

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CASE NO. 20-00222-UT

DIRECT TESTIMONY AND EXHIBITS

OF

CHRISTOPHER K. SANDBERG

ON BEHALF OF

NEW ENERGY ECONOMY

April 2, 2021

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2 **Background and Experience**

3 **Q. Please state your name and business address.**

4 A. My name is Christopher Sandberg, and my business address is 2324 14th St. SE,
5 Rio Rancho, NM 87124.

6 **Q. On whose behalf are you testifying in this proceeding?**

7 A. I am testifying on behalf of New Energy Economy ("NEE").

8 **Q. Please summarize your educational and business background.**

9 A. I have a Juris Doctor degree from the University of Minnesota School of Law.

10 I also attended the annual Regulatory Studies Program taught at the College of

11 Social Science at Michigan State University under the auspices of the Institute of

12 Public Utilities and the National Association of Regulatory Utility Commissioners.

13 As an attorney licensed in Minnesota, I took a minimum of 45 hours of Continuing
14 Legal Education courses each three-year period.

15 For over 20 years, I taught at the undergraduate, graduate, and law school levels,

16 presenting classes on telecommunications legal and policy issues, online privacy

17 issues, intellectual property law, alternative dispute resolution, non-incorporated

18 business entities, and contract drafting. I have also taught accredited Continuing

19 Legal Education courses.

20 I worked for the Minnesota Public Utilities Commission and as an Assistant

21 Attorney General in the Minnesota Attorney General's Office for 10 years. In those

22 positions, I:

- 1 • managed the Minnesota Public Utilities Commission’s rulemaking program;
- 2 • created and maintained the first manual analyzing and summarizing MPUC policy
- 3 and precedent;
- 4 • represented Minnesota’s general public advocate on utility matters before the
- 5 MPUC and advanced that client’s policy goals;
- 6 • analyzed witness testimony and cross-examined witnesses in contested cases before
- 7 the MPUC; and
- 8 • represented Minnesota’s Energy Issues Intervention Office in electric and gas utility
- 9 matters before the Federal Energy Regulatory Commission and on appeal in Federal
- 10 Courts.

11

12 After leaving State service, I was an associate and partner in a top-25 Minnesota law

13 firm, where I lead the firm’s Utilities and Technology Law practice area,

14 emphasizing regulatory issues, business development, administrative law, and civil

15 litigation. Among other matters, I represented:

- 16 • what is now the Midcontinent Independent System Operator in proceedings to
- 17 certify new transmission facilities for wind power development and system
- 18 capacity/reliability upgrades;
- 19 • a taconite processing company in a dispute over which electric LDC would
- 20 provide service to that company’s new production facility;
- 21 • the largest Minnesota county in a lengthy dispute over RECs;

- two Minnesota counties in a proceeding regarding power from a hydroelectric facility; and,
- parties seeking certification as CLECs in Minnesota.

I also served as a member of two state-wide task forces developing public policy on key issues – the Minnesota Information Policy Task Force and the Minnesota Government Information Access Council.

A resume of my relevant educational and business experience is attached as Exhibit CKS-1.

Q. Why are you qualified to present your testimony in this matter?

My educational background includes course work in administrative law and policy, and my subsequent training has focused on utility issues.

My 38 years of practice in legal and policy matters at the state and Federal level has given me a broad and deep understanding of the issues surrounding PNM's filing in this matter. Working with witnesses in all aspects of utility ratemaking – revenues, expenses, rate of return, rate base, rate design, and merger issues – has provided me with the substantive basis for the issues I will address in this testimony. Finally, working as lead counsel for the state agency charged with advancing the public interest in utility matters at both the state and Federal levels gave me a deep understanding of often-complex process of developing and implementing public policy related to utilities.

Q. Have you appeared before the New Mexico Public Regulation Commission ("Commission") before?

1 A. Yes. I submitted testimony last year on behalf of NEE in Commission Case No.
2 20-00121-UT.

3 **Q. In what proceedings involving regulatory commission approval of purchases**
4 **or other transfer of control have you been involved?**

5 I was involved in the following cases before the Minnesota Public Utilities
6 Commission:

7
8 • In the Matter of the Proposed Merger of Minnegasco, Inc. with and into Arkla,
9 Inc., MPUC Docket No. G-008/PA-90-604.

10 • Joint Application of AT&T Inc. and BellSouth Corp., MPUC Docket No. P-442,
11 5458/PA-06-509.

12 • Joint Application of Brooks Fiber Properties, Inc. and ALD Communications, Inc.,
13 MPUC Docket No. P-3145/PA-96-917.

14 • Joint Application of Hickory Tech Corporation and Allete, Minnesota Power
15 Enterprises, Inc. for Approval of a Change of Ownership of Enventis Telecom, Inc.,
16 MPUC Docket No. P-5596/PA-05-1839.

17 • Joint Application of Origix Corporation, Lighthouse Acquisitions, LLC, and
18 Lightedge Solutions, Inc., MPUC Docket No. P-5822/PA-05-930.

19 • Application of Minnesota Fiber Exchange LLC for Approval of a Change of
20 Ownership, MPUC Docket No. P-6640/PA-15-86.

- 1 • Joint Application of Central Telephone Company and Rochester Telephone
2 Company for Approval of an Asset Purchase Agreement and for Transfer of
3 Certificates and Authority, MPUC Docket No. H-2028, P-405/PA-91-130.
- 4 • Joint Petition of Journal Communications, Inc., NorLight, Inc., Telephone
5 Associates Long Distance, Inc., and Bemidji Long Distance, Inc. for Approval of a
6 Corporate Reorganization and Change of Ownership, MPUC Docket No. P-
7 5041/PA-96-156.
- 8 • Joint Petition of Norstan Network Services, Inc. and Hawkeye Acquisitions, Inc.
9 for Approval of a Change of Ownership, MPUC Docket No. P-3083/PA-02-193.
- 10 • Joint Petition of Rochester Telephone Corporation, WCT Communications, Inc.,
11 and West Coast Telecommunications, Inc., for Approval of a Merger and for
12 Transfer of Certificates and Authority, MPUC Docket No. P-2028, 3136/PA-94-1128.
- 13 • Joint Petition of Nextera Communications, LLC and OneNet USA, Inc. for
14 Approval of Acquisition of Assets, MPUC Docket No. P-6387,6514/PA-11-1117.
- 15 • Joint Petition of Jaffray Communications, LLC., Vitesse Networks Inc., and Origix
16 Corp. for Approval of a Corporate Reorganization and Change of Ownership, and
17 for a Transfer of Operating Authority, MPUC Docket No. P-5822/PA-01-1088.
- 18 • Joint Petition of FTTH Communications, L.L.C., Contractor Property Developers
19 Company and Rudder Capital Corporation for Approval of a Change of Ownership,
20 MPUC Docket No. P-6014/PA-07-1066.

Q. Are you appearing here as counsel for NEE?

A. No. Upon retiring from my law firm in 2017, I took non-practicing status with the Minnesota Supreme Court, and in 2020 the Minnesota Supreme Court granted my Petition to Resign as a practicing attorney. I have not sought attorney registration in New Mexico. My appearance here is as a factual and policy witness, recognizing that the boundary between public policy and legal issues is often quite fuzzy in utility matters.

Executive Summary

I have reviewed the proposals that the Joint Applicants have made in this Case.

Based on my review, I believe that the proposed acquisition should not be approved as filed.

The key parts of my opinion are as follows:

- At a fundamental level, the acquisition as proposed does not provide meaningful benefits to PNM ratepayers or the public.
- The acquisition would be beneficial to PNM stockholders and senior managers, but not to ratepayers.
- No synergies are even claimed to result from the acquisition.
- PNM goes from being a significant NM business, responsible to the local community, to an insignificant footnote on a multi-national conglomerate's balance

1 sheet. PNM will be responsive only to its new masters, not to any local community
2 or authority.

3 • PNM's failure to secure bids from other suiters demonstrates that the proposed
4 acquisition has not been tested for fairness to ratepayers.

5 • PNM ratepayers get saddled with additional costs - millions of dollars would be
6 added to rates for the proposed 100 new hires; those new hires are not supported as
7 being an improvement to PNM's operations.

8 • PNM's decisions related to FCPP were imprudent and full cost recovery would
9 negate any and all possible benefits of the proposed acquisition. Permitting recovery
10 by a post-acquired PNM would be inapposite to sound ratemaking principles and
11 practices.

12 • The nominal \$24.6 million "rate credit" to ratepayers is not sufficient in light of the
13 acquisition premium being paid by Avangrid and Iberdrola.

14 • Any potential improvement in costs of debt is speculative and will take years or
15 decades to be realized if at all.

16 • Any potential advantages in procurement will be nominal and provide *de minimis*
17 benefit to ratepayers.

18 • The "guarantees" about localism are short-lived and provide no real value to
19 ratepayers.

- 1 • The offers provided by Avangrid and PNM don't comport with even the minimum
2 benefits provided in the recent merger cases, and therefore should be considered
3 non-compliant with Commission precedent.
- 4 • The Commission should reject the proposed acquisition as filed.
- 5 • Any approval by the Commission should only take place in conjunction with the
6 imposition of meaningful conditions.

7
8 **The Joint Application Should Not Be**
9 **Approved by the Commission as Proposed**
10

11 **Q. Have you read and studied the Joint Applicants' filing in this Docket?**

12 A. Yes. I have reviewed their prefiled direct testimony, their exhibits, and the
13 summary materials filed on November 23, 2020. I have also reviewed their responses
14 to parties' discovery requests.

15 **Q. What have the Joint Applicants asked the Commission to do in this filing?**

16 A. Through a complex series of transactions, move PNMR from being a free-
17 standing entity to a component of Avangrid's North American corporate holdings
18 and thus a minor asset in Iberdrola's world-wide holdings. The Joint Applicants
19 have asked the Commission to approve the changes of ownership and ultimate
20 control being planned under New Mexico's Public Utility Act, Sections 62-6-12 and
21 62-6-13.

22 **Q. Are there standards which guide the Commission's review of this filing?**

1 A. Yes. The governing provisions of New Mexico law are found in the state's Public
2 Utility Act. Specifically, Section 62-6-12 requires prior authorization by the
3 Commission of a transaction of the nature of the acquisition proposed here. And
4 Section 62-6-13 permits the NMPRC to reject proposed acquisitions when it finds
5 that the proposed transaction is unlawful or is "inconsistent with the public
6 interest."

