

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF)	
PUBLIC SERVICE COMPANY OF NEW MEXICO'S)	
ABANDONMENT OF SAN JUAN)	Case No. 19-00018-UT
GENERATING STATION UNITS 1 AND 4)	
)	

**NEW ENERGY ECONOMY'S
RESPONSE TO PNM'S EMERGENCY MOTION FOR STAY**

JULY 12, 2022

New Energy Economy (“NEE”) hereby responds to the *Emergency Motion and Supporting Brief of Public Service Company of New Mexico for Stay of Rate Credits Under Final Order Pending Appeal and for Shortened Response Time* (“Motion for Stay”) filed on June 29, 2022.

INTRODUCTION

PNM supports its motion for emergency stay by claiming that it will lose money if it is not stayed; that it will lose almost half of the profits it anticipates earning during the period that it plans on billing its customers for the costs that used to be associated with a coal plant that will by then be closed. PNM, of course, already enjoys a monopoly in New Mexico, making its profitability a sure thing, regardless of how it manages its business. That status, alone, is a wonderful thing for PNM’s management and shareholders. But how much more wonderful that monopoly would be for them if PNM can just be permitted to continue to collect the huge chunk of its overheads, plus profits on those overheads, as if they still existed!

PNM’s complaint that it will lose half its anticipated profits if the PRC prevents it from continuing to bill for the San Juan Generating Station (“SJGS”) after it’s shuttered is undoubtedly the most stunning statement in its motion.¹ NEE respectfully requests that the PRC consider how a thoughtful, informed ratepayer might recast PNM’s complaint from that ratepayers’ perspective. The ratepayer might paraphrase PNM’s statement as follows: “We expect to almost **double** our profits by continuing to bill ratepayers for a major coal plant after it’s closed. We have a tricky way of doing it, but if we can fit this camel through the eye of the

¹ Failure to grant the stay will result, as PNM estimates, in “lost revenues that will likely exceed \$128.3 million.” Motion for Stay, p. 1. These “lost revenues” allegedly represent “a 48% reduction based on 2021 earnings.” *Id.*

PRC needle, we'll make almost \$150 million dollars without having to spend any money at all!

Telling us we can't do this is an outrage! It's an emergency! Woodman, Spare our money tree!"²

Setting aside NEE's foregoing soliloquy on the obvious injustice and overreach that characterizes PNM's current conniving, the PRC should deny PNM's its requested stay because its motion fails to meet any of the boiler plate requirements that even PNM agrees are necessary prerequisites to a stay. In its Motion, at PP 9-10, PNM recites, as it must, the criteria our Supreme Court laid out in *Tenneco Oil Co. v. New Mexico Water Quality Control Comm'n*, 1986-NMCA-033, ¶ 10, 105 N.M. 708 for staying an administrative order such as this one. The movant must show (1) a likelihood that the applicant will prevail on the merits; (2) irreparable harm to the applicant; (3) evidence that no substantial harm will result to other interested persons; and, (4) no harm will ensue. PNM cannot meet any of the four factors favoring a stay.

As NEE demonstrates below, PNM's motion to make any of the required showings: First, in order to prevail on the merits, PNM would have to demonstrate that its plan to continue billing its customers for enormous, imaginary costs is legally invulnerable, despite the fundamental requirements that rates be just, fair and reasonable. In other words, PNM would have to prove its apparent theory that the Energy Transition Act has a mystical aura that allows PNM to obliterate all constraints on the rates it may collect, so long as the particular charge has something to do with a coal plant. It has failed to do so, and its interpretation of the ETA cannot be harmonized with *anything* in the Public Utility Act, principles of unjust enrichment, fundamental fairness or the rights of its customers. Second, PNM would have to demonstrate

² With apologies to poet George Pope Morris (1802-1864), *Woodman, Spare That Tree!*
<https://rpo.library.utoronto.ca/content/woodman-spare-tree>

that denying it the opportunity to recover unearned profits at the expense of ratepayers would cause it irreparable harm. Just stating this requirement answers the question of whether PNM can satisfy this second prong. Third, PNM would have to demonstrate that imposing unincurred costs on and reaping unearned profits from its customers for as long as PNM cares to do so would cause no substantial harm to its customers. This prong, in the context of this case, is also impossible for PNM to satisfy in light of the facts set forth in the *Recommended Decision on the Show Cause Hearing*, and, *Final Order Adopting Recommended Decision With Additions*. NEE respectfully suggests that the PRC require PNM, in its next billing, to explain to all of its customers, including those struggling to pay their bills, why allowing PNM to collect this money from them will cause them no harm while refusing to allow it will grievously harm PNM. Fourth, PNM cannot possibly articulate a basis for claiming that a stay will not harm the public interest. The most PNM seems to be saying is that staying the order will somehow honor the intent of the legislature in passing the ETA. Perhaps PNM should be required to persuade the members of the legislature to sign a statement that it was their unstated and unimplied intent, in passing the ETA, that a) PNM be permitted to mislead the PRC and the public however it wishes with regard to its ETA-related scheming when it closes a plant, and; b) that when PNM closes a plant, the PRC, in the exercise of its duty to protect ratepayers from unreasonable rates, must allow PNM the leeway to continue to charge ratepayers for the costs of the plant as though it were continuing to operate. This prong is also answered by reference to the facts and evidence before the PRC, the texts of the ETA and PUA, and the language of the Financing Order to which PNM wrote and then consented when it was amended. NEE respectfully requests that the PRC require PNM to answer a simple question: “How is it that the procedure you attribute to the

ETA was going to save ratepayers money when you closed San Juan if you are allowed to keep on charging ratepayers for the closed plant?”

