financing Order (the "Four Corners Bonds"). Depending on rating agency and investor preferences at the time of issuance, the Four Corners Bonds may be issued by the same special purpose entity that issues the SJGS Bonds or through a separate special purpose entity. In either case, the SJGS Bonds and the Four Corners will be issued under separate trust indentures. Through the Supporting Testimony, PNM indicated that the substantial majority of utilities that have conducted multiple securitization bond issuances have used a separate special purpose entity for each bond issuance.

bankruptcy-remoteness may also be included in the SPE LLC Agreement as required by the rating agencies.

20. The SPE will require ongoing administration services, such as corporate maintenance, reporting and internal accounting functions. The SPE will have no staff to provide these administrative services. These services will be provided by PNM pursuant to the terms of the Administration Agreement (as defined in the Application).

21. The SPE will be capitalized through the issuance of the Energy Transition Bonds and a concurrent equity capital contribution from PNM. Through the Supporting Testimony, PNM estimated that its equity capital contribution to the SPE will be 0.5% of the total capital of the SPE (with the Energy Transition Bonds representing the remaining 99.5% of the capitalization of the SPE).[364] In accordance with Section 4(B)(8) of the ETA, PNM's equity capital contribution to the SPE will not be less than 0.5% of the total capital of the SPE. This minimum capitalization level also will satisfy existing Internal Revenue Service safe harbors so that PNM will not recognize gross income upon the receipt of cash in exchange for the issuance of the Energy Transition Bonds. PNM proposed earning a return on this equity capital contribution relating to the Energy Transition Bonds equal to the interest rate on the longest maturing tranche of the Energy Transition Bonds, to be paid as an Ongoing Financing Cost.

22. The SPE will issue and sell the Energy Transition Bonds in one or more series consisting of one or more tranches. Through the Supporting Testimony, PNM included a

[364]If the Four Corners Bonds are issued through the SPE that issues the SJGS Bonds, PNM will make an initial capital contribution to the SPE at the time of issuance of the SJGS Bonds equal to 0.5% of the total capitalization of the SPE and an additional capital contribution to the SPE at the time of issuance of the Four Corners Bonds so that the total contribution of PNM equals 0.5% of the total capitalization of the SPE. The capital contribution with respect to the SJGS Bonds will be held by the trustee under the indenture for the SJGS Bonds and the capital contribution with respect to the Four Corners Bonds will be held by the trustee under the indenture for the Four Corners Bonds.

preliminary projected bond structure with the Energy Transition Bonds being issued in a single series with multiple tranches. As described in the Supporting Testimony, PNM expects that the Energy Transition Bonds will be issued with a final scheduled maturity date of approximately 25 years from the date of issuance of the Energy Transition Bonds, and a final legal maturity date longer than the scheduled final maturity, driven by rating agency considerations, with semiannual payments of principal and interest. The initial debt service payment may be scheduled to take place more than six months after issuance of the Energy Transition Bonds. As discussed in the Supporting Testimony, the difference between the scheduled final payment date and legal final maturity date is to provide additional credit protection by allowing shortfalls in principal payments to be recovered over this additional time period due to any unforeseen circumstance, in furtherance of achieving the desired "AAA" or equivalent credit ratings for the bonds. The rated final maturity of the Energy Transition Bonds will be the legal final maturity date. The number, size and tenor of the series and tranches offered to investors will be determined by rating agency requirements and investor demand at the time of pricing, and as a result, the actual structures may differ. In no event will the final scheduled maturity date of the Energy Transition Bonds be more than 25 years from the date of issuance of the Energy Transition Bonds.

23. The Energy Transition Bonds will be structured in a manner designed to provide for substantially levelized annual revenue requirements over the expected life of the bonds.

24. PNM has proposed that the Energy Transition Bonds will be sold pursuant to a negotiated sale to investors, coordinated through one or more underwriters in a public offering registered with the Securities and Exchange Commission (the "SEC"). As discussed in the Supporting Testimony, SEC-registered transactions are considered to be more liquid than Rule 144A or other private placement transactions. Publicly offered transactions are not limited to

"qualified institutional investors" or "accredited investors" upon initial issuance or resale, as privately placed transactions are, and this broader potential investor universe will potentially be more attractive to investors and more likely to obtain lower interest rate coupons on any particular pricing day. While PNM has proposed and expects the transaction to be conducted as an SEC-registered offering conducted through a negotiated sale to underwriters, PNM will determine at the time of the proposed transaction, consistent with its commitment to use its commercially reasonable efforts to achieve the lowest cost objective, whether transaction will be conducted as a SEC-registered public offering or a Rule 144A private placement.

25. As described in the Supporting Testimony, each tranche of the Energy Transition Bonds will bear interest at a fixed rate.

26. As described in the Application, including the Supporting Testimony, PNM expects to cause the issuance of the Energy Transition Bonds as promptly as possible after the last of the following events have occurred: (1) issuance of a final, non-appealable financing order acceptable to the Company; (2) PNM's abandonment of its interest in Four Corners; (3) delivery of any necessary SEC approvals under the Securities Act of 1933; and (4) completion of the rating agency process. PNM estimated that the issuance of the Energy Transition Bonds would occur in 2025.

Energy Transition Property

27. Concurrent with the issuance of any series of the Energy Transition Bonds, PNM will transfer to the SPE the energy transition property created pursuant to this Financing Order (the "Energy Transition Property"), including all of its rights under this Financing Order and specifically the right to impose, charge, collect and receive the Energy Transition Charges approved in this Financing Order. This transfer will be structured so that it will qualify as a "true sale" within the meaning of Section 14(A) of the ETA. The transfer of the Energy Transition

Property will be made pursuant to the Purchase Agreement (as defined in the Application) and a related bill of sale, and the Purchase Agreement will expressly state that the transaction is a sale or other absolute transfer. By virtue of this transfer, the SPE will acquire all of the right, title and interest of PNM in the Energy Transition Property created under this Financing Order.

Security

28. The payment of the Energy Transition Bonds and related charges authorized by this Financing Order is to be secured by the Energy Transition Property created by this Financing Order and by certain other collateral as described in the Application, including the Supporting Testimony. The Energy Transition Bonds will be issued pursuant to the Indenture (as defined in the Application) under which the Indenture Trustee will administer the trust. Pursuant to the Indenture, the SPE will establish a collection account (the "Collection Account") to be held by the Indenture Trustee as collateral to facilitate the payment of the principal of, interest on, and other costs approved in this Financing Order related to the Energy Transition Bonds in full and on a timely basis. The Collection Account will include a general subaccount (the "General Subaccount"), a capital subaccount (the "Capital Subaccount"), an excess funds subaccount (the "Excess Funds Subaccount"), and may include other subaccounts (the General Subaccount, the Excess Funds Subaccount, the Capital Subaccount and any other subaccounts under the indenture, collectively are the "Subaccounts").

29. The Indenture Trustee will deposit in the General Subaccount the Energy Transition Charge remittances that the servicer remits to the Indenture Trustee. The Indenture Trustee will apply moneys in the General Subaccount according to the priorities set forth in the Indenture to pay expenses of the SPE, to pay principal of and interest on the Energy Transition Bonds, and to meet the funding requirements of the other Subaccounts. Funds in the General Subaccount will be

invested by the Indenture Trustee in short-term, high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the Indenture Trustee to pay principal of and interest on the Energy Transition Bonds and all other components of the Periodic Revenue Requirement (as defined below), and otherwise in accordance with the terms of the Indenture.

30. PNM will make its capital contribution (as described above) to the SPE, and the SPE will deposit that capital contribution into the Capital Subaccount. The Capital Subaccount will serve as collateral to facilitate the timely payment of principal of and interest on the Energy Transition Bonds and all other components of the Periodic Revenue Requirement. Any funds drawn from the Capital Subaccount to pay these amounts due to a shortfall in the Energy Transition Charge remittances will be replenished to its original level through future Energy Transition Charges as adjusted through the true-up adjustment mechanism described below. The funds in the Capital Subaccount will be invested by the Indenture Trustee in short-term, high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the Indenture Trustee to pay principal of and interest on the Energy Transition Bonds and all other components of the Periodic Revenue Requirement.

31. The Excess Funds Subaccount will hold any Energy Transition Charge remittances and investment earnings on the Collection Account in excess of the amounts needed to pay current principal of and interest on the Energy Transition Bonds and to pay all other components of the Periodic Revenue Requirement (including, but limited to, funding or replenishing the Capital Subaccount). Any balance in or amounts allocated to the Excess Funds Subaccount on a true-up adjustment mechanism date will be subtracted from the Periodic Revenue Requirement for purposes of the true-up adjustment. The funds in the Excess Funds Subaccount will be invested

by the Indenture Trustee in short-term, high-quality investments, and such funds (including, to the extent necessary, investment earnings) will be applied by the Indenture Trustee to pay principal of and interest on the Energy Transition Bonds and all other components of the Periodic Revenue Requirement.

32. If for any reason the amount of Energy Transition Charges remitted to the General Subaccount is insufficient to make, on a timely basis, all scheduled payments of principal of and interest on the Energy Transition Bonds and to make payment on all other components of the Periodic Revenue Requirement, the Excess Funds Subaccount and the Capital Subaccount will be drawn upon, in that order, to make those payments. Any deficiency in the Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up adjustment mechanism process. Following repayment of the Energy Transition Bonds and all related Financing Costs and the release of funds by the Indenture Trustee, the SPE will distribute the final balance of the Collection Account to PNM. PNM has proposed that it will credit customers by the amount of the distribution, less the amount of the Capital Subaccount an any unpaid return on the capital contribution due to PNM as set forth in this Financing Order.

