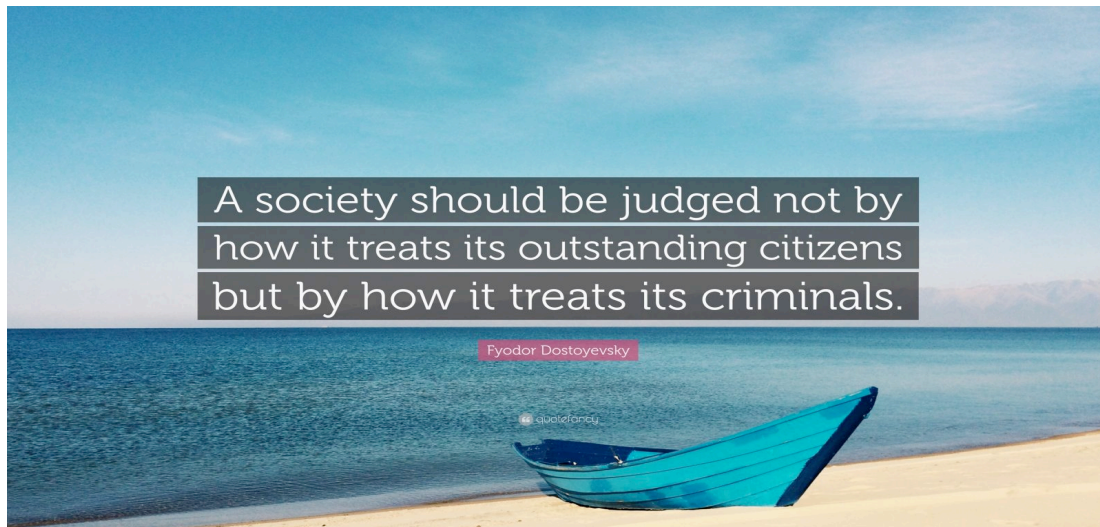


Chairman Fischmann and Honorable Commissioners,

I must begin by thanking you, and especially Commissioner Espinoza, for bringing this important rulemaking that seeks to protect the most vulnerable among us.

As one of the greatest novelists and thinkers, Fyodor Dostoyevsky, said:



A modern day re-interpretation of this quote is: our society should be judged not by its wealthiest citizens but by how it treats its most vulnerable people. I thank YOU for standing with, and, unflinchingly, side-by-side the most vulnerable with this rulemaking.

20 states and the District of Columbia have enacted moratoriums on utility shut-offs. Thank you for considering joining this list of: Alaska, Washington, California, Wyoming, Colorado, Minnesota, Wisconsin, Arkansas, Kentucky, Maine, Vermont, New York, Rhode Island, Connecticut, Pennsylvania, Delaware, Maryland, Massachusetts, New Hampshire, Hawaii.

New Energy Economy, joins the Attorney General, to support PRC staff's proposition to slightly amend, but importantly amend, the rulemaking to include their proposed language in Rule 560:

“Irrespective of any conflict with 17.5.410 NMAC,...

Equally we support PRC staff’s proposed revisions to Rule 760.

Otherwise, New Energy Economy supports the rulemaking as is.

In response to PNM’s comments on the rulemaking, New Energy Economy, states:

PNM has cried victim once again: they state they have \$17.5M in residential and commercial arrearages¹ and oppose the utility shut-off moratorium because there will be “insurmountable past due balances on customers’ utility bills”² and the bad “avoidable” debt³ will accumulate and need to be spread over all other customers because PNM expects that the debt will be “[paid] down in full.”⁴

A couple of important points in response:

(i) There is NO presumption that a utility is entitled to recover *any* of these alleged losses in a future rate case. That claim will be fully scrutinized in other proceedings going forward.

(ii) As this Commission has acknowledged, Governor Michelle Lujan Grisham has declared a state of public health emergency in New Mexico as a result of the novel coronavirus disease (also known as COVID-19). In the midst of this unprecedented public health crisis, the negative impact to the economy has caused many individuals and families to suffer severe financial difficulties. COVID-19 is a highly infectious and fast-spreading virus. Symptoms and their effects can range from mild to severe and in certain cases result in extreme health complications and death.⁵

¹ *PNM’s Comments on the Notice of Proposed Rulemaking*, 10/16/2020, p. 7.

² *Id.*, p. 11.

³ *Id.*, p. 6.

⁴ *Id.*

⁵ <https://www.newmexico.gov/>

(iii) Our Supreme Court has decided that the Public Regulation Commission's constitutional duty to regulate utilities requires the Commission to review and exercise discretion over proposed rates to ensure that they are "just and reasonable"⁶ and that "fairly balance the interests of investors and ratepayers."⁷ "The rate-making process involves a balancing of investor and consumer interests." *Matter of Rates & Charges of Mountain States Tel. & Tel. Co.*, 1982-NMSC-127, ¶ 26. Whether PNM or any of the monopoly private utilities and co-ops are entitled to *any* cost recovery for this alleged bad debt is a matter of future decision-making and the Commission need not concern itself with that issue at present.