BACKGROUND

1. On June 18, 2022, Hearing Examiners Anthony F. Medeiros and Ashley Schannauer issued a *Recommended Decision on the Show Cause Hearing* (“RD”). Exceptions and Response to Exceptions were filed by various parties. Pertinent to PNM’s Motion for Stay, the Hearing Examiners recommended, *inter alia*, the following, which the PRC adopted in full:
 - a. The materially changed circumstances revealed in the Commission’s investigation in this proceeding require the Commission, acting pursuant to its supervisory authority over the rates and service of jurisdictional utilities, to issue an Order that addresses the de-linked scenario and establishes a remedial mechanism that ensures the rates charged to PNM customers are fair, just, and reasonable and protects customers from the double recovery and other potential harms resulting from the de-linkage PNM conceived and opted to execute without this Commission’s prior authorization.³
 - b. [PNM should] issue the [SJGS rate] credits using the same allocation and rate design methodology previously vetted and approved for the ETCs in this docket. Mr. Settlage prepared an exhibit that shows the allocation of the rate credits to PNM’s various customer classes for the abandonment of Unit 1 on July 1, 2022 and the cumulative credit for the abandonment of Unit 1 on July 1, 2022 and the abandonment of Unit 1, Unit 4 and the San Juan common plant on September 30, 2022. The table atop [page 98], a reproduction of Settlage’s PNM Exhibit MJS 2 (Corrected), shows PNM’s proposed allocation of the \$98.3 million revenue requirement associated with the [annual] rate credits.⁴
 - c. PNM shall file an Advice Notice by **July 1, 2022** that revises PNM’s rates to remove all of the costs of San Juan Unit 1 from rates and issues rate credits to customers using the allocation and rate design methodology approved for the ETCs in the *Financing Order*, as described above.⁵

³ *Recommended Decision on the Show Cause Hearing*, 6/18/2022, p. 110-111, ¶8.

⁴ *Id.*, p. 97.

⁵ *Id.*, p. 112, ¶B.

- d. PNM shall file an Advice Notice by **October 1, 2022** that revises PNM's rates to remove all of the costs of San Juan Unit 4 and the San Juan common facilities from rates and issues rate credits to customers using the allocation and rate design methodology approved for the ETCs in the *Financing Order*, as described above.⁶

2. On June 29, 2022, the New Mexico Public Regulation Commission issued the *Final Order Adopting Recommended Decision With Additions*, in this case.

3. About an hour later on the same day, Public Service Company of New Mexico ("PNM") filed its Emergency Motion requesting an "immediate emergency stay of those portions of its June 29, 2022 Final Order requiring PNM to implement rate credits in order to avoid permanent, irreparable harm to PNM in the form of lost revenues that will likely exceed \$128.3 million." Motion for Stay, p. 1.

4. The four-part test applied by appellate courts in considering whether to stay a final order of an administrative agency is (1) a likelihood that applicant will prevail on the merits of the appeal; (2) a showing of irreparable harm to applicant unless the stay is granted; (3) evidence that no substantial harm will result to other interested persons; and (4) a showing that no harm will ensue to the public interest. *Tenneco Oil Co. v N.M. Water Qual. Cont. Comm'n*, 105 N.M. 708, 710, 736 P.2d 986, 988, 1986-NM-033.

5. As our Supreme Court stated:

The mere fact that an administrative regulation or order may cause injury or inconvenience to applicant is insufficient to warrant suspension of an agency regulation by the granting of a stay. An administrative order or regulation will not be stayed pending appeal where the applicant has not made the showing of each of the factors required to grant the stay.

Id., (internal citations omitted.)

6. In this case, PNM *cannot* meet any of the four factors favoring a stay.

⁶ *Id.*, p. 112, ¶C.

7. PNM correctly stated that an administrative order will not be stayed pending appeal where the applicant has not made a showing of each of the foregoing factors and acknowledges that even if an administrative order may cause injury or inconvenience to the applicant that may be insufficient to warrant a stay. *Id.* The grant of an application for stay is not matter of right, but rather an exercise of judicial discretion and the propriety of its issuance is dependent upon the facts of each individual case. *Id.* Motion for Stay p. 4.

8. In the appeal of the *Financing Order*, PNM told the New Mexico Supreme Court that “[t]he bonds will be issued in 2022”, explaining to the Court that:

[b]y securitizing, abandonment costs, the utility foregoes its authorized rate of return on the investments recovered through the bonds *so that it makes no further profit* on these investments. Because the authorized rate of return is typically significantly higher than bond interest rates, customers save money compared to standard rate-of-return recovery. *The estimated net savings to customers as a result of abandonment of [San Juan Generating Station] and its replacement with lower carbon resources is approximately \$80 million in 2023 alone.*

(Emphasis added.)

PNM’s Answer Brief in No. S-1-SC-38247, *Citizens for Fair Rates and the Environment and New Energy Economy, Inc. v. NMPRC* (entered on October 5, 2020 in NMPRC Case No. 19-00018-UT case record), pp. 7, 9.

9. The following facts, based on the evidenced adduced at the show cause hearing, and articulated in the Hearing Examiners’ RD are particularly relevant:

- a. The Hearing Examiners found that PNM’s new plan to issue the bonds in January or February 2024, at least 18 months after the abandonment of Unit 1 and 15 months after the abandonment of Unit 4 violates the ETA and Financing Order.⁷

⁷ *Recommended Decision in Show Cause Proceeding*, June 17, 2022, pp. 10, 24, 49, 57, 84 (footnote 238).