33. Other forms of credit enhancement and other mechanisms (*e.g.*, letters of credit, additional amounts of overcollateralization or reserve accounts, or surety bonds) to improve the credit quality and marketability of the Energy Transition Bonds may be used in furtherance of the lowest cost objective.

Servicing Arrangements

34. PNM will enter into the Servicing Agreement (as defined in the Application), under which PNM will serve as the initial servicer of the Energy Transition Property and the Energy

Transition Bonds. The Servicing Agreement will, among other things, include the following provisions:

(a) PNM will be responsible for metering, calculating, billing, collecting and remitting the collected Energy Transition Charges from electric utility customers arising from the Energy Transition Property owned by the SPE.[365] As servicer, PNM will be obligated to make daily remittances of the Energy Transition Charges (or estimates of such receipts) to the trustee on servicer business days.

(b) PNM will be responsible for making all true-up adjustment mechanism filings with the Commission to make periodic adjustments to the Energy Transition Charges, and for preparing and filing any other reports with the Commission, the Indenture Trustee, the rating agencies or other financing parties; and

(c) PNM will not be permitted to resign voluntarily from its duties as servicer unless (i) PNM determines that its continued performance of the duties of servicer would no longer be permitted under applicable law or (ii) PNM receives the consent of the Commission and confirmation that such action will not result in a suspension, reduction or withdrawal of the then current ratings on any of the Energy Transition Bonds.

35. As compensation for its duties under the Servicing Agreement, PNM has proposed that it receive from the SPE a servicing fee equal to 0.05% per annum of the initial aggregate

[365] The Energy Transition Charges approved in this Financing Order (the "Four Corners Charges") are separate and independent of the energy transition charges approved in Docket No. 19-00018-UT with respect to the SJGS Bonds (the "SJGS Charges"). Under the servicing agreement relating to the SJGS Bonds, PNM, in its capacity as servicer, will remit the collections from the SJGS Charges to the indenture trustee for the SJGS Bonds. Under the servicing agreement relating to the Four Corners Bonds, PNM, in its capacity as servicer, will remit the collections from the Four Corners Charges to the indenture trustee for the Four Corners Bonds. PNM, the SPE for each of the SJGS Bonds and the Four Corners Bonds and the related indenture trustees will enter into an intercreditor agreement, a form of which is attached as Exhibit D to the proposed form of indenture, which will address PNM's responsibilities for the collection and remittance of these separate charges.

principal amount of the Energy Transition Bonds. As described in the Supporting Testimony, this fee is based on current market rates in similar utility securitization transactions. As described in the Supporting Testimony, payment of a servicing fee that is consistent with market rates is necessary to maintain the essential bankruptcy-remote nature of the SPE.

36. If PNM defaults on its duties as servicer or is required for any reason to discontinue those functions, then an independent successor servicer acceptable to the Indenture Trustee and, if required, the rating agencies, may be named to replace PNM. In this event, the servicing fee paid to a successor servicer would likely need to be higher than the servicing fee paid to PNM. PNM has proposed that, in the event a successor servicer is appointed, the servicing fee be allowed to increase; provided that the Commission's consent would be required for any servicing fee in excess of 0.60% per annum on the initial aggregate principal balance of the Energy Transition Bonds, as described in this Financing Order.

PNM as Administrator of the SPE

37. Under the Administration Agreement, PNM will establish the SPE and perform the administrative duties necessary to maintain the SPE.

38. PNM has proposed that is receive an annual fee of $150,000 plus out-of-pocket expenses for performing the services required by the Administration Agreement.

Imposition of Energy Transition Charges/Non-Bypassability

39. Through the Application, including the Supporting Testimony, PNM has requested that the Commission authorize PNM to impose, charge, collect and receive Energy Transition Charges from electric utility customers in an amount sufficient to provide for the timely payment of principal and interest on the Energy Transition Bonds and all Other Ongoing Financing Costs. The Energy Transition Charges will be non-bypassable charges (as defined by Section 2(P) of the

ETA) that must be paid by all customers: (1) receiving electric delivery from PNM or its successors under Commission-approved rate schedules or special contracts; and (2) all customers who acquire electricity from an alternative or subsequent electricity supplier in the utility service area currently served by PNM, to the extent such acquisition is permitted by New Mexico law. The Energy Transition Charges will be imposed until the Energy Transition Costs and the Financing Costs are paid in full.

40. PNM has proposed that the Energy Transition Charges will be collected by the servicer through an Energy Transition Charge that is separate and apart from PNM's other rates, in the manner described in the Supporting Testimony and in the proposed ETA Rider included as PNM Exhibit 2. The Energy Transition Charges will appear as a separate line item on each customer's electric bill. In addition, all electric bills will state that the Energy Transition Charges are owned by the SPE.

41. In the event a customer of PNM does not pay the full amount of any bill that includes Energy Transition Charges, such partial payments shall be allocated in accordance with applicable Commission requirements and any other requirements of applicable law. PNM has proposed that, following the issuance of any Energy Transition Bonds, for amounts billed on the same date, charges will be credited based on a priority waterfall, with late payment charges being credited first, energy transition charges being credited second, and other charges being credited thereafter in the priority waterfall. PNM has proposed that if more than one series of energy transition bonds are outstanding, partial payments allocable to energy transition charges shall be allocated pro rata based upon the amount of energy transition charges owing with respect to each series.[366]

[366] Accordingly, if both SJGS Bonds and Four Corners Bonds were outstanding, the aggregate amount of a customer's payment allocated to energy transition charges would be applied pro rata based on the amount of (*Cont'd on next page*)

42. Through the Supporting Testimony filed with the Application, in accordance with Section 4(B)(11) of the ETA, PNM proposed a ratemaking method to account for the reduction in PNM's cost of service associated with the costs being recovered by the Energy Transition Charge at the time that charge becomes effective. As described in the Supporting Testimony, upon PNM's abandonment of Four Corners, the SPE will issue the Energy Transition Bonds. In the Supporting Testimony, PNM proposed that if it begins to collect the Energy Transition Charges from customers and has not adjusted its base rates charged to customers in a general rate case to reflect PNM's abandonment of Four Corners, then PNM would provide a credit to customer bills to reflect the abandonment. Consistent with the Commission's decision in Docket No. 19-00018-UT, PNM proposed to calculate the credit by determining the annual revenue requirements for all costs associated with PNM's ownership interest in Four Corners included in current rates being charged to customers, including capital, O&M, and all other expenses. This credit will be an interim rate adjustment mechanism and will be eliminated when new rates reflecting the change in resources go into effect. PNM will credit these amounts to customer bills for as long as PNM's ownership interest in Four Corners is abandoned and transferred to another owner, PNM is collecting the Energy Transition Charges, and has not adjusted its base rates to reflect the removal of these costs in customer's rates.

Estimated Energy Transition Charges

43. The Application, including the Supporting Testimony, includes PNM's estimate of the Energy Transition Charges based on the estimated date of issuance, estimated maturity and estimated principal amount of the Energy Transition Bonds to be issued as described above.

(*Cont'd from previous page*)
energy transition charges owing with respect to SJGS Bonds as compared to the amount of energy transition charges owing with respect to the Four Corners Bonds.

Through the Supporting Testimony, PNM estimates that the Energy Transition Charges for the initial full year (2025) following issuance of the Energy Transition Bonds will be approximately $16.7 million. Through PNM Exhibit MJS- 6, PNM has provided the estimated amount of Energy Transition Charges for the initial full year following issuance of the Energy Transition Bonds for each rate schedule. The estimated amounts for each rate schedule are based on the production cost allocation methodology used in PNM's 2015 Rate Case, 15-00261-UT, the Company's most recent fully litigated general rate proceeding. The actual initial Energy Transition Charges will be determined at the time of the pricing of the Energy Transition Bonds.

Allocation and Calculation of Energy Transition Charges

44. A detailed discussion of PNM's proposed allocation and calculation of the Energy Transition Charges is included in the Supporting Testimony. PNM's proposed calculation of the Energy Transition Charges involves a multi-step process that begins with an estimate of the Energy Transition Charge collections that would be necessary to pay on a timely basis all scheduled payments of principal and interest (or deposits to sinking funds in respect of principal and interest) and all Other Ongoing Financing Costs over a specified period of time (the period covered by such estimate, the "Remittance Period" and the estimated revenue required for such period, the "Periodic Revenue Requirement"). In establishing the initial Energy Transition Charges, the Company will estimate the Periodic Revenue Requirement for a Remittance Period beginning on the date of issuance of the Energy Transition Bonds and ending on the first scheduled principal and interest payment date on the Energy Transition Bonds. The Periodic Revenue Requirement for any subsequent Remittance Period will be further adjusted through the true-up adjustment mechanism described below.

45. PNM will next determine the aggregate amount of Energy Transition Charges that must be assessed during a Remittance Period to collect the Periodic Revenue Requirement during the Remittance Period (the "Periodic Billing Requirement"). The Periodic Billing Requirement accounts for collection lag and uncollectible amounts. For each Remittance Period, PNM will estimate the timing of collections of Energy Transition Charges based on a weighted average balance of days outstanding on PNM's customer bills. PNM also will estimate an amount that will be uncollectible.