(iv) While PNM and other for-profit monopoly utilities oppose the utility shut-off extension, PNM brags about their financial superiority to their investors, particularly offensive, in these times. PNM's positions *vis a vis* Wall Street investors, recently stated in their September 2020 presentation, yet conveniently omitted in their comments to you are as follows:

- a) While commercial demand has declined due to the shutdown, current load trends show a 5% *increase* expected from residential users.⁸ Last summer, this Commission agreed in its June 24th 2020 Order that while "utilities [are permitted] to record extraordinary costs incurred as a result of the COVID-19 pandemic ... in future rate proceedings [t]his authorization creating an accounting order does not in any way create any presumption that any expenses included in a regulatory asset are reasonable or that a utility is entitled to recover any of those costs in a future rate case. ... In addition, the Commission finds that utilities creating a regulatory asset should also be required to pursue all federal, state, or other subsidies available, and record a regulatory liability for all offsetting cost savings resulting from the COVID-

⁶ NMSA 1978 § 62-8-1. "To set a just and reasonable rate, the Commission must balance the investor's interest against the ratepayer's interest." *Behles v. New Mexico Public Service Commission*, 114 N.M. 154, 161, 836 P.2d 73 (1992). As the Supreme Court has concluded, "Neither [interest] is paramount ... we cannot focus solely on investor interests." *Mountain States Tel. & Tel. Co. v. New Mexico State Corporation Commission*, 99 N.M. 1, 7-8, 653 P.2d 501 (1982).

⁷ NMSA 1978, §62-3-1; For example, when PNM requested ratemaking treatment for its Advanced Metering Infrastructure Project, the PRC ultimately denied, stating that "PNM's requests for the approval of regulatory assets to recover the undepreciated costs of the existing meters that PNM intends to replace and the estimated costs of a customer education program do not, in the context of PNM's current plan, fairly balance the interests of investors and ratepayers." NMPRC Case No. 15-00312-UT, *Recommended Decision* p. 96 (adopted unanimously by *Final Order* (Apr. 11, 2018).

⁸ PNM Investor Meetings, September 2020, <https://www.pnmresources.com/~media/Files/P/PNM-Resources/events-and-presentations/2020/September%20Investor%20Meetings.pdf>, p. 16, attached as Exhibit A.

19 pandemic. Public utilities creating a regulatory asset should also track energy usage and changes in usage between rate classes [.]”⁹

- b) Reduced load impacts of COVID-19 from commercial customers in 2020 have been offset by higher temperatures requiring the need for more air conditioning¹⁰ (as a result of climate disruption).
- c) There will be “no significant impacts” to the company from COVID-19 and may even be a benefit during the “Stay-at-Home” order. Finally, and perhaps most significantly, NM’s investors’ Earning Per Share (EPS) was higher than previously projected, PNM states: “\$3.3Billion investment plan supports 5% - 6% earnings growth target through 2023”, “dividend growth mirrors earnings growth”, “immediate equity needs met through January 2020 forward offering” and “adequate liquidity remains available to finance business needs”. Rate base growth results in earnings growth which allows for dividend growth and liquidity. PNM has \$1Billion in available liquidity and \$361 million securitization bonds.¹¹

PNM states at p. 6 of their Comments to you filed on 10/16/2020, that “many customers are declining to participate in payment plans or to make partial or full payments on bills even when they are able to pay some or all of the balance due.”¹² Is this a racist dog-whistle? How can PNM know that customers who can’t afford electricity bills are intentionally withholding their payments?

They can’t, and here’s how we know. In Case No. 20-00121-UT, in response to the New Mexico Attorney General’s discovery PNM stated as follows:

“PNM does not retain/maintain customer income information.”¹³ This admission means that PNM can’t actually know if their customers *are able to pay*. Psychologically, there are few people who wish to skip on their responsibilities to others who provide service. Frankly, PNM’s claim is insulting and hurtful.

⁹ *Order Authorizing Creation of A Regulatory Asset by Public Utilities for Costs Associated with Emergency Conditions*, 6/24/2020, pp. 11-12.

¹⁰ PNM Investor Meetings, September 2020, <https://www.pnmresources.com/~media/Files/P/PNM-Resources/events-and-presentations/2020/September%20Investor%20Meetings.pdf>, pp. 29-30.

¹¹ *Id.*, pp. 7-11.

¹² *PNM’s Comments on the Notice of Proposed Rulemaking*, 10/16/2020, p.6.

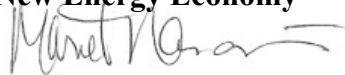
¹³ 20-00121-UT, PNM Exhibit NMAG 1-37, 7/6/2020.

Lastly, there is a question of equity and justice that is before this Commission. A utility that boasts \$3.3B in assets¹⁴ and has extracted not only coal, gas/oil, and uranium from the ground, is the single largest polluter in NM, has also extracted the wealth from New Mexicans by exporting these profits out of state to Wall Street shareholders. For PNM to be crying hardship when their top five executives make more than \$10M/year¹⁵ and their stock has nearly doubled since 2015¹⁶ is outrageous and reprehensible. Shareholders are comfortable – don't you worry. New Mexicans, on the other hand, are experiencing unprecedented homelessness, job loss, hunger, and depression.

Please do not delay, vote today to adopt this rulemaking. Be a shining light onto other states and regulate on behalf of the public as I know is not only your mission but your guiding principle.

DATED this October 20, 2020.

New Energy Economy



Mariel Nanasi, Esq.
600 Los Altos Norte St.
Santa Fe, NM 87501-1260
(505) 469-4060
mariel@seedsbeneaththesnow.com

¹⁴ PNM Investor Meetings, September 2020, <https://www.pnmresources.com/~media/Files/P/PNM-Resources/events-and-presentations/2020/September%20Investor%20Meetings.pdf>, pp. 8-9.

¹⁵ <https://www.pnmresources.com/~media/Files/P/PNM-Resources/annual-meeting/2020/2020-proxy.pdf>, p. 52.

¹⁶ <https://www.google.com/search?q=pnm+stock+price+today&oq=PNM+stock&aqs=chrome.1.0l8.4863j1j7&sourceid=chrome&ie=UTF-8>

PNM's stock on December 16, 2015 was \$29.54/share (the day PRC approved SJGS abandonment for PNM units 2&3); today, during COVID, PNM's share is \$45.74/share.

EXHIBIT A