- b. “Requiring PNM to issue a rate credit will protect ratepayers from PNM’s overcollection, is an efficient way of doing so, and is consistent with the Commission’s ratemaking authority to ensure fair, just and reasonable rates.”⁸
- c. “In my view, the Commission – as long as it doesn’t expressly violate a term that’s in the ETA and the Financing Order, the Commission has its ongoing regulatory authority to take whatever steps it believes are necessary to ensure just and reasonable rates.”⁹
- d. “The Commission [should] address the looming extended period of double recovery if ratepayers are forced to wait until the outcome of a rate case filed at the time PNM chooses, when base rates are adjusted to exclude the impact of a facility abandoned months or years earlier.”¹⁰
- e. NM AREA’s expert, Mr. Dauphinais expressed similar concern: PNM would recover the San Juan Generating Station depreciation expense twice – first through its current base rates and then later a second time when ETCs begin to be collected after the delayed issuance of the energy transition bonds.¹¹
- f. “The extraordinary circumstances brought about by PNM’s unilateral, undisclosed decision to de-link the abandonment of San Juan Units 1 and 4 from the securitized bond issuance”¹² created the moral hazard which required Commission action to protect ratepayers.
- g. “[A]ssuming without finding that PNM would be harmed if a rate credit remedy is ordered in this case, the Hearing Examiners note, as Dr. Blank pointed out, that the ETA provides PNM the right to recover its remaining \$283 million San Juan plant investment by issuing the bonds at the time of the abandonment of Unit 4 as authorized by the *Financing Order* or requesting rate relief.”¹³

⁸ *Id.*, p. 70, NEE Exhibit 1, Fetter (5/11/22) p. 20.

⁹ *Id.*, p. 57, Tr. (6/24/22) p. 315 (NMAG, Crane).

¹⁰ *Id.*, p. 71; *See also*, Staff Exhibit 1, Reynolds (5/11/22) p. 4. (PRC Staff’s central issues are: “(1) PNM’s extended double recovery of the costs associated with the San Juan Generating Station (“San Juan” or “SJGS”) which is inconsistent with the representations made by PNM in seeking a Financing Order related to their abandonment, and which was not contemplated by the Commission when it authorized the issuance of the Financing Order. (2) The succession of unilateral delays by PNM in filing general rate cases with the Commission and the resulting delays in adjusting rates to remove the cost of San Juan, thus depriving ratepayers of the monetary benefits of the closure of San Juan.”)

¹¹ *Id.*, p. 69, NM AREA Exhibit, Dauphinais (5/11/22) pp. 7-8.

¹² *Id.*, p. 88.

¹³ *Id.*, p. 82.

10. “[R]egarding PNM’s complaint that the Company will suffer punitively imposed harm if a rate credit remedy is implemented in this matter, the intervenors assert the harm, if any, would be self-inflicted due to PNM’s decision to not file a rate case until December 2022.”¹⁴

ARGUMENT

A. There is no Emergency.

There is no “Emergency.” PNM knew that the PRC required¹⁵ that an Advice Notice be filed on July 1st – rates would actually begin to be credited 30 days hence - NOT as the Company tried to mislead the Commission and the New Mexico Supreme Court to believe,¹⁶ that the rate reduction would commence within 48 hours of the order. NMSA 1978 § 62-8-7 (2018).¹⁷ The law clearly states that PNM shall make a change in the rate, herewith a credit for the closure of SJGS unit 1, only *after thirty days’ notice. Id.*

¹⁴ *Id.*, p. 78, citing CCAE et al. Response p. 3.

¹⁵ *Recommended Decision on the Show Cause Hearing*, 6/18/2022, adopted with additions in, *Final Order Adopting Recommended Decision With Additions*, 6/29/2022. Decretal Paragraph B from the RD states as follows (which is reiterated verbatim in PNM’s Advice Notice, excerpt attached as Exhibit 1): “B. PNM shall file an Advice Notice by **July 1, 2022** that revises PNM’s rates to remove all of the costs of San Juan Unit 1 from rates and issues rate credits to customers using the allocation and rate design methodology approved for the ETCs in the *Financing Order*, as described above.”) (Emphasis in the original.)

¹⁶ Motion to Stay, p. 2: “Under the Final Order, PNM is required to file advice notices and to implement rate credits commencing on July 1, 2022, less than 48 hours following the issuance of the Commission’s Final Order.

¹⁷ NMSA 1978 § 62-8-7 (2018) (“...no public utility shall make any change in any rate that has been duly established *except after thirty days’ notice to the commission*, which notice shall *plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect* and other information as the commission by rule requires. *The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection.*”) (Emphasis supplied.)

- B. There are no PNM “losses”. Seen from the ratepayers’ perspective, PNM’s continued collection, post SJGS abandonment, consists of a combination of phantom costs and double recovery of undepreciated investments for a plant that is no longer providing *any* service. PNM will not be incurring any costs for the inoperable SJGS therefore continued charges amount to unearned profit, making the rate PNM is charging its customers unjust and unreasonable.**

PNM is not entitled to ongoing SJGS costs. Period.