46. After determining the Periodic Billing Requirement, the next step in the Company's proposed process of calculating the Energy Transition Charges involves allocating the Periodic Billing Requirement to the Company's various customer classes and further sub-allocating the Periodic Billing Requirement based on PNM's rate schedules within the customer classes. In accordance with the requirements of Sections 5(F)(3) and 6(A) of the ETA, the Company's proposed method of allocation will be consistent with the production cost allocation methodology used in the Company's most recent general rate case. PNM's proposed allocation methodology is described in the Supporting Testimony and PNM Exhibit MJS-3 and PNM Exhibit MJS-4.

47. The final step in the Company's proposed process of calculating the Energy Transition Charges involves determining the Energy Transition Charges for customers within each customer class based on the portion of the Periodic Billing Requirement allocated to each class. In accordance with the requirements of Sections 5(F)(3) and 6(A) of the ETA, the Company's proposed process for calculating the initial Energy Transition Charges would assess the charges consistent with energy and demand cost allocations within each customer class. Consistent with the Company's most recent general rate case, the Periodic Billing Requirements will be further allocated to various rate schedules within customer classes. Given the differing characteristics of

each customer class and rate schedule, differing methodologies will be used as described in the Supporting Testimony. A detailed description of the proposed methodology for each of the Company's customer classes and rate schedules is included in the Supporting Testimony and PNM Exhibit MJS-5.

True-Up Adjustment Mechanism

48. As described in the Supporting Testimony and PNM Exhibit MJS-6, PNM has proposed a formula-based "adjustment mechanism" within the meaning of Section 2(A) of the ETA (the "True-Up Adjustment Mechanism").

49. The True-Up Adjustment Mechanism is a formula-based mechanism to periodically adjust the Energy Transition Charges to correct for any over-collection or under-collection of the Energy Transition Charges and to provide for timely payment of scheduled principal of and interest (or deposits to sinking funds in respect of principal and interest) on the Energy Transition Bonds and the payment of Other Ongoing Financing Costs. The True-Up Adjustment Mechanism will remain in effect until the Energy Transition Bonds and all financing costs have been fully paid and recovered, any under-collection is recovered from customers and any over-collection is returned to customers. The Company proposes that the True-Up Adjustment Mechanism should include both standard adjustments ("Standard True-Up Adjustments") and non-standard adjustments ("Non-Standard True-Up Adjustments" and, together with Standard-True Up Adjustments, "True-Up Adjustments").

50. A Standard True-Up Adjustment is an automatic adjustment to the Energy Transition Charges that is required to occur at least semi-annually (and at least quarterly during the two-year period preceding the final maturity date of the Energy Transition Bonds). A Standard True-Up Adjustment is designed to ensure that the level of Energy Transition Charges to be charged over the

next set of collection periods is corrected for over- and under-collection in prior periods, for changes in projected consumption and collection patterns, and for changes in the Periodic Revenue Requirement. In order to effect a Standard True-Up Adjustment, the Company, as servicer under the Servicing Agreement, will file with the Commission a letter requesting the Standard True-Up Adjustment (the "Standard True-Up Adjustment Letter"), which will include the calculations required by Section 6(B) of the ETA. A form of Standard True-Up Adjustment Letter is attached as an exhibit to this Financing Order.

51. In connection with each True-Up Adjustment, PNM will calculate the Periodic Revenue Requirement described above for the current Remittance Period and the next Remittance Period (two six-month periods). Except with respect to the initial True-Up Adjustment, PNM will further adjust the Periodic Revenue Requirement to take into account any over-collection or under-collection of the Energy Transition Charges during the preceding Remittance Period. These proposed calculations are shown in PNM Exhibit MJS-2. PNM will then calculate the Periodic Billing Requirement, allocate the Periodic Billing Requirement to customer classes and rate schedules, and calculate the adjusted Energy Transition Charges as described in paragraphs 45, 46 and 47 above. In connection with the each True-Up Adjustment, the calculation of the adjusted Energy Transition Charges will be based upon updated projections of customer count, electricity usage and demand for the applicable Remittance Periods.

52. In addition to the required semi-annual (and quarterly during the two-year period preceding the final scheduled maturity date of the Energy Transition Bonds) Standard True-Up Adjustments, the Company also proposed to be granted authority to make optional interim Standard True-Up Adjustments at any time, without limits as to frequency, in order to ensure timely payment of scheduled principal of and interest (or deposits to sinking funds in respect of

principal and interest) on the Energy Transition Bonds and the payment of Other Ongoing Financing Costs.

53. A Non-Standard True-Up Adjustment is an adjustment in connection with any general rate case, as necessary to reflect any changes to the allocation of the Energy Transition Charges as a result of changes in the production cost allocation methodology used in such general rate case. In order to effect a Non-Standard True-Up Adjustment, the Company, as servicer under the Servicing Agreement, will file with the Commission a request letter (together with the Standard True-Up Adjustment Letter, a "True-Up Adjustment Letter"), which will include the calculations required by Section 6(B) of the ETA and as described above.

Use of Proceeds

54. As described in the Application, including the Supporting Testimony, the SPE will use the proceeds it receives from the sale of the Energy Transition Bonds to (i) pay the Upfront Financing Costs incurred in connection with the issuance of the Bonds (including reimbursement to PNM of any such costs paid by PNM) and (ii) purchase the Energy Transition Property from PNM pursuant to the terms of the Purchase Agreement.

55. As described in the Application, including the Supporting Testimony, PNM will use the proceeds it receives from the sale of the Energy Transition Property to the SPE (i) to make required Section 16 Payments and (ii) for purposes of providing utility service to customers, including paying certain Energy Transition Costs financed with the Bonds. In particular, as described further in the Supporting Testimony, PNM will apply the proceeds it receives from the sale of the Energy Transition Property to make required Section 16 Payments, to pay Decommissioning Costs, to make capital expenditures for the purpose of providing utility service to customers, and to repay any indebtedness incurred for the purpose of making any such

payments. Proceeds of the Bonds shall not be used for purposes of paying dividends, making affiliate loans or paying incentive compensation.

Lowest Cost Objective

56. In the Application, including the Supporting Testimony, PNM has committed to use its commercially reasonable efforts to obtain the lowest cost objective.

B. Conclusions of Law

1. PNM is a "public utility" as defined in Section 2(R) of the ETA.

2. Four Corners is a qualifying generating facility as defined in Section 2(S) of the ETA. As a public utility that (i) owns plants, property and facilities for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses, and (ii) owns a qualifying generating facility, PNM is a qualifying utility as defined in Section 2(T) of the ETA.

3. PNM was authorized to apply to the Commission for this Financing Order through the Application pursuant to Section 4(A) of the ETA to recover all of its energy transition costs as defined in Section 2(H) of the ETA through the issuance of the Energy Transition Bonds.

4. The Commission has jurisdiction over this matter pursuant to the ETA.

5. On the date hereof, the Commission approved PNM's abandonment of Four Corners on December 31, 2024.

6. Section 5(E) of the ETA provides that the Commission shall issue a financing order approving PNM's request to issue the Energy Transition Bonds if the Commission finds that the Application complies with the requirements of Section 4 of the ETA. Pursuant to Section 5(A) of the ETA, in its January 19, 2021 Initial Order Assigning Hearing Examiner the Commission extended the time for issuance of an order granting or denying the application for the financing

order under NMSA 1978, Section 62-18-5 by an additional three months, for a total of nine months. PNM has agreed, as set out in the February Order, that the extended nine-month deadline under the ETA shall commence upon the filing of its March 15, 2021 Application.

7. As discussed above in this Financing Order, in compliance with Section 4(B)(1) of the ETA, the Application includes a description of Four Corners and PNM's ownership interest therein, the facility for which abandonment authority was requested and granted by the Commission after December 31, 2018.

8. As discussed above in this Financing Order, in compliance with Section 4(B)(2) of the ETA, the Application includes an estimate of PNM's energy transition costs as defined in Section 2(H) of the ETA. The Upfront Financing Costs and Ongoing Financing Costs are energy transition costs as defined in Section 2(H)(1) of the ETA. The Undepreciated Investment and Decommissioning Costs are energy transition costs as defined in Section 2(H)(2) of the ETA. The Section 16 Payments are energy transition costs as defined in Section 2(H)(4) of the ETA.

9. As discussed above in this Financing Order, in compliance with Section 4(B)(3) of the ETA, the Application includes an estimate of the amount of Energy Transition Charges necessary to recover the estimated energy transition costs provided in the Application and the proposed calculation of the estimated Energy Transition Charges, based on the estimated date of issuance and estimated principal amount of each series of the Energy Transition Bonds proposed to be issued.

10. As discussed above in this Financing Order, in compliance with Section 4(B)(4) of the ETA, the Application includes a description of the True-Up Adjustment Mechanism, which is a proposed adjustment mechanism that complies with Section 6 of the ETA.

11. As discussed above in this Financing Order, in compliance with Section 4(B)(5) of the ETA, the Application includes the Securities Firm Memorandum indicating that the proposed issuance of the Energy Transition Bonds by the SPE satisfies the current published "AAA" rating or equivalent criteria of at least one nationally recognized statistical rating organization for issuances similar to the proposed Energy Transition Bonds.