7 **Q. What do the Joint Applicants say are the factors the Commission should use in**
8 **reviewing their request?**

9 A. Their witness Kemp proposed these factors:

10 I understand that the Commission has previously applied the following four
11 principal factors when determining whether to approve a utility acquisition:

- 12 1) whether the acquisition is beneficial to utility customers;
13 2) whether the Commission's jurisdiction will be preserved;
14 3) whether the quality of utility service will be diminished; and
15 4) whether the acquisition will result in the improper subsidization of non-utility
16 activities.

17 Additionally, I understand that the Commission has considered two additional
18 important factors:

- 19 1) careful verification of the qualifications and financial health of the new owner
20 and
21 2) adequate protections against harm to customers.

22 Kemp Direct at 10-11.

23 It appears that witness Kemp was referring to the Commission's Certification of
24 Stipulation in Case No. 15-00327-UT, but was paraphrasing language of that

1 decision and omitting several of the conditions that the Commission required for
2 approval of an acquisition. Certification of Stipulation, June 8, 2016, at 31-32.

3 **Q. Are those the only conditions that the Commission in past acquisition cases**
4 **have considered to ensure than an acquisition is in the public interest?**

5 A. No. In Case No. 19-00234-UT, the Hearing Examiner, in her Amended
6 Certification of Stipulation, issued February 12, 2020, listed the following other
7 conditions to be considered when determining the public interest. At p. 23-24 she
8 provided the following list:

- 9 • no adverse impact on utility's existing rates: Case No. 3712, Recommended
10 Decision at 23 (7-22-02), adopted by Final Order (8-20-02); Case No. 3103,
11 Recommended Decision at 20 (1-10-00), adopted by Final Order (1-18-00);
- 12 • maintain current offices for period of time: Case No. 3103, Recommended Decision
13 at 22; Case No. 04-00315-UT, Certification of Stipulation at 49; Case No. 08-00078-
14 UT, Certification of Stipulation (11-24-08), adopted in relevant part by Final
15 Order Partially Approving Certification of Stipulation at 106-08 (12-11-08),
16 clarified by Order on Request for Clarification (3-30-10);
- 17 • maintain employee wages and benefits: Case No. 08-00078-UT, Certification of
18 Stipulation at 108;
- 19 • not recover transaction costs from ratepayers: Case No. 3103, Recommended
20 Decision at 22; Case No. 04-00315-UT, Certification of Stipulation at 42; Case No.
21 11-00085-UT, Recommended Decision at 27 (12-2-11);

- 1 • hold customers harmless from negative impacts of transaction: Case No. 2678,
2 Recommended Decision at 85 (11-15-96), adopted by Final Order (1-28-97); Case
3 No. 3103, Recommended Decision at 23; Case No. 3116, Recommended Decision
4 at 40 (5-4-00), adopted by Final Order (5-9-00);
- 5 • require utility to give Commission notice of its intent to pay dividends to the
6 holding company: Case No. 3103, Recommended Decision at 21; Case No. 3712,
7 Recommended Decision at 20; Case No. 08-00078-UT, Certification of Stipulation
8 at 30;
- 9 • agreement by utility to not recover acquisition adjustment from ratepayers: Case
10 No. 3103, Recommended Decision at 20; Case No. 3712, Recommended Decision
11 at 21; Case No. 04-00315-UT, Certification of Stipulation at 42; Case No. 08-00078-
12 UT, Certification of Stipulation at 104; Case No. 11-00085-UT, Recommended
13 Decision at 27;
- 14 • require utility to waive any claims of preemption as a basis for challenging the
15 Commission's disallowance of costs: Case No. 2678, Recommended Decision at
16 85; Case No. 3103, Recommended Decision at 21; Case No. 3116, Recommended
17 Decision at 39; Case No. 3712, Recommended Decision at 21;
- 18 • prohibit utility from recovering increased costs of capital that may result from
19 transaction: Case No. 3103, Recommended Decision at 20; Case No. 3116,
20 Recommended Decision at 40;
- 21 • file Cost Allocation Manual: Case No. 04-00315-UT, Certification of Stipulation 48;

- 1 • hold ratepayers harmless from increases in cost of replacement debt: Case No. 11-
2 00085-UT, Recommended Decision at 2;
- 3 • rate freeze: Case No. 08-00078-UT, Certification of Stipulation at 26; Amended
4 Certification of Stipulation 24 Case No. 19-00234-UT
- 5 • agreement by acquiring company to not sell for period of time: Case No. 08-00078-
6 UT, Certification of Stipulation at 26;
- 7 • agreement by acquiring company to invest certain amount in utility for period of
8 time: Case No. 08-00078-UT, Certification of Stipulation at 26.

9 Further, when the Hearing Examiner recommended approving the Stipulation in the
10 EPE merger case with J.P. Morgan, she found it was fair, just, and reasonable and in
11 the public interest. *Id.*, p. 62. She recommended approval because the Stipulation
12 “does not violate any regulatory principle or practice.” *Id.*, p. 63.

13 **Q. Are those the appropriate factors here?**

14 A. Yes. In my opinion, the over-arching issue is whether PNM customers would be
15 better off as a result of the proposed acquisition. I see that issue as being embedded
16 in the first of the factors witness Kemp presented, “whether the acquisition is
17 beneficial to utility customers.” It is also restated in the other factors, including
18 “quality of utility service”, “improper subsidization’, and “protections against harm
19 to customers.” Unless the Joint Applicants can demonstrate that PNM’s customers
20 would be better off as a result of the proposed acquisition, none of the other factors
21 witness Kemp noted can save the proposed acquisition from rejection.

1 **Q. How do you interpret that factor in practice?**

2 A. I see the practical application as requiring the Joint Applicants to demonstrate
3 that PNM customers will see an overall positive benefit from the proposed
4 acquisition. In other words, it is not sufficient for PNM customers to be “no worse
5 off” as a result of the proposed acquisition, but rather there must be actual
6 improvements realized by customers. The conditions set out by the Hearing
7 Examiner listed above all relate to insuring that there is an overall positive benefit to
8 a proposed acquisition of an New Mexico utility, so that it would be “fair, just, and
9 reasonable and in the public interest.”

10 **Q. Why is that an appropriate burden for the Joint Applicants here?**

11 A. Because that is the standard that the acquiring parties applied in deciding
12 whether to absorb PNMR. Iberdrola would not have decided to spend
13 approximately \$8.3 billion on the proposed acquisition (JA Response to NEE
14 Interrogatory 4-23, attached as Exhibit CKS-2) unless it had concluded there would
15 be a net benefit from the acquisition of at least that amount. The same standard
16 should be used to evaluate the proposed acquisition from the customer’s
17 perspective.

18 It is also sound regulatory policy. “Regulation must replicate the pressures of
19 competition. Successful competitors do not rest on their status quo performance.
20 They say ‘How do I out-do my competitors (both actual and potential), so I can keep
21 my current customers and attract new ones?’ To deny customers the benefits of that

1 sentiment, to accept the status quo as the definition of ‘no harm,’ is to do customers
2 harm.” *“No Harm” vs. “Positive Benefits”: The Wrong Conversation about Merger*
3 *Standards*, Hempling, S, [https://www.scotthemplinglaw.com/essays/no-harm-vs-](https://www.scotthemplinglaw.com/essays/no-harm-vs-positive-benefits)
4 [positive-benefits](https://www.scotthemplinglaw.com/essays/no-harm-vs-positive-benefits), retrieved March 21, 2021, attached as Exhibit CKS-3.

5 **Q. Has the standard been used in other cases before the Commission?**

6 A. Yes.

7 In addressing the statutory requirements for approval of mergers in 1997, the
8 Commission considered the standard for determining whether a merger is
9 “inconsistent with the public interest.” The Commission approved the declaration in
10 the Recommended Decision that “the test is whether the public interest is served by
11 approving the merger as determined by the facts and circumstances of each case.
12 Generally, the complexities of mergers should require a positive benefit to
13 ratepayers if they are to be approved.” Case No. 2678, Recommended Decision at 22,
14 adopted by Final Order Approving Recommended Decision (Jan. 28, 1997)
15 (emphasis added.)

16 In Case No. 15-00327-UT, the Teco Energy-New Mexico Gas Company-Continental
17 Energy Systems acquisition matter, Commission Staff explained that commitments
18 made by the Joint Applicants should be considered “benefits” that would result
19 from approval of the transaction proposed in that mater. Staff did not consider
20 proposals that just continued the status quo benefits to be benefits. Rather, benefits
21 are improvements over the status quo, while hold “harmless provisions” are

1 protections that just ensure the status quo. The Attorney General in that case viewed
2 some commitments, not as benefits to ratepayers, but as "hold-harmless provisions,"
3 meaning that ratepayers are no worse off than they would be in the absence of the
4 transaction. Case No. 13-00231-UT, Certification of Stipulation at 54-55.

5 In 15-00327-UT, the New Mexico Gas Company-Teco Energy-Emera merger request,
6 the Hearing Examiner found, "In summary, the analysis shows that approval of the
7 Proposed Transaction will generate both quantifiable and unquantifiable benefits to
8 NMGC customers. ...The Proposed Transaction, as reflected in the Stipulation,
9 provides customers with substantially greater benefits and protections than those
10 originally proposed in the Joint Application." Certification of Stipulation at 52-53
11 (emphasis added.)

12 Most recently, in Case No. 19-00234-UT, the El Paso-Sun Jupiter-IIF acquisition
13 matter, the Hearing Examiner found that approval of the parties' Unopposed
14 Stipulation "will generate a quantifiable benefit - the bill credit - and an
15 unquantifiable benefit - IIF's commitment to not sell its interest in EPE for at least 10
16 years after closing - to EPE customers." Amended Certification of Stipulation at 62-
17 63. The Commission subsequently adopted all the findings and conclusions of the
18 Hearing Examiner and accepted the Amended Certification in its entirety. Final
19 Order Adopting Amended Certification of Stipulation, March 11, 2020 (emphasis
20 added.)

1 The necessity for the Joint Applicants here to demonstrate positive benefits seems
2 clear, and those cases demonstrate that it is not difficult for the moving parties in an
3 acquisition matter to provide substantial benefits through aspects of their proposal.

4 **Q. Have the Joint Applicants met the burden of demonstrating a net benefit from**
5 **the proposed acquisition?**

6 A. No.

7 **Q. Why do believe the Joint Applicants have not met their burden of**
8 **demonstrating that PNM customers will see an overall positive benefit from the**
9 **proposed acquisition?**

10 A. As a starting point answer, the Joint Applicants have admitted that they do not
11 believe there will actually be any synergies or operational efficiencies at PNM as a
12 result of the proposed acquisition. As a result, they have not developed any cost
13 estimates of possible synergies or efficiencies. They also have not quantified any
14 potential cost savings for PNM customers, and they admit that such potential cost
15 savings are not quantifiable! JA Response to NEE Interrogatory 2-5, attached as
16 Exhibit CKS-4. That admission is both stunning and revealing.