The facts that the Commission is aware of, more fully described in the RD, explain that the Financing Order – which the company itself wrote – was premised on PNM’s Application and testimony, and the fact that the express terms of the Financing Order at ¶28 required bond issuance and rate credit promptly after the last of four events contained therein had occurred. PNM would obtain necessary Securities & Exchange Commission (“SEC”) approvals and the rating agency would complete its process so that following SJGS plant’s abandonment PNM would “as promptly as possible” issue the ETA bonds and a rate adjustment.¹⁸ Not 12, 15 or 18 months later or whenever PNM decided.

It is not in dispute that 1) PNM promised that that the ETA would produce customer savings resulting from its abandonment;¹⁹ 2) this was the plan PNM had agreed to;²⁰ 3) during the Avangrid merger case, 20-00222-UT, PNM unilaterally decided to delay the rate adjustment and bond issuance;²¹ and 3) PNM informed no one of its change in plans.²²

¹⁸ *Recommended Decision in Show Cause Proceeding*, June 17, 2022, p. 17, citing, Eden.

¹⁹ Vol. II, 5/24/2022, Sanchez, p. 537.

²⁰ Monroy Testimony and Exhibits, April, 20, 2022, p. 4. (“at the time it filed its Consolidated Application for the Financing Order that it anticipated it would issue the energy transition bonds near the time of the abandonment of San Juan.” *See also*, Vol. II, 5/24/2022, Sanchez, p. 533-4. (“I think there was an expectation, an intent, a plan, if you will [to file a rate case and to coordinate that with the energy transition bonds].”)

²¹ Vol. II, Tr., 5/24/2022, Tarry, p. 349-352.

²² Vol. II, Tr., 5/24/2022, Tarry, p. 351.

PNM is claiming “lost revenues” from its inability to keep charging customers for an abandoned plant.²³ PNM is also claiming that if its request for Stay is not granted the Company will be deprived of nearly half its expected profits.²⁴ Yet, if we review the history and facts surrounding PNM’s San Juan abandonment we understand that PNM is not losing money at all and if it was in need of cash²⁵ then it could issue the ETA bonds or file a rate case²⁶; offering PNM a stay would not be in the public interest or result in just and reasonable rates because PNM testified that: 1) the positive economic ramifications of ETA securitization for ratepayers would amount to \$94M per annum and this would be eliminated; and 2) what constituted the \$360.1 million approved by the PRC for ETC bonds for SJGS abandonment made PNM whole; and 3) continued collection of ratepayer charges would be for non-recurring costs or over recovery for depreciation expense and a return on investment. To understand PNM’s undeserved earnings we need to look at PNM’s testimony.

Customer impacts as a result of SJGS abandonment: Arguing for SJGS abandonment, Henry Monroy testified on July 1, 2019 that the “Savings from San Juan coal plant - Continue

²³ Motion to Stay, p. 14.

²⁴ *Id.*, p. 1 (representing a 48% reduction based on 2021 earnings)

²⁵ NEE Exhibit 1, Fetter (5/11/22) pp. 17-20.

²⁶ *Recommended Decision in Show Cause Proceeding*, June 17, 2022, p. 17, citing, WRA’s expert, Blank. (“Finally, regarding PNM’s complaint that the Company will suffer punitively imposed harm if a rate credit remedy is implemented in this matter, the intervenors assert the harm, if any, would be self-inflicted due to PNM’s decision to not file a rate case until December 2022. Asked whether a rate credit removing the San Juan costs from customer bills would be unduly punitive to PNM, Dr. Blank replied ‘No. PNM’s recourse is to recover its approximately \$283 million in undepreciated investment by issuing the bonds. PNM accepted that treatment when it supported passage of the ETA and defended the Commission’s *Financing Order* on appeal.’ In any event, Dr. Blank considered PNM’s earnings position irrelevant for purposes of this proceeding: ‘If PNM believes it is under-earning, it can file a rate case. It can even seek emergency relief if its financial position is truly dire. It cannot, however, act outside the scope of a Commission order and law that requires bonds to be issued concurrently with San Juan abandonment.’”) (citations omitted.)

Operations” would be \$94M²⁷ – this is the exact same amount that the Hearing Examiners recommended and the PRC authorized should be credited to ratepayers upon closure. According to PNM this constituted the “projected the 2023 non-fuel revenue requirements associated with the continued operations of the coal plant.”²⁸

PRC-approved SJGS ETA bonds: Arguing for approval of \$360.1 M in ETA bonds, Henry Monroy testified that the following energy transition costs will be financed with the energy transition bonds, based on the calculation of costs at the time of the abandonment of the San Juan coal plant.²⁹

PNM Table HEM-2 ³⁰ Summary of Upfront Energy Transition Costs to be Financed <i>\$ in millions</i>	
1	8.7 Upfront Financing Costs - Section 2(H)(1) of the ETA
2	283.0 Undepreciated Investment in San Juan coal plant Units 1 and 4 - Section 2(H)(2)(c)(d)*
3	9.4 Coal Mine Reclamation Costs - Section 2(H)(2)(a)*
4	19.2 Plant Decommissioning Costs - Section 2(H)(2)(a)*
5	11.1 Job Training and Severance Costs for PNMR and PNM Employees - Section 2(H)(2)(b)*
6	8.9 Job Training and Severance Costs for Westmoreland Coal Mine Employees - Section 2(H)(2)(b)*
7	- Other Costs Required to Comply with Law Changes After 1/1/19 - Section 2(H)(3)
8	1.8 Payments Made to Indian Affairs Fund - Section 2(H)(4)

²⁷ Direct Testimony of Henry Monroy, July 1, 2019, p. 5, PNM Table HEM-1, Summary of Impacts to 2023 Revenue Requirements.