12. As discussed above in this Financing Order, in compliance with Section 4(B)(6) of the ETA, the Application includes a commitment by PNM to file with the Commission following the issuance of the Energy Transition Bonds (a) a description of the final structure and pricing of the bonds, (b) updated financing costs and payment amount required pursuant to Section 16 of the ETA, and (c) an updated calculation of the Energy Transition Charges.

13. As discussed above in this Financing Order, in compliance with Section 4(B)(7) of the ETA, the Application includes an estimate of timing of the issuance of the Energy Transition Bonds and term of the Energy Transition Bonds, including a provision that the scheduled final maturity for the Energy Transition Bonds shall be no longer than twenty-five years. The legal final maturity of the Energy Transition Bonds may be longer than twenty-five years.

14. As discussed above in this Financing Order, in compliance with Section 4(B)(8) of the ETA, the Application includes (i) identification of plans to sell, assign, transfer or convey, other than as security, interest in the Energy Transition Property, including identification of the SPE as the assignee as defined in Section 2(C) of the ETA, and (ii) demonstration that the SPE will be a financing entity wholly owned, directly or indirectly, by PNM that will be initially capitalized by PNM in such a way that equity interests in the SPE are at least one-half percent of the total capital of the SPE.

15. As discussed above in this Financing Order, in compliance with Section 4(B)(9) of the ETA, the Application includes identification of ancillary agreements as defined in Section 2(B) of the ETA that may be necessary or appropriate in connection with the issuance of the Energy Transition Bonds, including various forms of credit enhancement or other mechanisms designed to improve the credit quality and marketability of the Energy Transition Bonds.

16. As discussed above in this Financing Order, in compliance with Section 4(B)(10) of the ETA, the Application includes a description of PNM's proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the Energy Transition Bonds and the actual final energy transition costs incurred by PNM and the SPE.

17. As discussed above in this Financing Order, in compliance with Section 4(B)(11) of the ETA, the Application includes PNM's proposed ratemaking method to account for the reduction in PNM's cost of service associated with the costs being recovered by the Energy Transition Charge at the time that charge becomes effective.

18. As discussed above in this Financing Order, in compliance with Section 4(B)(12) of the ETA, the Application includes a statement from PNM committing that PNM will use its commercially reasonable efforts to obtain the lowest cost objective as defined in Section 2(N) of the ETA.

19. As discussed above in this Financing Order, in compliance with Section 4(C) and 4(D) of the ETA, the Application and Supporting Testimony identified adequate potential new resources sufficient to provide reasonable and proper service to retail customers.

20. The Application complies with all of the requirements of Section 4 of the ETA.

21. As required by Section 5(F)(1) of the ETA, this Financing Order includes approval for PNM to use the Energy Transition Bonds to finance the estimated amounts of Abandonment

Costs identified in the Application and this Financing Order. As required by Section 5(F)(1) of the ETA, this Financing Order includes approval for PNM to use the Energy Transition Bonds to finance the estimated amounts of Upfront Financing Costs and Section 16 Payments identified in the Application and this Financing Order, as such amounts may be updated pursuant to Section 4(B)(6) of the ETA. As required by Section 5(F)(1) of the ETA, this Financing Order includes approval of the proposed use of proceeds of the Energy Transition Bonds by the SPE and PNM. The approved use of proceeds of the Energy Transition Bonds by the SPE and PNM complies with the requirements of Section 10 of the ETA.

22. As required by Section 5(F)(2) of the ETA, this Financing Order includes approval for PNM to recover the Ongoing Financing Costs, as may be adjusted pursuant to Section 4(B)(6) of the ETA, requested in the Application, through energy transition charges as defined in Section 2(G) of the ETA.

23. This Financing Order adequately details the estimated amount of energy transition costs to be financed through the issuance of the Energy Transition Bonds and recovered through the Energy Transition Charges. In accordance with Section 5(F)(1), this Financing Order authorizes the SPE to issue the Energy Transition Bonds in a maximum aggregate principal amount equal to the sum of: (A) the $276 million of estimated Abandonment Costs set forth in the Application and described in this Financing Order, (B) Section 16 Payments described in the Application and this Financing Order (updated as of the time of issuance and provided to the Commission following issuance in accordance with Section 4(B)(6) of the ETA), and (C) Upfront Financing Costs described in the Application and this Financing Order (updated as of the time of issuance and provided to the Commission following issuance in accordance with Section 4(B)(6) of the ETA). The SPE shall not issue Energy Transition Bonds in a principal amount in excess of

$300 million unless PNM shall have obtained an amendment to the Financing Order as provided in Section 7(B)(2) of the ETA. If PNM's energy transition cost estimate at the time of issuance is lower than the estimate included in the financing application, the SPE shall reduce the size of the bond issuance accordingly.

24. As required by Section 5(H) of the ETA, this Financing Order authorizes the SPE to issue the Energy Transition Bonds in one or more series with a scheduled final maturity of no more than 25 years for each series. PNM shall not subsequently be required to secure a separate financing order prior to each issuance. In accordance with Section 5(H) of the ETA, this Financing Order provides that the rated final maturity may exceed 25 years.

25. The Energy Transition Bonds to be issued by the SPE pursuant to this Financing Order will constitute energy transition bonds as defined Section 2(F) of the ETA, and the Energy Transition Bonds issued pursuant to this Financing Order and the holders thereof shall be entitled to all of the protections of the ETA.

26. As required by Section 5(F)(3) of the ETA, this Financing Order (i) approves Energy Transition Charges necessary to recover the energy transition costs authorized in this Financing Order to be shown as a separate line item on customer bills, and (ii) provides that the Energy Transition Charges shall be subject to the True-Up Adjustment Mechanism. The Energy Transition Charges authorized in this Financing Order are energy transition charges as defined in Section 2(G) of the ETA.

27. In accordance with Section 5(F)(3), the Energy Transition Charges authorized by this Financing Order are non-bypassable as defined in Section 2(P) of the ETA, meaning that the Energy Transition Charges may not be avoided by an electric service customer in PNM's utility service territory and shall be paid by each customer that receives electric delivery service from the

qualifying utility imposing the charge for as long as the Energy Transition Bonds remain outstanding and the related financing costs have not been recovered in full.

28. The methodology approved in this Financing Order for allocating Energy Transition Charges among customer classes and for assessing Energy Transition Charges within customer classes complies with the requirements of Section 5(F)(3) and Section 6(A) of the ETA. Pursuant to Section 6(A) of the ETA, the allocation of Energy Transition Charges among customer classes and the manner of assessing Energy Transition Charges within customer classes is subject to the True-Up Adjustment Mechanism.

29. As required by Section 5(F)(4) of the ETA, this Financing Order approves the True-Up Adjustment Mechanism. The True-Up Adjustment Mechanism approved by this Financing Order, including the Standard True-Up Adjustment Mechanism and Non-Standard True-Up Adjustment Mechanism, complies with the requirements of Section 6 of the ETA.

30. As required by Section 5(F)(5) of the ETA, this Financing Order includes a description of the Energy Transition Property that is created by this Financing Order. The Energy Transition Property created by this Financing Order includes the rights and interests of PNM or the SPE upon assignment under the Financing Order, including the right to impose, charge, collect and receive the Energy Transition Charges in an amount necessary to provide for full payment and recovery of all energy transition costs identified in the Financing Order, including all revenues or other proceeds arising from those rights and interests. The Energy Transition Property also includes the True-Up Adjustment Mechanism approved in this Financing Order. The Energy Transition Property created by this Financing Order is energy transition property as defined in Section 2(I) of the ETA.

31. As required by Section 5(F)(6) of the ETA, this Financing Order includes approval for PNM and the SPE to enter into appropriate ancillary agreements as defined in Section 2(B) of the ETA.

32. As required by Section 5(F)(7) of the ETA, this Financing Order approves PNM's plans for assigning, transferring and conveying, other than as security, all of its right, title and interest in and to the Energy Transition Property to the SPE. The SPE will be an assignee as defined in Section 2(C) of the ETA. The transfer of the Energy Transition Property to the SPE is in accordance with Section 12(B) of the ETA.

33. The rights, interests and property conveyed to the SPE under the Purchase Agreement, including without limitation the irrevocable right to impose, bill, collect and receive the Energy Transition Charges and the revenues and collections from the Energy Transition Charges are energy transition property within the meaning of Section 2(I) of the ETA.

34. As required by Section 5(F)(8) of the ETA, this Financing Order approves (i) PNM's proposed ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the Energy Transition Bonds and the actual final energy transition costs incurred by PNM or the SPE, and (ii) PNM's proposed ratemaking method to account for the reduction in PNM's cost of service associated with the amount of costs being recovered through the Energy Transition Charges at the time the Energy Transition Charges become effective.

35. As required by Section 5(G) of the ETA, this Financing Order provides that the creation of the Energy Transition Property shall be simultaneous with the sale of the Energy Transition Property to the SPE and the pledge of the Energy Transition Property to secure the Energy Transition Bonds. Upon its transfer to the SPE, the Energy Transition Property will constitute an existing, present property right, notwithstanding that the imposition and collection of

Energy Transition Charges depend on PNM continuing to provide electric energy or continuing to perform its service functions relating to the collection of the Energy Transition Charges or on the level of future energy consumption, as provided in Section 12(A) of the ETA.