17 **Q. Please explain.**

18 A. The admission is stunning because synergy is usually the primary motivating
19 factor in business acquisitions. "Synergy is the concept that the combined value and
20 performance of two companies will be greater than the sum of the separate

1 individual parts. Synergy is a term that is most commonly used in the context of
2 mergers and acquisitions (M&A). Synergy, or the potential financial benefit achieved
3 through the combining of companies, is often a driving force behind a merger."
4 *Synergy*, Barone, <https://www.investopedia.com/terms/s/synergy.asp>, retrieved
5 March 24, 2021 (emphasis added), attached as Exhibit CKS-5.

6 The admission is revealing because it demonstrates that improvements in PNM's
7 operations which would result in customer benefits were not a factor in the decision
8 to proceed with the proposed acquisition. That is especially problematic given the
9 enormous acquisition premium which would be paid if the proposed acquisition
10 were to be approved. "An acquisition premium might be paid, too, if the acquirer
11 believes that the synergy created from the acquisition will be greater than the total
12 cost of acquiring the target company."
13 <https://www.investopedia.com/terms/a/acquisitionpremium.asp>, retrieved
14 March 22, 2021, attached as Exhibit CKS-6.

15 To proceed with the proposed acquisition not knowing (or having attempted to
16 learn) what cost savings might result that could be passed on to customers shows
17 how little concern the Joint Applicants about creating real benefits for PNM
18 customers.

19 **Q. Is there any indication in the filing that the Joint Applicants were concerned**
20 **about securing a new owner for PNMR that would be the best at generating**
21 **benefits to the public?**

1 A. No. As explained at length in the Definitive Proxy Statement, PNMR did not have
2 multiple bidders to compare to see which would maximize customer benefits – it
3 only negotiated with Avangrid/Iberdrola. Exhibit CKS-7 at 35-38. PNM’s failure to
4 secure bids from other suiters in the course of reaching a deal with Iberdrola
5 demonstrates that the proposed acquisition was not built with considerations of
6 benefits to ratepayers at its core.

7 **Q. Why is that important?**

8 A. Because of the conflict between a utility’s board’s fiduciary obligations under
9 corporate law to maximize the acquisition price for the utility’s owners, and the
10 obligation imposed by state utility law to put the public interest first. “The public
11 interest does not allow a government-protected utility to place shareholder gain
12 before customer benefit.” *Regulating Mergers and Acquisitions of U.S Electric Utilities*,
13 Hempling, S., 2020, at 25, attached hereto as Exhibit CKS-8.

14 When a utility has competing suitors, it can exercise its obligation to secure the best
15 customer benefit from among offers being made. Here, PNMR could not carry out
16 that obligation when it sold itself to a single acquirer.

17 As a result, the benefits to which the Joint Applicants’ witnesses point are *post-hoc*
18 creations, put into the filing not as central terms of a negotiated acquisition designed
19 to enhance the interests of the public and PNM’s customers, but just tacked on in the
20 hopes of “sweetening the deal” enough to secure Commission approval.

21 **Q. How do you view the supposed benefits advanced by the Joint Applicants?**

1 A. There is one which, if modified, would have the potential to provide a
2 meaningful benefit. As proposed, however, it does not.

3 As to the other asserted benefits of the proposed acquisition, most of the benefits
4 advanced by the Joint Applicants merely maintain the *status quo* for PNM customers,
5 and thus do not prove a benefit to customers. The others are either speculative, so
6 vague as to be meaningless, or actually detrimental to customers.

7 **Q. What is the one potential benefit?**

8 A. The Joint Applicants have proposed trickling out \$24.6 million of “rate credits” to
9 PNM’s customers over 36 months, which equals, according to Joint Applicants,
10 approximately \$0.59 per month for 3 years, for a maximum of \$21 per average
11 residential customer. PNM Exhibit NEE 1-5(A) and (C), attached as Exhibit CKS-9.
12 While superficially appealing, the amount of that supposed benefit is too small to be
13 a meaningful basis for approving the proposed acquisition.

14 **Q. Please explain what asserted benefits merely maintain the *status quo* for PNM**
15 **customers.**

16 A. Foundation giving. The three-year promise to continue Foundation giving at the
17 current level provides no net benefit to customers or the general public. The Joint
18 Applicants admit that “changes in circumstances in the future” could reduce even
19 that level of community support. PNM Response to NEE Interrogatory 1-39,
20 attached as Exhibit CKS-10.

1 Low-income assistance. The three-year promise to continue the current level of low-
2 income assistance provides no net benefit to customers or the general public. And,
3 as with Foundation giving, “changes in circumstances in the future” could reduce or
4 eliminate that assistance. Exhibit CKS-10.

5 Employment. The two-year promise to maintain PNM’s current level of
6 employment provides no net benefit to customers or the general public. And, at the
7 end of the two-year period, “there could be unanticipated changes in
8 circumstances....”, ending even that minimal promise to maintain the *status quo*.
9 PNM Response to NEE Interrogatory 1-44, attached as Exhibit CKS-11. Also, the
10 promise is only that that there will not be reductions to wages or benefits, and not to
11 collective bargaining agreements, which will only be honored for their remaining
12 term(s). JA Response to NEE Interrogatory 2-20, attached as Exhibit CKS-12.

13 Management. The Joint Applicants’ “intention” to keep local management located in
14 New Mexico provides no benefits above the current state of PNM’s operations. PNM
15 Response to NEE Interrogatory 1-47, attached as Exhibit CKS-13.

16 The statement that “Day-to-day operational decisions will continue to be made by
17 PNM... is another example of maintaining the *status quo* but providing no net
18 benefit. JA Response to NEE Interrogatory 2-12, attached as Exhibit CKS-14.

19 Board. The Joint Applicants’ state that “A search will be conducted to identify
20 qualified individuals residing in New Mexico to serve on the PNM Board of
21 Directors. At least two residents of New Mexico will be selected to serve on the

1 PNM Board of Directors [post-acquisition.” JA Response to NEE Interrogatory 2-11,
2 attached as Exhibit CKS-15. The current Board of PNMR consists of nine members,
3 three of whom reside in New Mexico. [https://www.pnmresources.com/esg-](https://www.pnmresources.com/esg-commitment/governance/board-of-directors.aspx)
4 [commitment/governance/board-of-directors.aspx](https://www.pnmresources.com/esg-commitment/governance/board-of-directors.aspx), retrieved March 24, 2021,
5 attached as Exhibit CKS-16. I see no improvement in public benefit from this
6 proposal. Also missing is any commitment to reflect the ethnic and cultural diversity
7 that epitomizes contemporary New Mexico on that Board. “New Mexico: Diversity
8 Is Our Strength”, [https://www.newmexicoculture.org/guide/2019-winter-guide-](https://www.newmexicoculture.org/guide/2019-winter-guide-to-museums-historic-sites/new-mexico-our-diversity-is-our-strength)
9 [to-museums-historic-sites/new-mexico-our-diversity-is-our-strength](https://www.newmexicoculture.org/guide/2019-winter-guide-to-museums-historic-sites/new-mexico-our-diversity-is-our-strength), retrieved
10 March 31, 2021, attached as Exhibit CKS-17.

11 Ring-fencing. The Joint Applicants have proposed several “ring fencing”
12 commitments that are designed to provide financial protections. Joint Application at
13 9; Kump direct testimony at 21-22. These are really just the items required by
14 Commission Rule 450. Joint Application at 9.

15 These supposed safeguards are only needed because of the proposed acquisition.
16 They do not improve anything, but rather are intended to prevent certain harms
17 which could otherwise be expected to result from the proposed acquisition and the
18 relationships among Avangrid and Iberdrola’s numerous operating entities. These
19 are analogous to a shopkeeper being advised to pay “protection” money to mobsters
20 to prevent her building from burning down: there would be no need for these
21 proposed safeguards if not for the likely harms arising from the Joint Applicants’
22 own activities.

1 The commitments stop short of providing the Commission a means of preventing
2 improper actions by PNM. Unless PNM is required to file with the Commission a
3 notice of its intent to pay a dividend at least 15 days before the dividend is paid
4 (with Commission Staff and the Attorney General being a copied on that notice on
5 the same day) which includes the amount of the proposed dividend, the proposed
6 payout ratio, and the historic payout ratios for the preceding three years, the
7 Commission will be in the dark on PNM's actions.

8 In sum, these "guarantees" are short-lived, minimal in scope, and provide no real
9 incremental value to ratepayers or the public.

10 **Q. What asserted benefits do you see as speculative?**

11 A. The largest speculative "benefit" surrounds future costs of capital.

12 **Q. Please explain.**

13 A. The Joint Applicants have argued that an improvement in PNMR's costs of debt
14 is a benefit that supports the proposed acquisition. But the argument that an
15 improved rating for PNMR by bond rating agencies is (1) speculative, (2) of future
16 impact, and (3) not capable of providing any benefit to ratepayers in the near future.

17 **Q. Why is any improvement speculative?**

18 A. Because there is no way to predict with any certainty what rating agencies may
19 do in the future as to PNMR's debt ratings. Joint Applicants' witness Lapson did not

1 perform any analysis on the cost savings that would result from the long-term cost
2 of bonds, and Avangrid has stated that cost savings from higher credit ratings has
3 not been quantified and is unquantifiable. JA Response to NEE Interrogatory 2-16,
4 attached as Exhibit CKS-18.

5 That statement is correct – the future is unknowable and unexpected factors often
6 intrude on presumptions about the future. For example, in early March 2021,
7 PNMR's shares price fell 1.5% after Citi downgraded the utility to "neutral" due to
8 uncertainties and risks with the Texas outage disaster and its impact on Avangrid's
9 requested regulatory approval. Avangrid shares dropped 1.7%. *Seeking Alpha*,
10 Fineman, [https://seekingalpha.com/news/3668825-pnm-resources-drops-after-citi-](https://seekingalpha.com/news/3668825-pnm-resources-drops-after-citi-downgrades-on-tough-outlook-for-avangrid-approval)
11 [downgrades-on-tough-outlook-for-avangrid-approval](https://seekingalpha.com/news/3668825-pnm-resources-drops-after-citi-downgrades-on-tough-outlook-for-avangrid-approval), retrieved March 25, 2021,
12 attached as Exhibit CKS-19.