²⁸ *Id.*, p. 5.

²⁹ *Id.*, p. 9, 23.

³⁰ Direct Testimony of Henry Monroy, July 1, 2019, p. 9.

9	5.9 Payments Made to Economic Development Fund - Section 2(H)(4)
10	12.1 Payments Made to Workers Assistance Fund - Section 2(H)(4)
11	360.1 Total Upfront Energy Transition Costs

*All these costs are described together as “abandonment costs,”³¹ another indication that the \$360.1 million in energy transition costs were pegged to SJGS abandonment. The single greatest charge included in the ETC bonds is full recovery of undepreciated investments of \$283M.³²

PNM’s delay of the bond issuance past the abandonment dates while continuing to collect the costs associated with PNM’s undepreciated investments which PNM will collect in full when it issues the bonds, creates a double billing situation. When NEE asked PNM if the amounts collected post abandonment would be deducted from the future bond issuance Henry Monroy answered “No”. Included in Mr. Steve Fetter’s testimony,³³ was PNM’s response to NEE’s discovery, Mr. Monroy provided the following response verbatim to NEE’s Interrogatory, 12-18:

DOES PNM PLAN TO DECREASE THE AMOUNT AUTHORIZED IN THE FINANCING ORDER, \$360.1 MILLION, BY THE TOTAL AMOUNT COLLECTED OF UNDEPRECIATED INVESTMENT COSTS, NON-EXISTENT O&M AND OTHER SAN JUAN EXPENSES, SUCH AS WAGES AND BENEFITS FOR EMPLOYEES THAT NO LONGER WORK AT THE PLANT FOR SJGS UNIT 1 AND SJGS UNIT 4 BETWEEN THOSE RESPECTIVE ABANDONMENT DATES (JULY 1, 2022 AND SEPTEMBER 30, 2022) AND THE DATE OF ISSUANCE OF THE SECURITIZED BONDS?

³¹ *Id.*, p. 8 (“abandonment costs, which include (a) the undepreciated investment of San Juan Units 1 and 4 at June 30, 2022 (excluding balanced draft technology for San Juan Units 1 and 4, and any investments associated with 132 MW, and 65 MW of San Juan Unit 4), (b) coal mine reclamation and plant decommissioning costs that have yet to be collected from customers, and (c) job training and severance expenses for PNM, PNMR Services, and San Juan Coal Company (“SJCC”) coal mine employees affected by the closure of San Juan coal plant”)

³² HEM-2, above; See also *Recommended Decision on Financing Order*, at 70.

³³ Exhibit NEE-SC-1, Testimony and Exhibits of Steven M. Fetter, May 11, 2022, p. 17.

RESPONSE:

No. The \$360.1 million reflects the estimated energy transition costs authorized to be securitized in the Financing Order. The reconciliation and true-up of these amounts to the final energy transition costs are outlined in the financing order and PNM will reconcile these amounts pursuant to the Final Order adopting the Recommended Decision.

Continued Recovery Constitutes Over Recovery

Certain costs will no longer be in effect, hence non-recurring, at the time of abandonment of SJGS: O&M expenses, property taxes and any other tax implications. Most significantly, the amount that PNM seeks to continue to collect, depreciation expense and a return on investment from its ratepayers through PNM's base rates, would NOT reduce the amount of depreciation one cent. So unlike when a homeowner who continues to pay on her mortgage enjoys a reduction on principal owed, ratepayers would see no concomitant credit.

¹⁸¹ Blank (5/11/22) at 7.

¹⁸² *Recommended Decision on Financing Order*, at 81, *citing*, WRA's expert, Blank (5/11/22) at 7-8.

¹⁸⁴ Dauphinais (5/11/22) at 7.

When the Hearing Examiners asked PNM what the depreciation amounts would be for SJGS Units 1 and 4 and common plant in the future, Henry Monroy testified that the depreciation amounts would remain constant, the exact same as of June 30, 2022: "Under Generally Accepted Accounting Principles, once the plant is no longer used and useful, the plant will stop being depreciated, will be removed from utility plant in service and will be recorded as a regulatory asset as authorized by the Financing Order. Therefore, the [] amount remains the same for the remaining periods [whether June 30, 2022, September 30, 2022, December 31,

2022, December 31, 2023 or June 30, 2024.”³⁴ Continued collections therefore will produce no net benefit, in fact, no benefit at all. Yet, if PNM’s Stay were granted it will continue to recover those costs through PNM’s base rates until new base rates that remove the costs become effective.³⁵

PNM’s Sleight of Hand was a Failed Attempt to Make Good on an Unkept Avangrid Promise

The merger deal: What were the conditions to obligations between PNM/PNMR and Avangrid/Iberdrola? What did PNM/PNMR agree to deliver to Avangrid/Iberdrola in exchange for a \$50.30/share³⁶ pay out to PNMR shareholders?

Mr. Tarry admitted that PNM has not delivered *any* revenues from the rate cases,³⁷ decoupling case,³⁸ Palo Verde leasehold improvements,³⁹ or Four Corners case⁴⁰ that it promised to Avangrid/Iberdrola, and was memorialized in its own SEC proxy statement about the merger and its own PNMR Board of Directors documents.

³⁴ Direct Testimony of Henry Monroy, April 1, 2022, pp. 37-39; *Recommended Decision in Show Cause Proceeding*, June 17, 2022, p. 69, *citing*, NMAG’s expert, Crane. (there is no credit for depreciation expense paid by ratepayers after the date of abandonment.) *See also*, p. 79.