36. Pursuant to Section 12(B) of the ETA, the Energy Transition Property will continue to exist until the Energy Transition Bonds and all related financing costs have been paid in full. Pursuant to Section 9(C) of the ETA, if the Energy Transition Bonds are outstanding and the Ongoing Financing Costs have not been paid in full, the Energy Transition Charges authorized in this Financing Order shall be collected by PNM or its successors or assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on customer bills and not part of the qualifying utility's base rates. The charge shall be paid by all customers receiving electric delivery from PNM or its successors under Commission-approved rate schedules or special contracts, and all customers who acquire electricity from an alternative or subsequent electricity supplier in the utility service area currently served by PNM, to the extent such acquisition is permitted by New Mexico law.

37. Upon the transfer by PNM of the Energy Transition Property to the SPE, the SPE will have all of the rights, title and interest of PNM with respect to such Energy Transition Property, including the right to impose, collect and receive the Energy Transition Charges authorized by this Financing Order.

38. As provided in Section 12(E) of the ETA, any transfer, sale, grant of security interest or pledge of the Energy Transition Property to the SPE as authorized by this Financing Order does not require prior consent and approval of the Commission.

39. Pursuant to Section 14(A), PNM's sale, assignment, and transfer of the Energy Transition Property to the SPE under the Purchase Agreement and related bill of sale shall be an

absolute transfer and true sale of, and not a pledge or secured transaction relating to, PNM's right, title and interest in, to and under the Energy Transition Property. As provided in Section 14(C) of the ETA, the characterization of the sale, assignment or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the SPE, shall not be affected or impaired by: (1) commingling of energy transition revenues with other funds; (2) the retention by PNM of (a) a partial or residual interest, including an equity interest, in the Energy Transition Property, whether direct or indirect, or whether subordinate or otherwise, or (b) the right to recover costs associated with taxes or license fees imposed on the collection of energy transition revenues; (3) any recourse that the SPE may have against PNM; (4) any indemnification rights, obligations or repurchase rights made or provided by PNM; (5) the obligation of PNM to collect energy transition revenues on behalf of the SPE; (6) treatment of the sale, assignment or transfer of Energy Transition Property for tax, financial reporting or other purposes; (7) any subsequent order of the Commission amending the Financing Order pursuant to Section 7(B) of the ETA; (8) any use of the adjustment mechanism approved in this Financing Order; or (9) anything else that might affect or impair the characterization of the Energy Transition Property.

40. Except as otherwise provided in Section 13 of the ETA, the creation, perfection and enforcement of a security interest in the Energy Transition Property to secure the repayment of the principal of and interest on the Energy Transition Bonds are governed by Section 13 of the ETA.

41. Pursuant to Section 13(C) of the ETA, a security interest in the Energy Transition Property will be created, valid and binding at the latest of when (a) this Financing Order is issued, (b) a security agreement is executed and delivered, or (c) value is received for the Energy Transition Bonds. Pursuant to Section 13(D) of the ETA, the security interest will attach without any physical delivery of collateral or other act and the lien of the security interest shall be valid,

binding and perfected against all parties having claims of any kind against the SPE, regardless of whether such parties have notice of the lien, on the filing of a financing statement with Secretary of State of the New Mexico. Pursuant to Section 13(E) of the ETA, this security interest in the Energy Transition Property will be a continuously perfected security interest and will have priority over any other lien that may subsequently attach to the Energy Transition Property unless the holder of the security interest has agreed in writing otherwise.

42. Pursuant to Section 13(F) of the ETA, the priority of a security interest in the Energy Transition Property is not affected by the commingling of energy transition revenues with other funds. Any pledgee or secured party shall have a perfected security interest in the amount of all energy transition revenues that are deposited in any account of PNM and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for the SPE or a financing party.

43. As provided in Section 13(G) of the ETA, no order of the Commission amending this Financing Order and no application of the True-Up Adjustment Mechanism shall affect the validity, perfection or priority of a security interest in or transfer of the Energy Transition Property.

44. The Indenture Trustee will be a financing party as defined in Section 2(L) of the ETA. In addition, any other trustee, collateral agent, or other person acting for the benefit of a bondholder, and a party to any ancillary agreement as defined in Section 2(B) of the ETA or the Energy Transition Bonds will be a financing party. As provided in Section 12(G) of the ETA, the interests of the SPE, holders of the Energy Transition Bonds and the Indenture Trustee in the Energy Transition Property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge or defense by PNM or any affiliate thereof.

45. If PNM defaults on any required payment to the Indenture Trustee of Energy Transition Charges collected, a court with jurisdiction in the matter, on application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the energy transition revenues for the benefit of holders of the Energy Transition Bonds, the SPE, the Indenture Trustee and any other financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization or other insolvency or receivership proceedings with respect to the qualifying utility or any non-utility affiliate.

46. Pursuant to Section 19(A) of the ETA, the State of New Mexico has pledged to and agreed with holders of the Energy Transition Bonds, the SPE and the Indenture Trustee that the State of New Mexico shall not take or permit any action that impairs the value of the Energy Transition Property, except as allowed pursuant to Section 6 of the ETA, or reduces, alters or impairs Energy Transition Charges that are imposed, collected and remitted for the benefit of the holders of the Energy Transition Bonds, the SPE and the Indenture Trustee, until the entire principal of, interest on and redemption premium on the Energy Transition Bonds, all financing costs and all amounts to be paid to the SPE or a financing party under an ancillary agreement are paid in full and performed in full. Pursuant to Section 19(B) of the ETA, SPE is permitted to include the pledge specified in Section 19(A) of the ETA in the Energy Transition Bonds and any ancillary agreements and documentation related to the issuance and marketing of the Energy Transition Bonds.

47. As provided in Section 17 of the ETA, the Energy Transition Bonds shall not constitute a debt or a pledge of the faith and credit or taxing power of the State of New Mexico or of any county, municipality or any other political subdivision of the State of New Mexico. Holders

of the Energy Transition Bonds shall have no right to have taxes levied by the legislature or the taxing authority of any county, municipality or other political subdivision of the State of New Mexico for the payment of the principal of or interest on the Energy Transition Bonds. The issuance of Energy Transition Bonds does not obligate the State of New Mexico or a political subdivision of the State of New Mexico to levy any tax or make any appropriation for payment of the principal of or interest on the Energy Transition Bonds.

48. In accordance with Section 6(F) of the ETA, a True-Up Adjustment will be deemed approved by the Commission without a hearing thirty days after the Company's filing of the True-Up Adjustment Request Letter unless: (1) no later than twenty days from the date the Company files the True-Up Adjustment Letter, the Commission is notified of a potential mathematical or transcription error in the adjustment; and (2) the Commission determines that the calculation of the adjustment is unlikely to provide for timely payment, or is likely to result in a material overpayment, of scheduled principal of and interest on the Energy Transition Bonds and recovery of Other Ongoing Financing Costs in accordance with the Financing Order, suspends operation of the True-Up Adjustment Mechanism, pending a hearing limited to the issue of the error in the adjustment. In accordance with Section 6(F) of the ETA, any such suspension shall be for a period not to exceed sixty days from the date the Company filed the True-Up Adjustment Letter.

49. As provided in Section 6(G) of the ETA, any Commission hearing with respect to a Standard True-Up Adjustment or Non-Standard True-Up Adjustment will be limited to determining whether there is a mathematical or transcription error in the calculation of the Standard True-Up Adjustment or Non-Standard True-Up Adjustment, as applicable. If, after a hearing, the Commission determines that the calculation of a Standard True-Up Adjustment or Non-Standard True-Up Adjustment contains a mathematical or transcription error, the Commission shall issue an

order that rejects and corrects such adjustment. The Company will adjust the Energy Transition Charges in accordance with the Commission's calculation within five days from issuance of any such order. If the Commission orders such a hearing and does not issue an order rejecting a Standard True-Up Adjustment or Non-Standard True-Up Adjustment with a determination of the corrected calculation within 60 days from the date the Company filed the applicable Standard True-Up Adjustment letter or Non-Standard True-Up Adjustment letter, the adjustment to the Energy Transition Charges shall be deemed approved.

50. As provided in Section 11(A) of the ETA, the Commission shall not treat (1) the Energy Transition Bonds as indebtedness of PNM, (2) the Energy Transition Charges paid under this Financing Order revenues of PNM, or (3) the energy transition costs to be financed by the Energy Transition Bonds as costs of PNM.

51. As provided in Section 11(C) of the ETA, if PNM decides not to issue Energy Transition Bonds, such decision shall not be a basis for the Commission to refuse to allow PNM to recover energy transition costs in an otherwise permissible fashion, or as a basis to refuse or condition authorization to issue securities pursuant to Sections 62-6-6 and 62-6-7 NMSA 1978.

52. This Financing Order constitutes a financing order as defined in Section 2(L) of the ETA.

53. This Financing Order meets the requirements for a financing order under Section 5 of the ETA.

54. This Financing Order will be operative and in full force and effect from the date of issuance by the Commission.

55. Pursuant to Section 12(H) of the ETA, any successor to PNM shall be bound by the requirements of the ETA and shall perform and satisfy all obligations of, and have the same rights

under this Financing Order as, PNM under this Financing Order in the same manner and to the same extent as PNM, including the obligation to collect and pay energy transition revenues to the Indenture Trustee for the account of the SPE or to any other persons entitled to receive the revenues.