13 **Q. Why is any improvement only of future impact?**

14 A. Any change in bond rating will only have a positive effect when PNM realizes
15 lower rates for new debt. PNM has significant outstanding debt that has embedded
16 costs. In its last general rate case, PNM's capital structure was 50% debt:

	A	B	C	D	E	F
1	Public Service Company of New Mexico					
2	Schedule A-5 - Revised Stipulation					
3	Summary of Total Capitalization and the Weighted Average Cost of Capital					
4	Test Period Ending 12/31/2018					
5						
6	Line No.	Capital Component	Total Capitalization Test Period	Percentage of Total Capitalization	Capital Component Cost	Weighted Average Cost
7						
8						
9	1	Long Term Debt	1,465,870	50.00%	4.93%	2.47%
10						
11	2	Preferred Stock	11,529	0.39%	4.62%	0.02%
12						
13	3	Common Equity	1,454,341	49.61%	9.575%	4.75%
14						
15	4	Total	2,931,739	100.00%		7.23%
16						
17					Tax Rate	38.62%
18						
19						Tax gross up
20					Debt	2.47%
21					Preferred	0.03%
22					Common	7.74%
23					Total	10.23%

Revised Stipulation Exhibit 1, page 22, Case No. 16-00276-UT. That debt totaled \$1.47 billion and had an embedded average cost of 4.93%. By the end of 2020, PNM's long-term debt had decreased to 48.3% of its total capitalization, and its total long-term debt was reported as being \$1,351,050,000. PNMR 2020 10-K at A-55; B-24, attached as Exhibit CKS-20. PNM issued \$200 million of new long-term debt in 2020. JA Response to NEE Interrogatory 6-12, attached as Exhibit CKS- 21.

PNM's capital structure at the end of 2020 was reported in this matter slightly differently:

PNM Table NEE 6-6		
Capital Structure as of 12/31/2020		
Description	Amount	Capital Ratio
Long-Term Debt	1,665,845	47.84%
Preferred Stock	11,529	0.33%
Common Equity	1,804,743	51.83%
Total	3,482,117	100.00%

JA Response to NEE Interrogatory 6-6, attached as Exhibit CKS- 22. PNM intends to maintain that capital structure through 2023. JA Response to NEE Interrogatory 6-8, attached as Exhibit CKS- 23.

Within that capital structure, the costs of PNM's debt at the end of 2020 were:

PNM Table NEE 6-3					
Description	Average Principal Balance	Average Interest Cost Rate	Weighting Ratio	Weighted Rate	Reference
Total Long-Term Debt	1,665,845	3.60%	85.79%	3.09%	PNM Exhibit NEE 6-4
Total Short-Term Debt	276,016	2.19%	14.21%	0.31%	PNM Exhibit NEE 6-5
Total Debt	1,941,861		100.00%	3.40%	

JA Response to NEE Interrogatory 6-3, attached as Exhibit CKS- 24. None of PNM's existing debt will be retired as a result of the proposed acquisition, through 2020. JA Response to NEE Interrogatories 1-35; 2-26; 6-9, attached as Exhibits CKS-25. Until and unless either (1) existing debt is replaced with new, lower-cost debt, or (2) new debt is issued at a lower cost than the embedded cost of 3.60%, the cost of debt to PNM will not change.

1 If PNM does achieve any savings on new issuances of its debt, that will have no
2 immediate impact on PNM and its rates; only when PNM issues new debt **and** it is
3 at a lowered cost will any positive change occur. But even that would be (1) of no
4 effect until a new rate case is filed by PNM and its overall costs of capital re-
5 determined and used to set rates, and (2) of only incremental effect, since any lower-
6 cost new debt would be offset by the embedded costs of existing debt.

7 PNM did not retire any long-term debt in 2020. Exhibit CKS-25. PNM will retire
8 \$160 million of senior unsecured notes by the time they mature on October 1, 2021
9 and anticipates issuing an equal amount of long-term debt to refinance these
10 maturing notes. JA Response to NEE Interrogatory 6-10, attached as Exhibit CKS- 26.

11 As to new debt, in 2021, PNM expects to request Commission approval to issue up
12 to \$350 million of new senior unsecured debt to refinance the \$160 million of
13 maturing notes. JA Response to NEE Interrogatory 6-13, attached as Exhibit CKS- 27.

14 PNM does not plan to retire any long-term debt or issue any new long-term debt in
15 2022. JA Response to NEE Interrogatory 6-11, attached as Exhibit CKS-28.

1 Based on PNM's discovery responses, the issuance of that replacement debt in 2021
2 will actually increase PNM's overall cost of debt.

3 **Q. Why is that?**

4 *SEE CONFIDENTIAL TESTIMONY OF CHRISTOPHER SANDBERG*
5 *FILED ON APRIL 2, 2021*
6

7 **Q. How else would a change in debt rating not provide a benefit to ratepayers?**

8 A. An example of how a positive change in PNM's debt rating provides no benefit
9 to PNM ratepayers is shown by PNM's filing in Case No. 21-00017-UT, where PNM
10 its seeking to add "carrying charges" to its recovery on unamortized rate base
11 amounts for the Four Corners generating plant. As PNM witness Baker explained in
12 his prefiled direct testimony:

13 **Q. ARE THERE CARRYING CHARGES ASSOCIATED WITH THESE**
14 **REGULATORY ASSETS AND LIABILITIES?**

15 A. Yes. To compensate both customers and PNM for any difference between
16 amounts financed through the securitization bond issuance, and the final
17 actual energy transition costs incurred by PNM, PNM will record carrying
18 charges. Similar to the final order in the San Juan Generating Station
19 Abandonment case (19-00018- UT), **PNM proposes to record carrying charges**
20 **based on its then currently approved cost of debt.** Once the regulatory asset
21 or regulatory liability is reflected in rate base in PNM's general rate case cost
22 of service study, PNM will terminate the calculation of carrying charges as the
23 unamortized balance will be included in rate base.

24 Baker Direct at 25 (emphasis added.)

25 **Q. Are there any other positive benefits to PNM customers from a potential**
26 **improvement in credit ratings?**

1 A. Witness Lapson opined that, assuming PNM's \$440 million revolving credit
2 facilities remain in effect after the proposed acquisition and remain at the same total
3 commitment level, a higher rating by S&P by one notch would reduce the annual
4 commitment fee by \$110,000 per annum. Response to NEE Interrogatory 1-37,
5 attached as Exhibit CKS-29. Measured against PNM's total expenses of \$414 million
6 in 2020 (Exhibit CKS-20 at A-41), that would amount to a 0.027% reduction in
7 expenses – a vanishingly minute amount.

8 **Q What other asserted benefits do you see as being too vague to be meaningful?**

9 A. Service. The Joint Applicants talk about improved service to customers, but admit
10 that improving service to PNM's customers is **among the long-term objectives** of
11 the proposed acquisition. JA Response to NEE Interrogatory 4-4, attached as Exhibit
12 CKS-30. A generic statement about potential long-term improvements, with no
13 concrete plans to get to those improvements, is just a platitude, not a benefit.

1 As a reference for Avangrid's performance, after Iberdrola purchased Central Maine
2 Power it fell to the very bottom of customer satisfaction surveys among all utilities
3 in the U.S., and has now been at the bottom for three years in a row. "CMP ranks
4 last in nation for customer service for third consecutive year."

5 [https://www.newscentermaine.com/article/news/central-maine-power-ranks-last-](https://www.newscentermaine.com/article/news/central-maine-power-ranks-last-in-nation-for-customer-service-for-third-year/97-eda418b5-7504-48c7-be88-313e8155add6)
6 [in-nation-for-customer-service-for-third-year/97-eda418b5-7504-48c7-be88-](https://www.newscentermaine.com/article/news/central-maine-power-ranks-last-in-nation-for-customer-service-for-third-year/97-eda418b5-7504-48c7-be88-313e8155add6)
7 [313e8155add6](https://www.newscentermaine.com/article/news/central-maine-power-ranks-last-in-nation-for-customer-service-for-third-year/97-eda418b5-7504-48c7-be88-313e8155add6), retrieved March 31, 2021, attached as Exhibit CKS-31. That
8 performance as so bad that in January 2021, the Maine Public Utilities Commission
9 ordered the company to pay a \$10 million penalty over 18 months, citing the
10 company's longstanding customer service failures.

11 While the Joint Applicants assert that it has taken steps to improve its performance
12 (JA Response to NEE Interrogatory 1-43, attached as Exhibit CKS-32), that is not
13 reflected in the most recent – 2020 – service quality survey. Avangrid's commitment
14 "to work closely with local management to address existing or future reliability or
15 service quality issues" is laudable, but it has no enforcement mechanism. Without
16 both a benchmark measurement of customer satisfaction and periodic surveys, with
17 the Commission able to impose financial penalties, the "commitment" is
18 meaningless.

19 Information. The Joint Applicants also refer to PNM being able to share in
20 information about best practices, innovation, and collaboration. Exhibit CKS-14.

21 Again, there are no specific plans to secure those data for PNM and this remains just
22 another platitude.

1 Economic development. The Joint Applicants also suggest they will make
2 contributions to economic development projects or programs in New Mexico, at
3 shareholder expense, totaling \$2.5 million over the two-year period following the
4 acquisition. However, “Avangrid cannot determine the specific projects or
5 programs, including the location, date, and amount, until after the closing of the
6 Proposed Transaction.” PNM Response to NEE Interrogatory 1-46, attached as
7 Exhibit CKS-33. In other words, there is no plan to actually make investments, and
8 no basis from which the Commission could conclude there will be any economic
9 benefit. This is inconsistent with the economic development benefits actually
10 secured in Commission Case No. 19-00234-UT.

11 **Q. What about the transition to clean energy?**

12 A. After a long recitation of platitudes about Avangrid and Iberdrola, the only
13 substantive response to the question of how the proposed acquisition will accelerate
14 PNM’s transition to clean energy, was, “While early retirement is certainly an
15 important goal, where an equity owner owns a minority share and is not a
16 controlling interest holder (as PNM is with Four Corners), the best way to continue
17 building momentum is to divest as soon as possible. With an early exit by PNM,
18 PNM’s customers will be served from a resource mix with reduced carbon
19 emissions.” JA Response to NEE Interrogatory No. 1-13(A), attached as Exhibit CKS-
20 34. Again, this is so vague as to be meaningless.