³⁵ *Recommended Decision in Show Cause Proceeding*, June 17, 2022, p. 68, *citing*, NM AREA’s expert, Dauphinais.

³⁶ Vol. II, Tr., 5/24/2022, Tarry, p. 335. *See also*, According to Exhibit NEE-SC-2-3, PNM Exhibit NEE 12-12D (May 4, 2022), Board of Directors powerpoint presentation, September 20, 2021, p. 6 of 13. (Current stock price of \$49.52 based on expected transaction price of \$50.30); Exhibit NEE-SC-4, PNM Resources Definitive Proxy Statement, p. 48.

³⁷ *Id.*, p. 369.

³⁸ *Id.*, pp. 370-1.

³⁹ *Id.*, pp. 371-2.

⁴⁰ *Id.*, pp. 372.

PNM Resources Detailed Assumptions⁴¹

Issue & Case	August 2020 “Deal Model” ⁴²	Update/\$
Decoupling Revenues 20-00121-UT	2021 - \$15.9M 2022 - \$7.9M Total = \$23.8M ⁴³	No Decoupling Revenues \$0
Rate Case	July 2022 - \$22.7M ⁴⁴	No Rate Case Revenues \$0
Palo Verde Nuclear Generating Station Leases (“PV Leases”) 21-00083-UT (Abandonment of 114 MW ⁴⁵)	Exit leases in 2023 (PV Unit 1) and 2024 (PV Unit 2) 100% recovery of \$110M leasehold improvements ⁴⁶	No Rate PV Revenues \$0 <i>(Recommended Decision on Motions to Dismiss, July 28, 2021, 21-00083-UT)</i>
Four Corners Power Plant (FCPP) Abandonment, Transfer & Securitization 21-00017-UT	Shareholders pay \$75M to NTEC to assume 200MW of FCPP NTEC <i>buys</i> 200MW of FCPP for \$1 PNM Request for \$300M in Securitized Financing ⁴⁷ Denied Unanimously by the PRC, 12/15/2021 ⁴⁸	No FCPP Revenues \$0

⁴¹ Vol. II, Tr., 5/24/2022, Tarry, pp. 342-5. (The expected earnings from these sources of revenues determine the valuation of the company and the transaction price.)

⁴² Exhibit NEE-SC-2-1, PNM Exhibit NEE 12-12E (May 4, 2022), Board of Directors powerpoint presentation, March 5, 2021, p. 12 of 18.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ The prudence and rate treatment of the extension of the terms for the Palo Verde Nuclear Generating Station Leases were addressed in Case No. 15-00261-UT, and the subsequent appeal, *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm’n*, 2019-NMSC-012, 444 P.3d 460.

⁴⁶ Exhibit NEE-SC-2-1, PNM Exhibit NEE 12-12E (May 4, 2022), Board of Directors powerpoint presentation, March 5, 2021, p. 12 of 18.

⁴⁷ 21-00017-UT.

⁴⁸ *Order on Recommended Decisions on Request for Approval of the Sale and Abandonment of PNM’s Interest in the Four Corners Power Plant and Issuance of a Securitized Financing Order*, 12/15/2022.

CFO Tarry acknowledged that the valuation of PNM and the transaction price was dependent on the expected revenues from decoupling, rate case(s), PV leases, or Four Corners – which equaled more than \$450M.⁴⁹ But PNM hasn’t delivered on its part of the “deal” to Avangrid/Iberdrola – in fact, PNM hasn’t received a cent from the aforementioned expected sources. Was there an incentive in August of 2021, when Avangrid was trying to close the deal with PNM during the merger case, NM PRC Case No. 20-00222-UT, for PNM to try and compensate Avangrid, albeit inadequately, perhaps inelegantly and haphazardly? Did PNM try to make good on its failed revenue promises and deliver to Avangrid nearly \$150M that it would take from the savings customers should realize from the closure of San Juan? Was the “new” PNM plan⁵⁰ *not* to issue ETC bonds and provide a rate adjustment a clandestine financial scheme to rob the poor to cover for and satisfy the company’s insufficiency? We were not privy to the internal conversations, but we do know that Mr. Tarry admitted that Ms. Collawn and Avangrid delayed the rate case and bond issuance decision⁵¹ and that the PNMR Board understood that PNM’s delay was “due to the merger,” as it was explicitly presented.⁵² The equivalency between the money what PNM promised Avangrid PNM would receive but failed to, and the amount that PNM says it should realize by continuing to bill its customers for San Juan costs is stark. It is reasonable to draw the inference that PNM’s current maneuver was calculated to create a “no

⁴⁹ Vol. II, Tr., 5/24/2022, Tarry, pp. 342-5; Exhibit NEE-SC-4, PNM Resources Definitive Proxy Statement, p. 48.

⁵⁰ *Recommended Decision in Show Cause Proceeding*, June 17, 2022, pp. 9, 10, 23, 24, 50, 58, 59, 110.

⁵¹ *Id.*, pp. 357-9.

⁵² Exhibit NEE-SC-2-2, PNM Exhibit NEE 12-11 (April 21, 2022), Updated Long Range Plan 2021-25, PNMR Board of Directors powerpoint, August 31, 2021, p. 2 of 4.

harm no foul” situation between it and Avangrid. To say that it would be unjust and contrary to the Public Utility Act to impose the cost of this ploy on ratepayers would be to put it very mildly.