56. Pursuant to Section 7(A) of the ETA, this Financing Order is irrevocable, and the Commission shall not reduce, impair, postpone or terminate the Energy Transition Charges approved in this Financing Order, the Energy Transition Property or the collection or recovery of energy transition revenues, including recovery of the Ongoing Financing Costs through the Energy Transition Charges.

57. Pursuant to Section 9(B) of the ETA, this Financing Order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility (PNM or its successors) or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

58. In accordance with Section 8(A) of the ETA, this Financing Order has been issued as a separate order from any other order issued by the Commission on the approvals requested in the Application with respect to the Energy Transition Bonds and is a final order of the Commission. Pursuant to Section 8(A) of the ETA, a party aggrieved by the issuance of this Financing Order may apply to the Commission for a rehearing in accordance with Section 62-10-16 NMSA 1978; provided that such application shall be due no later than 10 calendar days after the issuance this Financing Order. An application for rehearing shall be deemed denied if not acted upon by the Commission within 10 calendar days after the filing of the application for rehearing. Pursuant to Section 8(B), an aggrieved party may file notice of appeal with the Supreme Court of New Mexico in accordance with Section 62-11-1 NMSA 1978; provided that such notice shall be due no later

than 10 calendar days after denial of an application for rehearing or, if rehearing is not applied for, no later than 10 calendar days after issuance of this Financing Order. Pursuant to Section 8(B) of the ETA, the Supreme Court of New Mexico shall proceed to hear and determine the appeal as expeditiously as practicable.

59. Pursuant to Section 22 of the ETA, effective on the date that any of the Energy Transition Bonds are first issued under this Financing Order, if any provision of the ETA is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect the validity of any action allowed pursuant to the ETA that is taken by the Commission, PNM or its successors, the SPE or any other person, a collection agent, a financing party, a bondholder or a party to an ancillary agreement and, to prevent the impairment of the Energy Transition Bonds issued or authorized in this Financing Order, any such action shall remain in full force and effect with respect to all Energy Transition Bonds issued or authorized pursuant to this Financing Order before the date that such provision is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason.

V. ORDERING PARAGRAPHS

Based upon the record, the Findings of Fact and Conclusions of Law set forth herein and, or the reasons stated above, the Hearing Examiner recommends that the Commission **ORDER** as follows:

1. The findings, conclusions and ordering paragraphs herein are adopted, approved, and ordered by the Commission.

2. PNM's application for a financing order authorizing the issuance of one or more series of Energy Transition Bonds by the SPE is granted, subject to the terms set forth in this

Financing Order. PNM may cause the Energy Transition Bonds to be issued through the SPE that issues the SJGS Bonds or through a newly formed SPE.

3. PNM may use the Energy Transition Bonds to finance the estimated amounts of Abandonment Costs identified in the Application and this Financing Order. PNM may use the Energy Transition Bonds to finance the estimated amounts of Upfront Financing Costs and Section 16 Payments identified in the Application and this Financing Order, as such amounts may be updated pursuant to Section 4(B)(6)(b) of the ETA.

4. The SPE may issue one or more series of Energy Transition Bonds, with the maximum aggregate principal amount of such Energy Transition Bonds to be equal to the sum of (A) the $276 million of estimated Abandonment Costs set forth in the Application and this Financing Order, (B) Section 16 Payments (updated as of the time of issuance and provided to the Commission following issuance in accordance with Section 4(B)(6) of the ETA), and (C) Upfront Financing Costs (updated as of the time of issuance and provided to the Commission following issuance in accordance with Section 4(B)(6) of the ETA). The SPE shall not issue Energy Transition Bonds in a principal amount in excess of $300 million unless PNM shall have obtained an amendment to the Financing Order as provided in Section 7(B)(2) of the ETA. If PNM's energy transition cost estimate at the time of issuance is lower than the estimate included in the financing application, the SPE shall reduce the size of the bond issuance accordingly.

5. PNM is authorized to form the SPE to be structured as described in the Application and this Financing Order. Concurrent with the issuance of the Energy Transition Bonds, PNM shall make an equity capital contribution to the SPE that shall not be less than 0.5% of the total capital of the SPE (with the aggregate principal amount of the Energy Transition Bonds

representing not more than 99.5% of the capital of the SPE).[367] PNM shall be permitted to earn a rate of return on its equity capital contribution to the SPE relating to the Energy Transition Bonds at a rate equal to the rate of interest payable on the longest maturing tranche of Energy Transition Bonds and this return on the capital contribution will be an Other Ongoing Financing Cost and part of the Periodic Revenue Requirement.

6. Each series of the Energy Transition Bonds may be issued in one or more tranches. The SPE is authorized to enter into an Indenture with an Indenture Trustee, consistent with the provisions of this Financing Order, pursuant to which the Energy Transition Bonds shall be issued. Each tranche of the Energy Transition Bonds shall be issued with a fixed interest rate and shall have a scheduled final maturity of no more than 25 years from the date of issuance of such Energy Transition Bonds, provided that the legal final maturity may exceed 25 years. Following the initial scheduled payment of principal and interest, payments of principal and interest on the Energy Transition Bonds shall be made semiannually. Subject to compliance with the requirements of this Financing Order, PNM and the SPE shall be afforded flexibility in establishing the terms and conditions of the Energy Transition Bonds, repayment schedules, term, payment dates, collateral, redemption provisions, credit enhancement, required debt service, reserves, interest rates and other financing costs.

7. Each of PNM and the SPE is authorized to execute and deliver the Transaction Documents (as defined in the Application) substantially in the form submitted with the Supporting Testimony, subject to such changes as are legally appropriate and necessary to satisfy bankruptcy or rating agency considerations or that are otherwise consistent with the provisions of this

[367] See the footnote to Findings of Fact paragraph 21 above.

Financing Order. Each of PNM and the SPE is authorized to enter into any ancillary agreements (as defined in Section 2(B) of the ETA) consistent with the provisions of this Financing Order that may be appropriate in connection with the issuance of the Energy Transition Bonds, including various forms of credit enhancement or other mechanisms designed to improve the credit quality and marketability of the Energy Transition Bonds in furtherance of the lowest cost objective. Each of PNM and the SPE is authorized to execute and deliver such additional agreements, documents, certificates and instruments as shall be legally appropriate and necessary in order to effectuate the issuance of the Energy Transition Bonds in accordance with the provisions of this Financing Order.

8. PNM is authorized to recover the Ongoing Financing Costs, including Other Financing Costs, as described in the Application and this Financing Order through the Energy Transition Charges authorized in this Financing Order.

9. PNM or the SPE as its assignee is authorized to impose, charge, collect and receive Energy Transition Charges necessary to recover the Ongoing Financing Costs, to be imposed as described in the Application, including the Supporting Testimony, and in this Financing Order. The Energy Transition Charges shall be subject to the True-Up Adjustment Mechanism described in the Application, including the Supporting Testimony, and in this Financing Order until the Energy Transition Bonds and the Ongoing Financing Costs are paid in full.

10. The Energy Transition Charges authorized in this Financing Order shall be non-bypassable as defined in Section 2(P) of the ETA, meaning that payment of an Energy Transition Charge may not be avoided by an electric service customer located within PNM's utility service area and shall be paid by each customer that receives electric delivery service from the qualifying utility (PNM or its successor) imposing the charge for as long as the Energy Transition Bonds

secured by the Energy Transition Charges are outstanding and the related Ongoing Financing Costs have not been recovered in full.

11. The Energy Transition Charges shall appear as a separate line item on each customer's electric bill. In addition, all electric bills shall state that all rights to the Energy Transition Charges are owned by the SPE.

12. PNM's proposed ETA Rider as shown in PNM Exhibit MJS-2 is hereby approved.

13. Upon issuance of the Energy Transition Bonds, PNM shall file an advice notice with the Commission, subject to review by the Commission for errors and corrections, that identifies the actual initial Energy Transition Charges to be included on customers' bills, effective fifteen days from the date the advice notice is filed.

14. The True-Up Adjustment Mechanism described in the Application, including the Supporting Testimony, and in this Financing Order is approved. PNM or its assignee is authorized to recover the Periodic Revenue Requirement through the Energy Transition Charges and shall file with the Commission at least semiannually (and at least quarterly during two-year period preceding the final maturity date of the Energy Transition Bonds) a True-Up Adjustment Letter as described in this Financing Order. In addition to the semiannual Standard True-Up Adjustments, PNM is authorized to implement optional Standard True-Up Adjustments at any time, without limitation as to frequency, in order to ensure timely payment of scheduled principal of and interest (or deposits to sinking funds in respect of principal and interest) on the Energy Transition Bonds and the payment of other ongoing financing costs, and to implement Non-Standard Adjustments as described above in this Financing Order.

15. In connection with each True-Up Adjustment, PNM shall file an advice notice with the True-Up Adjustment Request Letter to implement the revised Energy Transition Charges.