1 It is also contradicted by Avangrid's actions elsewhere. Avangrid *via* Central Maine
2 Power used its money and political influence to kill a pro-rooftop solar bill, which
3 would have resulted in a boost in customer satisfaction and service. Central Maine
4 Power worked behind the scenes in 2017 to rig the debate over rooftop solar and net
5 metering in its favor, including contributing to the Governor's PAC. "How Central
6 Maine Power killed a popular pro-rooftop solar bill",
7 <https://www.energyandpolicy.org/central-maine-power-solar-net-metering/>,
8 retrieved March 30, 2021, attached as Exhibit CKS-35. A similar action here would be
9 in direct conflict with the state's policy of supporting renewable energy. Renewable
10 Energy Act, NMSA § 62-16.

11 The lack of real substance in this claim can be seen in the fact that PNMR has
12 transferred the Four Corners Power Plant ("FCPP") to third parties in a way that
13 permits the coal-fired base load plant to continue to be operated for years to come.
14 "Four Corners station could move to seasonal operations",
15 [https://www.abqjournal.com/2368876/four-corners-station-could-move-to-](https://www.abqjournal.com/2368876/four-corners-station-could-move-to-seasonal-operations.html)
16 [seasonal-operations.html](https://www.abqjournal.com/2368876/four-corners-station-could-move-to-seasonal-operations.html), retrieved March 25, 2021, attached as Exhibit CKS-36. That
17 is not a meaningful step in removing carbon-based generation from use in New
18 Mexico. The same slight of hand has been used by other utilities, to the detriment of
19 the environment. "Companies go green, but the planet doesn't always win",
20 [https://www.politico.com/newsletters/the-long-game/2021/03/30/companies-](https://www.politico.com/newsletters/the-long-game/2021/03/30/companies-go-green-but-the-planet-doesnt-always-win-492293)
21 [go-green-but-the-planet-doesnt-always-win-492293](https://www.politico.com/newsletters/the-long-game/2021/03/30/companies-go-green-but-the-planet-doesnt-always-win-492293), retrieved March 30, 2021,
22 attached as Exhibit CKS-37.

1 At the same time it has arranged for FCPP to continue to operate, PNM wants its
2 customers to pay dearly for its imprudent actions regarding FCPP as PNM
3 abandons the plant.

4 **Q. How does that issue arise in this proceeding?**

5 A. The Joint Applicants want to recover the costs of abandoning FCPP from PNM's
6 ratepayers. As explained by witness Krump, "...these Four Corners Power Plant cost
7 recovery issues are not similar to commitments not to recover costs of the Proposed
8 Transaction from ratepayers and not part of the Proposed Transaction." JA Response
9 to NEE Interrogatory 2-8, attached as Exhibit CKS-38.

10 Elsewhere, the Joint Applicants have given mixed statements about the integration
11 of a specific regulatory treatment of FCPP:

12 • "Abandonment approval [of FCPP] is not a specific condition to the Merger
13 Agreement. The Merger Agreement does not preclude closing the Proposed
14 Transaction prior to the Commission granting abandonment approval." PNM
15 Response to NEE Interrogatory No. 1-9(I), attached as Exhibit CKS-39.

16 • "The merger proceeding is not contingent upon the outcome of the abandonment
17 case." PNM Response to NEE Interrogatory 1-49, attached as Exhibit CKS-40.

18 However, the Joint Applicants also provided a clear response to the question of
19 whether the \$50.30 per share price in the proposed acquisition assumes 100%
20 recovery on FCPP: "PNM assumed recovery of its capital investments consistent
21 with current authorized ratemaking treatment and as allowed under the Energy
22 Transition Act." JA Response to NEE Interrogatory 1-11, attached as Exhibit CKS-41.

1 That should leave no doubt that the Joint Applicants intend that FCPP recovery
2 costs be passed to the customers of the surviving PNM entity post-acquisition.

3 **Q. Was FCPP part of the parties' negotiations?**

4 A. Yes. The history of the proposed acquisition shows that escaping from FCPP and
5 recovering costs have been a long-standing part of negotiations. In late 2019, PNMR
6 provided Iberdrola with information regarding ongoing activities related to its
7 existing strategy for exiting from Four Corners and transitioning to clean energy.
8 Exhibit CKS-7 at 39. In a January 30, 2020, meeting, Mr. Azagra Blazquez indicated
9 that PNMR's exposure to coal remained an issue for Iberdrola and Avangrid. They
10 discussed how the issue could be resolved in light of PNMR's ongoing initiative to
11 pursue a strategy to exit from its interest in FCPP early, by 2024. Exhibit CKS-7 at 40.
12 In June of 2020, PNMR Board discussions included plans to exit Four Corners and
13 other transaction matters. Exhibit CKS-7 at 44. In August of 2020, PNMR
14 management received a draft of a letter proposing a transaction between PNMR and
15 Avangrid; the letter stressed the importance to Iberdrola and Avangrid of having
16 definitive documentation in place for PNMR's exit from Four Corners. Exhibit CKS-
17 7 at 45. In September of 2020, PNMR had a new draft of a merger agreement, which
18 contained a closing condition providing for PNMR's entering into definitive
19 agreements providing for the exit from Four Corners. Exhibit CKS-7 at 46.

20 Finally, when the PNMR Board recommended shareholder approval of the
21 Iberdrola/Avangrid acquisition, it noted among the financial forecasts for the

1 transaction both the divestment of FCPP and “the PNM securitization [being]
2 implemented in 2022.” Exhibit CKS-7 at 53. That representation to shareholders left
3 no room for doubt of the intention that PNM customers bear the FCPP burden.

4 **Q. Where does that leave the issue of placing FCPP abandonment costs onto PNM**
5 **customers?**

6 A. It seems plain that PNMR will do whatever it can to put those abandonment costs
7 onto ratepayers, and that the Joint Applicants have grounded the proposed
8 acquisition on an assumption that PNM will be successful in doing so. PNMR avoids
9 the fact that the Hearing Examiners in Case No. 16-00276-UT made extensive
10 findings demonstrating the imprudence of PNM in extending its participation in
11 FCPP and pursuing the \$90.1 million of the SCR investment and the \$58 million of
12 the additional life-extending capital improvements. The Hearing Examiners found
13 that the appropriate remedy for that imprudence was the disallowance of all costs
14 associated with the investment and improvements. *Certification of Stipulation*, Case
15 No. 16-00276-UT, October 31, 2017, at 43. While the Commission ultimately deferred
16 a final ruling on FCPP prudence (“ . . . the benefits to ratepayers under the Revised
17 Stipulation are so significant that the Commission is justified in deferring, for the
18 limited duration of the period that the revised Stipulation will be in effect, a finding
19 on the issue of PNM’s prudence in its continued participation and investment in
20 FCPP . . .”, *Revised Order Partially Adopting Certification of Stipulation*, at 23), the
21 Hearing Examiners’ findings remain in place, and demonstrate why ratepayers

1 should not be saddled with any of those imprudent investment/capital expenditure
2 costs.

3 PNM's intransigence in refusing to recognize that it is the corporation's
4 stockholders, not its ratepayers, who should bear the burden of management's
5 failure to operate a utility in a prudent manner is both distressing and unfounded.

6 The law is clear that, "ratepayers are not to be charged for negligent, wasteful or
7 improvident expenditures, or for the cost of management decisions which are not
8 made in good faith. *Pub Serv. Co. of N.M.* 101 P.U.R. 4th 126, 151 (1989). The proper
9 remedy for a utility's imprudence "should equal the amount of the unreasonable
10 investment" in order to "hold ratepayers harmless from any amount imprudently
11 invested[.]", *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n*,
12 2019-NMSC-012, 444 P.3d 460, ¶42 (2019), quoting *PacifiCorp*, UE 246, Order No. 12-
13 493 at 32, 31; 2012 WL 6644237.

14 **Q. What should the Commission do here about FCPP?**

15 A. The roughly \$300 million of imprudent FCPP costs which PNM seeks to impose
16 on ratepayers would dwarf all of the benefits asserted by the Joint Applicants. If the
17 proposed acquisition is evaluated without a requirement that the FCPP costs be
18 excluded from recovery in rates, it simply is not possible to find that the transaction
19 is in the public interest.

20 The FCPP costs are analogous to the costs of the proposed acquisition itself: they are
21 not costs in which ratepayers had any say, nor do they now provide any benefit to

1 ratepayers. Just as the Joint Applicants have recognized that ratepayers should not
2 be responsible for costs that are not necessary for the normal operation of PNM –
3 since the acquisition costs are not required for the provision of utility service –
4 ratepayers should not be responsible for costs that do not reflect the prudent
5 operation of PNM in rendering utility service.

6 The Commission should reject the proposed acquisition unless either the Joint
7 Applicants agree that none of the abandonment and securitization costs related to
8 FCPP will in any fashion be recovered from ratepayers, or the Commission imposes
9 an identical condition on approval.

10 **Q. What about the asserted improvements in procurement by being part of**
11 **Avangrid?**

12 A. According to the Joint Applicants., “The procurement ... savings are not
13 quantifiable and have not been quantified.” JA Response to NEE Interrogatory 2-9,
14 attached as Exhibit CKS-42. The Joint Applicants have admitted that PNM has
15 already been able to benefit from doing joint procurement with unaffiliated entities,
16 as well as with TNMP. JA Response to NEE Interrogatory 1-40, attached as Exhibit
17 CKS-43. Those efforts will no doubt continue, but they are not a result of the
18 proposed acquisition.

19 With no basis for measuring any potential advantages in procurement, there is no
20 way for a benefit to ratepayers to be found.

21 **Q What about the Joint Applicants claims regarding reliability?**

1 A. Given the history of Central Maine Power, the Joint Applicants were specifically
2 asked to provide an itemization of all planned investments by Avangrid in PNM for
3 the first five years for reliability and safety post-closing. Their response was another
4 vague and meaningless statement, "The commitment is for PNM to invest in its
5 system. PNM can access capital from a variety of sources to finance this investment.
6 Avangrid defers to PNM about what investments will be required for reliability and
7 safety." JA Response to NEE Interrogatory 2-28, attached as Exhibit CKS-44.

8 When asked about operational changes post-acquisition, the Joint Applicants said
9 only, "PNM is currently providing safe and reliable service to its customers at a
10 reasonable cost, and will continue to do so after closing. However, after closing,
11 PNM will have access to the assistance of Avangrid and Avangrid Networks, which
12 will provide added benefits to PNM and its customers." JA Response to NEE
13 Interrogatory 4-31, attached as Exhibit CKS-45. Those vacuous responses
14 demonstrate that there is no quantifiable benefit regarding reliability and safety
15 apparent as a result of the proposed acquisition.