As the Commission is aware, the Avangrid/Iberdrola takeover of PNM was not found to be in the public interest, and that determination encompassed certain representative conditions, which deserve particular attention here given PNM/Avangrid’s attempted “work around”:

- No adverse impact on utility’s existing rates⁵³;
- Not recover transaction costs from ratepayers⁵⁴;
- Hold customers harmless from negative impacts of transaction⁵⁵;
- Agreement by utility to not recover acquisition adjustment from ratepayers⁵⁶

While the Commission was in final deliberations in the merger case in December 2021 it was unaware of PNM/Avangrid’s “new plan” to fleece ratepayers and to avoid compliance with the Financing Order, because the Companies’ clandestine scheme was only revealed in February 2022. *If* the Commission had approved the merger, the Companies would have been immediately in violation of the above conditions because, as Mr. Monroy readily admitted, their new plan

⁵³Case No. 3712, *Recommended Decision* at 23 (7-22-02), adopted by *Final Order* (8-20-02); Case No. 3103, *Recommended Decision* at 20 (1-10-00), adopted by *Final Order* (1-18-00); Case No. 20-00222-UT, *Certification of Stipulation* at 32, (11-1-2021), adopted by *Order on Certification of Stipulation*, (12-8-2021).

⁵⁴ Case No. 3103, *Recommended Decision* at 22; Case No. 04-00315-UT, *Certification of Stipulation* at 42; Case No. 11-00085-UT, *Recommended Decision* at 27 (12-2-11); Case No. 20-00222-UT, *Certification of Stipulation* at 32, (11-1-2021), adopted by *Order on Certification of Stipulation*, (12-8-2021).

⁵⁵ Case No. 2678, *Recommended Decision* at 85 (11-15-96), adopted by *Final Order* (1-28-97); Case No. 3103, *Recommended Decision* at 23; Case No. 3116, *Recommended Decision* at 40 (5-4-00), adopted by *Final Order* (5-9-00); Case No. 20-00222-UT, *Certification of Stipulation* at 32, (11-1-2021), adopted by *Order on Certification of Stipulation*, (12-8-2021).

⁵⁶ Case No. 3103, *Recommended Decision* at 20; Case No. 3712, *Recommended Decision* at 21; Case No. 04-00315-UT, *Certification of Stipulation* at 42; Case No. 08-00078-UT, *Certification of Stipulation* at 104; Case No. 11-00085-UT, *Recommended Decision* at 27; Case No. 20-00222-UT, *Certification of Stipulation* at 32, (11-1-2021), adopted by *Order on Certification of Stipulation*, (12-8-2021).

resulted from the alleged merger rate freeze “benefit.”⁵⁷ We might never know the precise reason(s) for the PNM/Avangrid attempted overcharge – provide at least some benefit expected from the unrealized revenue obligations contained in the August 2020 merger deal? “Mitigate” the lost revenue promised by the PNM/Avangrid rate freeze?⁵⁸ Plain old fraud? A combination of the three? Or was the genesis related to something deeper, more fundamental in the way Avangrid/Iberdrola conducts its affairs? Mr. Tarry testified that not only was bond issuance and rate adjustment delayed as a result of the merger,⁵⁹ but that immediately after the Hearing Examiner’s Certification of Stipulation issued on November 1, 2021, “the financial plan,” which assumed the bond issuance and rate case delay, was re-affirmed⁶⁰ and “driven” by a decision

⁵⁷ Monroy Testimony and Exhibits, April, 20, 2022, p. 4, 13. “PNM also delayed the filing of its next rate case in consideration of the proposed merger with Avangrid, including the regulatory commitment to delay the filing of PNM’s next general rate case.” See also, Mr. Tarry testimony: “the decision [to delay the issuance of the energy transition bonds and delay the rate case] was made by Ms. Pat Vincent-Collawn and Avangrid.” Vol. II, Tr., 5/24/2022, Tarry, pp. 357-9.

⁵⁸ NEE Exhibit SC-2-6, PNM Exhibit NEE 12-12B (April 27, 2020), page 4 of 18. (Email from Don Tarry to Henry Monroy (and others), November 2, 2021, Subject: “RE: 6 month delay impact” “Also this is compared to the deal model... **the schedule below compares to the last update we gave to Avangrid this year in August** do we think based on what we are seeing in 2022 (better than the deal model) that 2023 will be better than the deal model? **We believe that we can mitigate \$10M -\$15M in 2023 of the \$24M exposure, based on the updates we have done in 2022. ...** Trying to see what risks we have if we agree to the 6 month delay.. based on what we think verse what Avangrid thinks are earnings are? **I would say we have an exposure due to the delay of between \$10M - \$15M as a delta from the earnings provided to Avangrid in August of 2021, which means we could mitigate about half of the impact of the delay**”) (Monroy answers in “red”; color in the original.)

⁵⁹ Vol. II, Tr., 5/24/2022, Tarry, pp. 364.

⁶⁰ NEE Exhibit SC-2-6, PNM Exhibit NEE 12-12B (April 27, 2020), page 1 of 18. (Email from Henry Monroy to Don Tarry (and others), November 2, 2021, Subject: “RE: 6 month delay impact” “yes – this assumes securitization bonds are issued 1/1/24 – with new rates – a 6 month delay from what was assumed in the August 2021 Model”

made by Ms. Pat Vincent-Collawn and Avangrid.⁶¹ In January 2022, PNM and Avangrid agreed to extend the merger contract date until April 2023.⁶²

In January 2021 of last year, Mr. Tarry's base salary was \$418,000 per year and if the merger would have been approved, Mr. Tarry, who did NOT even read the ETA⁶³ or the Finance Order⁶⁴ would have been given a promotion to the President and CEO of PNM and given a salary increase.⁶⁵ According to Tarry, PNM's 2022 operating plan included base rates, without any SJGS abandonment reduction; SJGS "stays in place".⁶⁶ Also according to Tarry, PNM's 2022 earnings guidance range did *not* include the issuance of energy transition bonds.⁶⁷ Coming from the very top, with personal financial interests at stake,⁶⁸ the Companies chose a financial plan to unjustly enrich themselves at the expense of ratepayers.