16. PNM's method of allocating the Periodic Billing Requirement to customer classes and rate schedules and assessing the Energy Transition Charges within rate schedules as described in the Application, including the Supporting Testimony, and in this Financing Order is hereby approved. As provided in Section 6(A) of the ETA, the allocation and assessment of energy transition are both subject to the True-Up Adjustment Mechanism. PNM shall file a True-Up Adjustment Request Letter in connection with any general rate case when necessary to reflect any adjustments in the allocation of ETCs as a result of changes in the production cost methodology used in such general rate case.

17. The creation of the Energy Transition Property as described in this Financing Order is approved. The Energy Transition Property shall consist of all rights and interests of the qualifying utility (PNM or its successors) or its assignee under this Financing Order, including the right to impose, charge, collect and receive Energy Transition Charges in an amount necessary to provide for full payment and recovery of all Ongoing Financing Costs, including all revenues or other proceeds arising from those rights and interests. The Energy Transition Property also include the rights and interests of the qualifying utility (PNM or its successors) or its assignee in the True-Up Adjustment Mechanism approved under this Financing Order.

18. The creation of the Energy Transition Property is conditioned upon and shall be simultaneous with, the transfer of the Energy Transition Property to the SPE pursuant to the Purchase Agreement and related bill of sale and the pledge of the Energy Transition Property to secure the Energy Transition Bonds. The Energy Transition Property shall continue to exist until the Energy Transition Bonds and all Ongoing Financing Costs have been paid in full.

19. In accordance with the terms and conditions of this Financing Order, the SPE may pledge to an Indenture Trustee, as collateral for payment of the Energy Transition Bonds, the

Energy Transition Property, including the SPE's right to receive the related Energy Transition Charges when collected, and the other collateral described in the Indenture.

20. PNM shall structure the issuance of the Energy Transition Bonds in a manner consistent with the provisions of IRS Revenue Procedure 2005-62.

21. The Securitization Transaction Structure described in the Application is approved.

22. In its capacity as the initial servicer of the Energy Transition Bonds under the Servicing Agreement, PNM is authorized to calculate, bill, collect and receive for the account of the SPE, the Energy Transition Charges established under this Financing Order, as adjusted from time to time pursuant to the True-Up Adjustment Mechanism, and to make such filings and take such other actions as are required or permitted by this Financing Order in connection with the True-Up Adjustment Mechanism. The servicer of the Energy Transition Bonds will be entitled to collect servicing fees in accordance with the provisions of the Servicing Agreement, provided that the annual servicing fee payable to PNM for acting as servicer (or any other servicer affiliated with PNM) shall be 0.05% of the initial aggregate principal amount of the Energy Transition Bonds plus out-of-pocket expenses, and (ii) the annual servicing fee payable to any other servicer not affiliated with PNM shall not at any time exceed 0.60% of the initial aggregate principal amount of the Energy Transition Bonds plus out-of-pocket expenses, except as provided in the paragraph below.

23. PNM shall not resign as servicer except upon either (a) a determination by PNM that the performance of its duties under as servicer shall no longer be permissible under applicable law, or (b) satisfaction of the following: (i) receipt of confirmation that such action will not result in a suspension, reduction or withdrawal of the then current ratings on any of the Energy Transition Bonds and (ii) the Commission shall have approved of such resignation. Upon the occurrence of an event of default under the Servicing Agreement relating to the servicer's performance of its

servicing functions with respect to the Energy Transition Charges, the Indenture Trustee may replace PNM as the servicer in accordance with the terms of the Servicing Agreement. If the servicing fee of the replacement servicer will exceed the applicable maximum servicing fee specified herein, the appointment of such replacement servicer will not be effective until (i) the date the Commission approves the appointment of such replacement servicer or (ii) if the Commission does not act to either approve or disapprove the appointment, the date which is 45 days after notice of appointment of the replacement servicer is provided to the Commission. No entity may replace PNM as the servicer in any of its servicing functions with respect to the Energy Transition Charges and the Energy Transition Property authorized by this Financing Order, if the replacement would cause any of the then-current credit ratings of the Energy Transition Bonds to be suspended, withdrawn or downgraded.

24. The servicer shall remit collections (or estimated amounts of collections) of the Energy Transition Charges to the SPE or the Indenture Trustee for the SPE's account on each business day.

25. In the event a customer of PNM does not pay the full amount of any bill that includes Energy Transition Charges, such partial payments shall be allocated in accordance with applicable Commission requirements and any other requirements of applicable law. Following the issuance of any Energy Transition Bonds, for amounts billed on the same date, charges shall be credited based on a priority waterfall, with late payment charges being credited first, Energy Transition Charges being credited second, and other charges being credited thereafter in the priority waterfall. If more than one series of energy transition bonds are outstanding, partial payments allocable to

energy transition charges shall be allocated pro rata based upon the amount of energy transition charges owing with respect to each series.[368]

26. PNM shall be entitled to receive an administration fee for its performance of administration duties for the SPE under the Administration Agreement, provided that the aggregate annual administration fee payable to PNM (or any of its affiliates) while serving as administrator for the SPE shall be $50,000 per year plus out-of-pocket expenses.

27. The servicing and administration fees collected by PNM (or any affiliate of PNM) acting as servicer or administrator under the Servicing Agreement or the Administration Agreement, respectively, shall be included in PNM's cost of service. The expenses incurred by PNM (or any affiliate of PNM) to perform obligations under the Servicing Agreement or Administration Agreement not otherwise recovered through the Energy Transition Charges shall be included in PNM's cost of service.

28. PNM has the continuing, irrevocable right to cause the issuance of the Energy Transition Bonds in one or more series in accordance with the terms of this Financing Order.

29. PNM shall provide the Commission with a copy of each registration statement, prospectus, Current Report on Form 8-K or other filing made with the SEC in connection with any issuance or proposed issuance of the Energy Transition Bonds within 5 business days following the date of such filing with the SEC.

30. In accordance with Section 4(B)(6) of the ETA, PNM shall file with the Commission within 30 days after the issuance of the Energy Transition Bonds, a report describing the final structure and pricing of the Energy Transition Bonds, updated Financing Costs and

[368] See the footnote to Findings of Fact paragraph 41 above.

Section 16 Payments amounts, and an updated calculation of the Energy Transition Charges. In addition, PNM will file final forms of the Transaction Documents.

31. In connection with any issuance of the Energy Transition Bonds, PNM shall use its commercially reasonable efforts to obtain the lowest cost objective.

32. The ratemaking method addressed in Findings of Fact paragraph 17 above to reconcile and recover or refund any difference between the energy transition costs financed by the Energy Transition Bonds and the actual final energy transition costs incurred by the PNM or the SPE, as described in this Financing Order, is approved.

33. The ratemaking method addressed in Findings of Fact paragraph 42 above to account for the reduction in PNM's cost of service associated with the amount of undepreciated investments being recovered by the Energy Transition Charges at the time the charge becomes effective, as described in this Financing Order, is approved.

34. The SPE is authorized to the use the proceeds it receives from the sale of the Energy Transition Bonds to (i) pay the Upfront Financing Costs incurred in connection with the issuance of the Energy Transition Bonds (including reimbursement to PNM of any such costs paid by PNM) and (ii) to purchase the Energy Transition Property from PNM pursuant to the terms of the Purchase Agreement and related bill of sale. PNM and the SPE are authorized to enter the Purchase Agreement and related bill of sale consistent with the provisions of this Financing Order.

35. PNM is authorized to use the proceeds it receives from the sale of the Energy Transition Property to the SPE (i) to make required Section 16 Payments and (ii) for purposes of providing utility service to customers, including paying certain Energy Transition Costs financed with the Energy Transition Bonds. In particular, PNM shall apply the proceeds it receives from the sale of the Energy Transition Property to make required Section 16 Payments, to pay

Decommissioning Costs, to make capital expenditures for the purpose of providing utility service to customers, and to repay any indebtedness incurred for the purpose of making any such payments. Proceeds of the Bonds shall not be used for purposes of paying dividends, making affiliate loans or paying incentive compensation.

36. In accordance with Section 5(J) of the ETA, PNM shall file a report, within 30 days following receipt of the proceeds from the sale of the Energy Transition Bonds and annually thereafter until all bond proceeds have been disbursed, specifying (1) the gross amount of proceeds arising from the sale of the Energy Transition Bonds, (2) any amounts expended for payment of Upfront Financing Costs (including reimbursement to PNM for such costs paid by PNM), (3) the amount of Section 16 Payments made, (4) the amount of proceeds used to make capital expenditures for the purpose of providing utility service to customers, (5) the amount of proceeds used to repay indebtedness incurred for the purpose of making any such payments, and (6) the amount of remaining proceeds, if any.

37. Following repayment of the Energy Transition Bonds and all related financing costs and the release of funds by the Indenture Trustee, the SPE shall distribute the final balance of the Collection Account to PNM. PNM shall credit customers by the amount of the distribution, less the amount of the Capital Subaccount and any unpaid return on the capital contribution due to PNM as set forth in this Financing Order. PNM shall similarly credit customers by the aggregate amount of any Energy Transition Charge collections subsequently received by the SPE.

38. In accordance with Section 5(I) of the ETA, to the extent permitted under applicable law, during any period in which the Energy Transition Bonds are outstanding, the SPE LLC Agreement shall provide that in order for the SPE to file a voluntary bankruptcy petition on behalf of the SPE, the prior unanimous consent of the managers of the SPE shall be required.