16 **Q. Are there provisions which would provide a public benefit that are absent**
17 **from the plans for the proposed acquisition?**

18 A. Yes. An issue that has arisen for other utilities which, like PNM, are moving to a
19 renewable-focused, more distributed, and mixed utility- and non-utility owned
20 generation is the process by which the utility will acquire new generation resources.
21 Concerns regarding the fairness of the utility's selection process are more intense

1 when the utility has corporate affiliates which are in the generation business and
2 may be among candidates for supply contracts.

3 **Q. Why is that a concern here?**

4 A. Avangrid Renewables Holdings, Inc. will become a corporate affiliate of PNM if
5 the proposed acquisition were to be approved. At present, PNM has in place two
6 long-term purchased power agreements ("PPAs") with subsidiaries of Avangrid
7 Renewables Holdings, Inc. PNM has represented that it will report any future
8 material amendments to these PPAs in accordance with the Commission's Rule 450
9 Class I Transaction notification requirements. Darnell direct testimony at 9.

10 While the commitment to follow the Commission's affiliate rules is encouraging, it
11 leaves out a protective feature which should be present to protect PNM ratepayers
12 and ensure that the public receives the full benefit of future PPAs with affiliates and
13 non-affiliates.

14 **Q. What is that feature?**

15 A. An independent evaluator for all RFPs under which PNM seeks to acquire all
16 new generation resources. Only with a truly independent evaluation of both the RFP
17 itself and the selection process can the public be assured that competitively fair and
18 transparent supply-side resource procurement practices are being followed in
19 practice.

20 **Q. Has that idea been adopted elsewhere?**

1 A. Yes. In December 2007, the California Public Utilities Commission (CPUC) issued
2 a decision directing the California investor-owned utilities (IOUs) to use
3 Independent Evaluators (IEs) to monitor long-term resource solicitations involving
4 affiliate, utility-owned, or utility-turnkey bids and for all competitive solicitations
5 seeking products greater than two years in length regardless of whom potential
6 bidders may be. The IEs Independent Evaluators monitor the cost-effectiveness and
7 overall appropriateness of transactions. *Phase 2 Decision*, D. 12-05-037.

8 The Hawai'i Public Utilities Commission requires IOUs to follow a "Competitive
9 Bidding Framework" for new generation with capacities greater than 5 MW (Oahu)
10 or 2.72 MW (MECO, HELCO), including monitoring of the bid process by AN
11 Independent Observer. *In the Matter of Instituting a Proceeding to Investigate*
12 *Competitive Bidding for New Generating Capacity in Hawai'i*, Docket No. 03-0372,
13 *Decision and Order No. 23121*, Dec. 8, 2006.

14 The Ohio Public Utilities Commission has adopted a rule which requires that a
15 utility's plan for a competitive bidding process for retail electric generation service
16 that is delivered to the utility shall include the use an independent third party to
17 design an open, fair, and transparent competitive solicitation; to administer the
18 bidding process; and to oversee the entire procedure. Ohio Administrative Code,
19 §4901:1-35-08, *Competitive bidding process requirements and use of independent third*
20 *party*.

1 Those utility commissions recognized the importance of removing incentives for a
2 utility to favor affiliates or certain bidders in the course of supply decisions, and
3 found that the public is best served by the use of an independent third party to
4 oversee that process.

5 **Q. Who should bear the cost of the independent evaluator?**

6 A. The payment of the independent evaluator should be borne solely by PNM
7 shareholders or Avangrid, not by PNM ratepayers.

8 **Q. What changes have you identified as being harmful to PNM's customers or**
9 **community?**

10 A. If the proposed acquisition is approved, PNM will become an insignificant part of
11 a multi-continental conglomerate, and will be responsive only to its new masters,
12 not to any local community or authority. The proposed acquisition would turn
13 PNMR from a publicly owned company into a privately held entity owned by
14 Avangrid and indirectly by Iberdrola, Avangrid's parent, a Spanish owned
15 company. Under the New Mexico definition of "affiliated interest", Avangrid and
16 Iberdrola would become affiliated interests of PNM and PNMR, because they each
17 would "possess[] the power to direct or cause the direction of the management and
18 policies of [PNM and PNMR] notwithstanding the lack of ownership of ten percent
19 or more of the[ir] voting securities." NMSA § 62-3-3(A)(4) (2019).

20 **Q. Please explain the harmful effects.**

1 A. In 2020, PNM had total revenues of \$1,139,834,000, while PNMR's other
2 subsidiary (TNMP) had total revenues of \$383,178,000. Exhibit CKS-20 at A-28. PNM
3 thus made up 75% of PNMR's overall revenues of \$1,523,012,000. From an economic
4 perspective, that made PNM the most important part of PNMR's overall operations
5 and assured that PNM would get the attention it needed.

6 In contrast, Avangrid reported \$6,320,000,000 of operating revenues for 2020, the
7 lowest level in three years. Avangrid 2020 10-K, attached as Exhibit CKS-46, at 57-58.
8 If PNRM had been part of Avangrid in 2020, PNM's revenues would have been only
9 15% of Avangrid's operating revenues, a vastly reduced level of importance to its
10 new corporate parent.

11 Iberdrola S.A., which would become PNM's ultimate parent if the proposed
12 acquisition were completed, reported total revenues in 2020 of 33,145,000,000 Euros,
13 or approximately \$39,643,408,700. Annual Financial Report 2020, Iberdrola, S.A.,
14 attached as Exhibit CKS-47 at 57. If PNM had been part of Iberdrola in 2020, its
15 revenues would have amounted to only 2.8% of Iberdrola's operating revenues.

16 The difference is both clear and compelling: PNM would move from being the most
17 important part of its ultimate parent's operations to become an insignificant part of a
18 multi-national business' operations.

19 **Q. Will there be a benefit to the local economy from the proposed acquisition?**

1 A. No. PNM will go from being a significant NM business, responsible to the local
2 community, to an insignificant footnote on a multi-national conglomerate's balance
3 sheet. The proposed acquisition would give Iberdrola/ Avangrid ten regulated
4 electricity companies in six states -- New York, Connecticut, Maine, Massachusetts,
5 New Mexico and Texas. The owner of that widely dispersed group of operating
6 companies, with PNM a minor player, will have little incentive to be concerned
7 about the local New Mexico economy.

8 **Q. Won't there be positive effects on the New Mexico economy from the proposed**
9 **acquisition?**

10 A. No. The one asserted concrete benefit to the New Mexico economy is a promise
11 regarding increase employment. "[T]he commitment to add an additional 100 full
12 time jobs in New Mexico over three years do not currently exist and reflect a
13 transaction benefit that is in the public interest." JA Response to NEE Interrogatory
14 2-17, attached as Exhibit CKS-48.

15 The claim that doing so will be a customer or community benefit is false for several
16 reasons.

17 First, PNM ratepayers face being saddled with the additional costs of those new
18 hires, since their salaries and benefits will doubtless be asserted as recoverable
19 through PNM's rates as an operating expense.

1 Putting the 100 new hires in context, as of December 31, 2020, PNM had only 917
2 employees. Exhibit CKS-20 at A-10. A 100-person addition would be more than a
3 10% increase in personnel! If allowed as a legitimate expense, millions of dollars will
4 be added to rates for the promised new hires. If PNM pays those 100 new employees
5 just a minimal living wage of \$15/hour, its fully loaded labor cost for each would be
6 approximately \$45,000. 100 employees would thus cost PNM \$4,500,000 per year.
7 PNM can be expected to seek full recovery of those employee expenses in rates, so
8 that its customers would be saddled with the burden of paying higher rates to
9 recover those expenses for years to come, long beyond the three years of the
10 proposed rate credits.

11 Second, PNM has not explained why those new positions are needed, above and
12 beyond the level of staff already in place. PNM does not even know what those new
13 employees would do: "Avangrid cannot specifically determine the titles, salaries,
14 responsibilities and dates of job creation until after closing of the Proposed
15 Transaction." JA Response to NEE Interrogatory 1-45, attached as Exhibit CKS-49. If
16 those 100 new employees are truly needed, why have they not been in place
17 previously? If they were not needed in the past, why are they suddenly needed, due
18 only to a change in corporate ownership? And why, if they have not been identified,
19 has an exact number of new hires been promised?

20 Third, the new hires have not been demonstrated as creating an improvement to
21 PNM's operations nor the New Mexico economy. "Each of these jobs will be in New
22 Mexico and will be created prior to the end of the three-year period....PNM has no

1 plans to limit its future hiring to only current New Mexico residents.” Exhibits CKS-
2 49 ; CKS-13. In other words, there is no guarantee as to when the new hires would
3 come online, and no requirement that they even be New Mexico residents!

4 Taken together, the facts show that the asserted benefit is nothing of the sort.

5 **Q. How do the “commitments” advanced by the Joint Applicants compare to other**
6 **acquisition and merger cases in New Mexico which have been approved?**

7 A. They don’t comport with even the minimum benefits provided in other cases
8 where approval was granted.

9 **Q. Please elaborate.**

10 A. In the most recently approved acquisition matter, El Paso Electric, Case No. 19-
11 00234-UT, the Joint Applicants committed to, among other items:

- 12 • providing a rate credit to EPE's New Mexico customers of \$8.7 million to be
13 distributed in 36 monthly installments, with no rate recovery of the credit;
- 14 • dedicating \$20 million to promote economic development within New Mexico
15 through an independent fund;
- 16 • maintaining EPE’s charitable giving at \$1.2 million annually for three years;
- 17 • evaluating potential methods to improve EPE's existing low-income assistance
18 programs while maintain them without a time limitation;
- 19 • creating or enhancing programs that provide entry-level training focused on
20 engineering, management and finance skills for the local labor force in collaboration
21 with New Mexico State University;

- 1 • creating apprenticeship programs for technical and professional positions for
2 students in local high schools and colleges;
- 3 • enhancing existing utility supplier diversity by promoting the inclusion of
4 minority, women, LGBTQ and veteran-owned businesses into EPE's supply chain;
- 5 • implementing a five-year bar on involuntary workforce reductions, or changes to
6 wages, benefits, or other terms of employment;
- 7 • entering into good faith bargaining with its represented employees during and
8 after the term of the existing collective bargaining agreements to negotiate new
9 bargaining agreements;
- 10 • creating a ten-member Board of Directors, of which seven will be Independent
11 Directors, and of those seven, at two will reside within EPE's service territory, at
12 least two will be individuals who either served on EPE's Board of Directors
13 immediately before closing, are local business/community leaders or are from a
14 university within EPE's service territory. And at least four will be "Disinterested"
15 (that is, also independent of IIF US 2 and its affiliates and J.P. Morgan, and have no
16 material financial relationship with IIF US 2 and its affiliates and J.P. Morgan
17 currently or within the last five years);
- 18 • adopting a written Delegation of Authority stating the duties of the EPE Board;
19 and,
- 20 • limiting the circumstances under which dividends or other distributions could be
21 made.