Additionally, CFO Tarry also admitted that there was NO emphasis or linkage presented to the Commission between a rate case disposition or conclusion and a securitization with respect to the ETC bonding for the Four Corners power plant that the Company newly emphasized with regard to the San Juan Generating Station.⁶⁹

⁶¹ Vol. II, Tr., 5/24/2022, Tarry, pp. 358-9.

⁶² *Id.*, p. 335.

⁶³ *Id.*, p. 350.

⁶⁴ *Id.*

⁶⁵ *Id.*, p. 336-7; Exhibit NEE-SC-4, PNM Resources Definitive Proxy Statement, pp. 68, 69, 70, 71.

⁶⁶ *Id.*, p. 338.

⁶⁷ *Id.*, p. 338-9.

⁶⁸ Pat Vincent-Collawn, PNMR President and CEO, receives a total of \$19 million. Case No. 20-00222-UT, *Certification of Stipulation* at 38, fn. 52, (11-1-2021), adopted by *Order on Certification of Stipulation*, (12-8-2021).

⁶⁹ Vol. II, Tr., 5/24/2022, Tarry, pp. 411-413; Atkins, pp. 511-2.

A breakdown of the components of continuing base rates fall into two categories: 1) phantom costs or 2) double recovery. Neither of these are elements are fair - there is NO entitlement that PNM is being denied. The Hearing Examiners recommended and the PRC made the correct decision: to allow PNM's ongoing rate base costs without a SJGS abandonment rate credit adjustment would amount to unjust enrichment, because, even as PNM admitted, there will be reductions in PNM's cost of service from SJGS abandonment.⁷⁰ Therefore, PNM would not be losing revenue it would be making pure profit. PNM won't succeed on the merits and the Company's Motion for Stay must fail.

Application of the *Tenneco* legal standards to the facts and circumstances related to the Commission's *Final Order Adopting Recommended Decision With Additions* demonstrate that there is no good cause shown for the granting of the stay and that the *Emergency Motion and Supporting Brief of Public Service Company of New Mexico for Stay of Rate Credits Under Final Order Pending Appeal and for Shortened Response Time* should be denied.

WHEREFORE, New Energy Economy requests that the Commission deny PNM's Emergency Motion for Stay and that PNM track all of its costs, including this frivolous Motion, so in PNM's next general rate case that the prudence of those costs will be known and be subject to review.

⁷⁰ *Recommended Decision in Show Cause Proceeding*, June 17, 2022, p. 20.

DATED: July 12, 2022.

Respectfully submitted,

NEW ENERGY ECONOMY

/s/ Mariel Nanasi

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July 1, 2022

Melanie Sandoval
New Mexico Public Regulation Commission
Prc.records@state.nm.us
P.O. Box 1269
Santa Fe, NM 87504

Re: PNM Advice Notice No. 588
NMPRC Case No. 19-00018-UT

Dear Ms. Sandoval:

Enclosed for filing is *Public Service Company of New Mexico's Advice Notice No. 588*. This Advice Notice is submitted pursuant to the New Mexico Public Regulation Commission's ("Commission") June 29, 2022, *Final Order Adopting Recommended Decision with Additions* ("Final Order") which approved the Hearing Examiners June 17, 2022, *Recommended Decision in Show Cause Proceeding* ("Recommended Decision") issued in NMPRC Case No. 19-00018-UT.

Decretal Paragraph B of the Recommended Decision as adopted and approved by the Final Order requires that:

"B. PNM shall file an Advice Notice by July 1, 2022 that revises PNM's rates to remove all of the costs of San Juan Unit 1 from rates and issues rate credits to customers using the allocation and rate design methodology approved for the ETCs in the Financing Order, as described above."

In compliance with the Recommended Decision, PNM hereby submits Advice Notice No. 588 which contains Original Rider No. 55 – San Juan Coal Exit Customer Credit which removes costs of San Juan Unit 1 from PNM rates and issues rate credits to customers beginning with services rendered July 1, 2022.

PNM will mail the filing fee of \$1.00 to the Commission's P.O. Box listed above. If you have any questions or require additional information, please call me at (505)241-4733.

Sincerely,
/s/ Carey Salaz

Carey Salaz
Director, Regulatory Policy & Case Management

Cc: COS NMPRC Case No. 19-00018-UT
Judith Amer – NMPRC

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF
PUBLIC SERVICE COMPANY OF NEW MEXICO'S
ABANDONMENT OF SAN JUAN
GENERATING STATION UNITS 1 AND 4**

Case No. 19-00018-UT

CERTIFICATE OF SERVICE

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

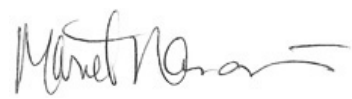
**NEW ENERGY ECONOMY'S
RESPONSE TO PNM'S EMERGENCY MOTION FOR STAY**

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DATED this 12th day of July, 2022.

New Energy Economy,



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