39. In accordance with Section 5(K) of the ETA, the Commission is authorized to review and audit the books and records of PNM and the SPE, relating to the Energy Transition Property and the receipt and disbursement of proceeds of the Energy Transition Bonds.

40. All regulatory approvals within the jurisdiction of the Commission that are necessary for the issuance of the Energy Transition Bonds and all related transactions, are granted.

41. The Commission finds that the Application satisfies the requirements of Section 4 of the ETA. The Commission finds that this Financing Order constitutes a financing order within the meaning of Section 2(L) of the ETA. The Commission finds that this Financing Order complies with the provisions of Section 5 of the ETA. A financing order issued under Section 5 of the ETA gives rise to rights, interests, obligations and duties as expressed in the ETA. It is the Commission's express intention to give rise to those rights, interests, obligations and duties by issuing this Financing Order. PNM and any successor servicer are authorized to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to compliance with the requirements of this Financing Order.

42. This Financing Order is irrevocable and the Commission shall not reduce, impair, postpone or terminate the Energy Transition Charges approved in this Financing Order, the Energy Transition Property or the collection or recovery of energy transition revenues, including recovery of the Ongoing Financing Costs through the Energy Transition Charges.

43. Any successor to PNM shall be bound by the requirements of the ETA and shall perform and satisfy all obligations of, and have the same rights under this Financing Order as, PNM under this Financing Order in the same manner as PNM, including the obligation to collect and pay energy transition revenues to the Indenture Trustee for the account of the SPE or to any other persons entitled to receive the revenues. This Financing Order also is binding upon any

servicer or other entity responsible for billing and collecting the Energy Transition Charges on behalf of the SPE, and upon any successor to the Commission.

44. If the Energy Transition Bonds are outstanding and the Ongoing Financing Costs have not been paid in full, the Energy Transition Charges authorized in this Financing Order shall be collected by PNM or its successors or assignees, or a collection agent, in full through a non-bypassable charge that is a separate line item on customer bills and not part of the qualifying utility's base rates. The charge shall be paid by all customers receiving electric delivery from PNM or its successors under Commission-approved rate schedules or special contracts, and all customers who acquire electricity from an alternative or subsequent electricity supplier in the utility service area currently served by PNM, to the extent such acquisition is permitted by New Mexico law.

45. This Financing Order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility (PNM or its successors) or any non-utility affiliate or the commencement of any proceeding for bankruptcy or appointment of a receiver.

46. In accordance with Section 19 of the ETA, the Commission pledges to and agrees with holders of the Energy Transition Bonds, the SPE and the Indenture Trustee that the Commission shall not take or permit any action that impairs the value of the Energy Transition Property, except as allowed pursuant to Section 6 of the ETA, or reduces, alters or impairs Energy Transition Charges that are imposed, collected and remitted for the benefit of the holders of the Energy Transition Bonds, the SPE and the Indenture Trustee, until the entire principal of, interest on and redemption premium on the Energy Transition Bonds, all financing costs and all amounts to be paid to the SPE or a financing party under an ancillary agreement are paid in full and performed in full. The SPE is permitted to include this pledge in the Energy Transition Bonds and any

ancillary agreements and documentation related to the issuance and marketing of the Energy Transition Bonds.

47. A copy of this Financing Order shall be served on all parties listed on the official service list for this case via e-mail where such e-mail addresses are known and if not known, by regular first-class postal delivery.

48. This Financing Order is effective immediately.

49. In accordance with 1.2.2.35(D) NMAC, the Commission has taken administrative notice of all Commission orders, rules, decisions, and other relevant materials in all Commission proceedings cited in this Order.

50. Any matter not specifically ruled on during the course of this proceeding or in this Order is disposed of consistent with this Order and the Commission's Rules.

51. This Docket is closed.

ISSUED at Santa Fe, New Mexico this **12th** day of **November 2021**.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros

Anthony F. Medeiros
Hearing Examiner

EXHIBIT A

FORM OF STANDARD TRUE-UP ADJUSTMENT LETTER

New Mexico Public Regulation Commission
[ADDRESS]
Attention:

Re: Energy Transition Act Financing Order, 21-00017-UT

Dear [_____]:

Pursuant to the financing order of the New Mexico Public Regulation Commission (the "Commission") adopted on [_____], in the above-referenced matter (the "Financing Order"), Public Service Company of New Mexico ("PNM"), as servicer of the energy transition bonds issued pursuant to the Financing Order, submits this filing for a True-Up Adjustment (as defined in the Financing Order) to the energy transition charges authorized pursuant to the Financing Order.

PNM has calculated the True-Up Adjustment in accordance with the methodology approved in the Financing Order. Attachment 1 hereto is the Energy Transition Charge True-Up Mechanism Form and Attachment 2 hereto is PNM's workpapers showing the calculation of the adjusted energy transition charges. Attachment 3 hereto is PNM's advice notice with respect to implementing the adjusted energy charges pursuant to the True-Up Adjustment.

Pursuant to the Financing Order and Section 6(F) of the Energy Transition Act, the True-Up Adjustment will be deemed approved by the Commission without a hearing thirty days after PNM's filing of this letter unless: (1) no later than twenty days from the date PNM files this letter, the Commission is notified of a potential mathematical or transcription error in the adjustment; and (2) the Commission determines that the calculation of the adjustment is unlikely to provide for timely payment, or is likely to result in a material overpayment, of scheduled principal of and interest on the energy transition bonds and recovery of other ongoing financing costs in accordance with the Financing Order, and suspends operation of the True-Up Adjustment, pending a hearing limited to the issue of the error in the adjustment. In accordance with Section 6(F) of the Energy Transition Act, any such suspension shall be for a period not to exceed sixty days from the date PNM filed this letter.

Accordingly, so long as the Commission takes no action to suspend operation of the True-Up Adjustment, the True-Up Adjustment requested in this letter shall become effective on [_____].

Respectfully submitted,
PUBLIC SERVICE COMPANY OF NEW MEXICO

By:_____
Name:
Title:

Attachment 1 to True-Up Adjustment Request Letter

PNM Exhibit MJS-2, Appendix 1: Form of Recovery Period True-up

Public Service Company of New Mexico (PNM)
Energy Transition Bond rider true-up calculation summary report
ETA Rider No 51
Remittance Period Start Date: _____
Remittance Period End Date: _____

Line No.	Description	*Equation*	Calculation of the True-up (1)	Projected Revenue Requirement to be Billed and Collected (2)	Revenue Requirement for Projected Collection Period (1)+(2)=(3)	Data Source
1	**Prior period remittances from Start date: to End Date:**					
2						
3	True-up for the Prior Remittance Period					
4	Revenue Requirement					
5	Actual Cash Receipt Transfers Interest Income					
6	Cash Receipts Transferred to the SPE					
7	Interest income on Subaccounts at the SPE					
8	Total Current Period Actual Daily Cash Receipts Transfers and Interest Income	*Line 6 + Line 7*	-			
9	(Over)/Under collection of prior remittance period revenue requirements	*Line 4 + Line 8*				
10	Cash in Excess Funds subaccount					
11	Cumulative (Over)/Under collections through the end of prior remittance period	*Line 9 + Line 10*	$		$	
12						
13						
14	**Current Remittance Period with Start date: through End Date:**					
15	Principal					
16	Interest					
17	Servicing Costs					
18	Other On-Going Costs					
19	Current Remittance Period Total Revenue Requirement	*Line 15 + Line 16 + Line 17 + Line 18*	$			
20						
21	Current Remittance Period Cash Receipt Transfers and Interest Income:					
22	Cash Receipts Transferred to SPE		(A)	(B)		
23	Interest Income on Subaccounts at SPE		(A)	(B)		
24	Total Current Remittance Period Cash Receipt Transfers and Interest Income	*Line 22 + Line 23*	$	$		
25	Estimated Current Remittance Period (Over)/Under Collection	*Line 19 + Line 24*	$	$	$	
26						
27						
28	**Projected Remittance Period with Start date: through End Date:**					
29	Principal					
30	Interest					
31	Servicing Costs					
32	Other On-Going Costs					
33	Projected Remittance Period Total Revenue Requirement	*Line 29 + Line 30 + Line 31 + Line 32*		$	$	
34						
35	Revenue Requirements to be Billed in Projected Remittance Period, TOTAL	*Line 11 + Line 25 + Line 33*		(C)	$	
36	Forecasted Sales (in kWh) for Projected Remittance Period (adjusted for uncollectibles)					
37	Average Energy Transition Bond rider charge per kWh	*Line 35 / Line 36*			$	
38						
39						
40						
41	Footnotes:					
42	(A) Reflects cash receipts and interest income that have been billed, collected, and remitted to SPE					
43	(B) These are the remaining months in the current period whose collection is estimated.					
44	Remaining estimated months are for this time period:					
45	(C) This is the total amount for recovery.					

Attachment 2 to True-Up Adjustment Request Letter

[Advice Notice]

Attachment 3 to True-Up Adjustment Request Letter

[Workpapers]

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER	))))))	**Case No. 21-00017-UT**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused to be sent to the individuals listed below, via e-mail only, a true and correct copy of the ***Recommended Decision on PNM's Request for Issuance of a Financing Order*** issued November 12, 2021.

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DATED this **12th** day of **November 2021**.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros

Anthony F. Medeiros
Hearing Examiner