22 Amended Certification of Stipulation, Feb. 12, 2020, at 39 – 63.

1 **Q. How do the Joint Applicants commitments here compare?**

2 A. As seen from my examination of the commitments set out above, they fall far
3 short, and should be seen as not consistent with Commission precedent.

4 **Q. Are there other examples of commitments made in other cases where the Joint**
5 **Applicants have not made parallel commitments?**

6 A. Yes. In Case No. 15-00327-UT, the TECO-New Mexico Gas-Continental matter,
7 the applicants presented a rate freeze as a positive benefit, asserting that it would
8 provide a \$30.4 million cumulative benefit. The Hearing Examiner noted that, in
9 Case No. 08-00078-UT, involving PNM's sale of its gas utility to NMGC, the
10 Commission found that the rate freeze should be viewed as a benefit because of the
11 potential that a rate case would be filed in the next three years that could result in
12 higher rates. Certification of Stipulation, June 30, 2014, at 56-57.

13 The Joint Applicants have made so similar commitment here.

14 **Q. What about the costs of the proposed acquisition?**

15 A. All we have is the statement, "Avangrid commits that PNM will not seek to
16 recover from rate payers any acquisition premium, transaction costs, or transition
17 costs associated with the proposed transaction." JA Response to ABCWUA Request
18 for Admission 1-6, attached as Exhibit CKS-50. Those simply are not all the potential
19 costs which could be shoehorned into rates.

20 **Q. What are the other costs not addressed by the Joint Applicants' response?**

1 A. They include any goodwill associated with the proposed transaction, potential
2 pushdown accounting for the transaction, any form of incentive compensation
3 associated with the proposed transaction, or third-party costs, fees, expenses, or
4 costs of the transition incurred by any party to the proposed transaction. Unless
5 those are specifically barred, they remain as opportunities for PNM to claim them in
6 future rate cases.

7
8 **Recommendation**

9 **Q. What is your recommendation to the Commission on the proposed acquisition?**

10 A. The Commission should reject the proposed acquisition, as filed, as not
11 benefitting the public interest nor PNM customers in a manner that would show it to
12 be consistent with the public interest.

13 **Q. If the Commission were to decide to approve the proposed acquisition, what**
14 **conditions should it require for that approval?**

15 A. The Commission should require meaningful conditions that generate measurable
16 customer benefits as part of any such approval.

17 **Q. Are there specific conditions you would view as essential to any approval?**

18 A. Yes. The first would be the requirement that PNM withdraw its Case, 21-00017-
19 UT, to abandon and securitize its undepreciated investments of \$300 million in
20 FCPP, and cancel its sale of its 13% interest in FCPP. Following that, PNM should
21 file a case to abandon FCPP, removing it from rate base, and becoming an asset of

1 PNMR, with ratepayers held harmless for the imprudent investments in and life
2 extension of FCPP.

3 The second would be requiring a much more significant rate crediting for PNM
4 customers due to the inequity between financial benefits flowing to owners and
5 managers on the one hand, and ratepayers on the other.

6 **Q. You discussed FCPP earlier. As to the second condition, if the Commission**
7 **were to give serious consideration to the proposed acquisition, what should be**
8 **done to address that inequity?**

9 A. The nominal \$24.6 million sop to ratepayers does not an appropriately reflect the
10 acquisition premium being realized by stockholders and managers. A more
11 equitable sharing of the premium would result in a short-term payout of at between
12 \$75 million and \$125 million to ratepayers rather than the proposed years of
13 miniscule "rate credits."

14 **Q. Who will benefit economically from the proposed acquisition?**

15 A. The economic benefits of the acquisition will flow almost exclusively to the
16 shareholders of PNMR stock, and to the senior management of PNM. The owners of
17 PNM and its senior management will see a significant benefit from the proposed
18 acquisition in the form of the premium to be paid over the market-based price for
19 PNMR stock.

20 **Q. Please explain what benefit flows to stockholders.**

21 A. The price to be paid to stockholders upon closing is \$50.30 per share. I reviewed
22 at the prices set by the market shortly before the proposed acquisition was

1 announced and at the time PNMR's stockholders approved the proposed
2 acquisition.

3 At market close on October 20, PNMR traded at \$45.74/ share, down from a high of
4 \$46.23 at close on October 16, 2020. The difference between the \$50.30/ share to be
5 paid at closing and the \$45.74/ share market price times 80 million shares shows an
6 acquisition premium of \$204,000,000 flowing to shareholders. Just before the
7 shareholder vote to approve on Feb 12, 2021, PNMR closed at \$47.11. Using 80
8 million shares, the premium was \$50.30 minus \$47.11 (\$3.19) times 80 million shares,
9 or \$255,200,000. Historical price of PNMR common stock, attached an Exhibit CKS –
10 51.

11 Simply put, PNMR shareholders will receive in excess of \$200 million just for
12 holding PNMR stock certificates. That windfall produces no customer benefit
13 whatsoever, but merely enriches those shareholders.

14 **Q. Please explain what benefit flows to senior management of PNM.**

15 A. PNM's senior management will profit handsomely from the proposed
16 acquisition. On an individual basis, their benefits are far in excess of the proposed
17 handout to any individual ratepayer:

PNM Resources' top six executives could receive a combined \$38 million in executive compensation if shareholders approve the company's proposed merger with Connecticut-based energy giant Avangrid.

About \$12.5 million of that would go to three departing execs as a "golden parachute." The rest is earnings and benefits the six are entitled to under their employment contracts because of goals they have achieved and is compensation they would receive regardless of the merger.

January 30, 2021 Albuquerque Journal, attached as Exhibit CKS-52.

Pat Vincent-Collawn will step down as Chairman, President and Chief Executive Officer upon closing. Kemp Direct at 9. Charles Eldred, Executive Vice President, Corporate Development and Finance, and Patrick Apodaca, Senior Vice President, General Counsel, and Secretary, will also leave PNM. Joseph Terry, Chris Olson, and Ronald Darnell will remain with PNM. Exhibit CKS-52. Their stock benefits are summarized here:

PNMR executive compensation package

	Cash	Equity	Benefits	Other	Total
Pat Vincent-Collawn	\$9,066,706	\$9,904,875	\$49,377	\$20,000	\$19,040,958
Charles Eldred	\$3,862,189	\$2,906,938	\$31,757	\$20,000	\$6,820,884
Patrick Apodaca	\$2,343,415	\$1,310,214	\$39,578	\$20,000	\$3,713,207
Joseph Terry	\$1,936,004	\$944,030	\$39,421	\$20,000	\$2,939,455
Chris Olson	\$1,819,374	\$1,059,620	\$38,868	\$20,000	\$2,937,862
Ronald Darnell	\$1,742,459	\$1,043,272	\$52,201	\$20,000	\$2,857,932
Subtotal (Vincent Collawn, Eldred, Apodaca)					\$29,574,049
Total					\$38,310,298

Source: PNMR proxy statement

Six PNMR executives will receive the above compensation packages, according to a proxy statement sent to shareholders. Three of the executives -- Pat Vincent-Collawn, Charles Eldred and Patrick Apodaca -- will leave the company if the merger is approved, triggering a "golden parachute" payout that totals a combined \$12.45 million. That money is included in the final compensation totals in the table above and breaks down as follows:

- Vincent Collawn: \$7.5 million
- Eldred: \$2.95 million
- Apodaca: \$2 million

JOURNAL

Exhibit CKS-52.

1
2 **Q. Will any other entities see material financial benefit from the acquisition?**

3 A. Yes. If the acquisition is approved, the investment banking firm Evercore will
4 earn a \$36.5 million fee for brokering the deal. Exhibit CKS-7 at 60.

5 **Q. How do those financial windfalls compare with the asserted direct benefit to**
6 **ratepayers?**

7 A. The \$24.6 million proposed to be trickled out to ratepayers over a period of years
8 is between 9.6% and 12% of the total acquisition premium to be realized by PNMR
9 owners. It is 65% of amount of windfall going to only six individuals currently
10 employed by PNM. And it is 67% of the amount to be realized by the deal broker.

11 Putting that into perspective, over \$275 million will be handed to owners, managers,
12 and one consultant immediately upon final approval of the proposed acquisition.
13 Customers would receive less than 10% of that total amount of benefit.

14 And the value of the \$24.6 million earmarked for ratepayers will be reduced by the
15 passage of time, making it an even smaller proportion of the total premium that will
16 be immediately realized by stockholders.

17 **Q. How did the Joint Applicants set the level of the “rate credits”?**

18 A. There was no rational basis for the selection of \$24.6 million in “rate credits” as
19 proposed by the Joint Applicants. To the contrary, that number was the result of
20 telephone calls between Pedro Azagra Blazquez for Iberdrola and unidentified

1 PNMR “representatives” and was set to “be similar to levels previously proposed
2 and approved by the Commission in utility merger and acquisition proceedings.”
3 Those unidentified PNMR “representatives” suggested the \$24.6 million and Mr.
4 Blazquez “agreed.” JA Response to NEE Interrogatory No. 1-1, attached as Exhibit
5 CKS-53.

6 **Q. Will the amount of the “rate credits” be meaningful for any individual PNM**
7 **customer?**

8 A. No. The “rate credit” in 2022, 2023, and 2024 will be \$0.0009909 per kWh. Exhibit
9 CKS-9. For a Residential customer using 591 kWh in an average month, that will be a
10 deduction to the customer’s bill of 59 cents, or a grand total of approximately \$21.00
11 per average residential ratepayer over the three years.

12 Further, Joint Applicants have refused to answer the question about future rate
13 impacts and have not offered a rate freeze. JA Response to NEE Interrogatories 1-3,
14 2-18, and 5-18, attached as Exhibit CKS-54. Not only is the “rate credit” *de minimis* to
15 begin with, but without knowing what rate increases are planned for the near
16 future, this alleged “benefit” is entirely unquantifiable.

17 **Q. How does that compare with potential rate increases by PNM over that same**
18 **three-year period?**

19 A. While the Joint Applicants have refused to commit to deferring PNM’s next
20 general rate case or to limit the amount of that rate case, Avangrid “understands”
21 that PNM won’t file a general rate case while the acquisition proposal is pending. JA

1 Response to NEE Interrogatory No. 1-2, attached as Exhibit CKS-55. That provides
2 absolutely no assurance that PNM will not have a general rate case before the
3 Commission later in 2021. Under these circumstances, there is no way to measure if
4 the \$24.6 million credit is of *any* value.

5 **Q. What would you expect to see from a general rate case by PNM?**

6 A. Avangrid's other state-regulated utilities have achieved annual base rate increases
7 of between 3% and 7%. Exhibit CKS-46 at 46-48. That same average residential
8 customer has a base-rate bill (omitting all rate adders and fuel clause adjustments) of
9 about \$56 outside summer months and \$58 during the summer. If PNM's rates
10 increase by the low end of that range, 3%, the non-summer bill jumps to \$ 57.68, or
11 an increase of \$1.68 – almost three times the amount of the “rate credit.” The
12 summer bill goes to \$ 60.18, a \$ 1.75 increase. One year of summer and other-month
13 bills at a 3% increase would cost the customer an additional \$ 20.82, essentially
14 wiping out all three years of the “rate credits.”

15 **Q. Why should the Joint Applicants share any of the acquisition premium with**
16 **ratepayers?**

17 A. Because a material portion of the value of PNM derives from its relationship with
18 its customers. As a regulated electric utility, PNM has an exclusive right to serve
19 customers in its denominated territory. In valuing the proposed acquisition, all the
20 “parties assumed that PNM would retain its exclusive rights to serve customers in
21 New Mexico.” JA Response to NEE Interrogatory 4-14, attached as Exhibit CKS-56.

1 While Avangrid did not expressly allocated a percentage of the purchase price to
2 PNM's retention of its exclusive right to serve (JA Response to NEE Interrogatory 4-
3 25, attached as Exhibit CKS-57), it did insist that all of the properties, rights,
4 privileges, immunities, powers **and franchises** of PNMR and merger sub will vest in
5 PNMR...as the surviving corporation. Exhibit CKS-7 at 77.

6 That exclusive right to serve is a value bestowed on PNM by the New Mexico public
7 through its Legislature and it is appropriate for that public-generated value to be
8 reflected through a meaningful rate credit.

9 **Q. Have there been any other analyses done of the inequity between customers**
10 **and other parties?**

11 A. Yes. The Texas Public Utility Counsel examined the proposed acquisition in
12 relation to PNMR's other subsidiary, TNMP, and concluded that the proposed
13 transaction would not be in the public interest. The Counsel recommended that, in
14 order for the Texas Public Utility Commission to find the acquisition to be in the
15 public interest, a rate credit to customers of at least \$24 million – rather than the \$8.6
16 million proposed by the applicants – would be required (along with other structural
17 safeguards.) Office of Public Utility Counsel's Statement of Position in PUC Docket
18 No. 51547, March 10, 2021, at 3-4; 9-10, attached as Exhibit CKS-58. That
19 recommendation was based upon the testimony of two witness (for two separate
20 parties) in that proceeding, each having testified that the \$8.6 million was arbitrary
21 and too small.

1 **Q. What would be a parallel amount of rate credits be for PNM's New Mexico**
2 **customers?**

3 A. The actual total amount of proposed rate credit is \$33.2 million, with \$24.6 million
4 for PNM and \$8.6 million for TNMP. Simply making the same adjustment as
5 proposed in the TNMP proceeding would move the PNM rate credits to \$75 million.

6 **Q. Could a \$75 million rate credit for PNM customers be justified?**

7 A. Yes. As I discussed above, shareholders would receive a premium on the order of
8 \$3.29 per share - the difference between the \$50.30 per share to be paid at closing
9 and price of PNMR stock immediately prior to the shareholder vote to approve the
10 acquisition of \$47.11. Using 80 million shares, the total premium for stockholders
11 would be \$255,200,000. On February 19, 2021, there were 7,902 holders of record of
12 PNMR's common stock. Exhibit CKS-20 at A-26. On a per-shareholder basis, the
13 acquisition benefit is approximately \$32,296.

14 **Q. How would you put that into context for PNM customers?**

15 A. If that acquisition premium benefit were passed on in full to PNM's 537,930
16 ratepayers, the average benefit per customer would be \$474. As proposed, the \$24.6
17 million rate credit would amount to an average credit per customer of \$45.73, or
18 9.6% of the total value of the acquisition premium. That miniscule amount does not
19 represent a reasonable apportionment of the acquisition premium.

1 **Q. Are there good policy bases for insisting upon an apportionment that is fairer**
2 **to ratepayers?**

3 A. Yes. Perhaps the most succinct explanation of the need for a more equitable
4 apportionment is found in this testimony regarding an earlier Iberdrola acquisition
5 request:

6 I recommend this principle: The control premium should be allocated
7 between shareholders and ratepayers according to their relative contribution
8 to the value represented by the premium.... There is, however, logic to
9 support a finding that the value of the control premium is attributable to
10 ratepayers. That logic is as follows:

11 Iberdrola is paying the control premium to get control of the UIL utilities'
12 franchises.

13 The value of those franchises is due to their stable source of revenue.

14 That source of revenue is stable because of the government decision to make
15 the utilities' distribution franchise exclusive.

16 That exclusivity means that the ratepayers have no choice but to be the source
17 of revenue that creates the value Iberdrola sees in the franchises.

18 That is the argument for the ratepayers' contribution. What about the UIL
19 shareholders' contribution? UIL might argue that but for its shareholders'
20 investment, there would be no service for which ratepayers contributed
21 revenue. Looking at the various arguments, PURA might even decide that
22 the control premium is, technically, a windfall – a value to which no one
23 actually contributed. Given the likely existence of arguments on both sides,
24 and to give both sides a chance to bring forward facts, I recommend that
25 PURA rebuttably presume that the relative contribution to the franchises'
26 value, as between shareholders and ratepayers, is 50-50. Then the logic of
27 rebuttable presumptions does the work. If facts rebutting the presumption
28 do not emerge, the presumption becomes the result.

29 Direct Testimony of Scott Hempling, *In the Matter of the Joint Application of Iberdrola,*
30 *S.A., Iberdrola USA, Inc., Iberdrola USA Networks, Inc., Green MergerSub, Inc. and UIL*

1 *Holdings Corporation for Approval of a Change of Control, Connecticut Public Utilities*
2 *Regulatory Authority Docket No. 15-03-45- at 36-39, attached as Exhibit CKS-59.*

3 Applied here, Mr. Hempling's reasoned approach would result in rate credits to
4 PNM's customers of \$127,600,000.

5 **Q. Do you have a recommendation for a reasonable rate credit for PNM's**
6 **customers?**

7 A. Yes. Recognizing that any specific amount of rate credit will necessarily be based
8 on a balancing of ratepayer and shareholder interests, I recommend the Commission
9 require rate credits in a total amount between \$75 million and \$125 million for
10 PNM's customers. At the lower end, that would set the level of customer benefit at
11 approximately 29% of the level of shareholders' benefit; at the higher end at
12 approximately 49%.

13 **Q. How should that rate credit be paid out?**

14 A. I have no objection to the Joint Applicant's proposal to distribute the rate credit
15 on a per/kWh basis. However, to avoid the diminishing value of any rate credit that
16 is spread out over an extended period such as the three years proposed by the Joint
17 Applicants, the rate credits should be applied to customers' bills over at most a one-
18 year period.

19 **Q. Can you summarize the other conditions that should be required in any**
20 **approval of the proposed acquisition?**

1 II. A. Yes. In order to bring the proposed acquisition within the frameworks of recent
2 Commission merger order, in addition to the conditions offered by the Joint
3 Applicants and the rate credit discussed above, the Commission should impose
4 conditions which:

5 • Forbid recovery of any costs associated with the FCPP from PNM's ratepayers.

6 • Bar a general rate case in which an increase in rates for any class of service is
7 proposed for a period of three years after closing.

8 • Require an independent evaluator for all RFPs and selections of any new sources
9 of generation, paid for by PNM's shareholders, with no rate recovery.

10 • Require that a new Board of Directors include in its seven Independent Directors,
11 at least four should be people of color who reside in New Mexico.

12 • Require Avangrid/ Iberdrola to own PNM (either through PNMR or directly) for
13 at least 10 years post-closing.

14 • Maintain wages/benefits (including those for employees covered by collective
15 bargaining units) at no less than current levels for at least five years post-closing.

16 • Bar the recovery in rates of all costs associated with the acquisition, including but
17 not limited to any goodwill associated with the proposed transaction, potential
18 pushdown accounting for the transaction, any form of incentive compensation
19 associated with the proposed transaction, or third-party costs, fees, expenses, or
20 costs of the transition incurred by any party to the proposed transaction.

1 • Require a notice of intent to pay dividends be filed with the Commission at least
2 15 days before the dividend is paid (with copies of the notice to Commission Staff
3 and the Attorney General) which includes the amount of the proposed dividend, the
4 proposed payout ratio, and the historic payout ratios for the preceding three years,
5 with the Commission empowered to issue an order prohibiting payment of any
6 dividends if it finds that payment of the proposed dividend would impair PNM's
7 ability to provide reliable and safe utility services at reasonable rates to its customers
8 or would otherwise be contrary to the public interest.

9 • Require PNM to secure a customer service survey from JD Power within 30 days
10 of closing, and again at 6 months, 12 months, and 24 months post-closing, all to be
11 paid solely by PNM shareholders and not recovered in rates, with the potential for
12 financial penalties for protracted poor customer service.

13 A.

14 Conclusion

15 The Commission should reject the proposed acquisition. If the Commission
16 determines that the acquisition should be approved, then it should require the
17 conditions set out above.

18 **Q. Does this conclude your direct testimony?**

19 A. Yes, it does.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CASE NO. 20-00222-UT

AFFIDAVIT

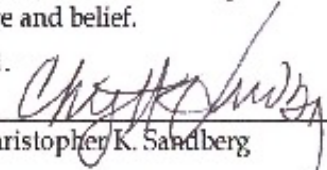
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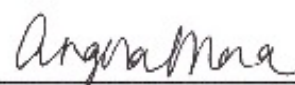
COUNTY OF SANDOVAL

CHRISTOPHER K. SANDBERG, upon affirmation, deposes and states: I have read the foregoing **Direct Testimony of Christopher K. Sandberg** and it is true and correct based on my personal knowledge and belief.

Signed this 2nd day of April, 2021.


Christopher K. Sandberg

SUBSCRIBED TO AND AFFIRMED before me this 02 day of April 2021.


NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My commission expires:

04/02/2022

