

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

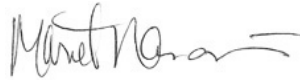
IN THE MATTER OF THE JOINT APPLICATION OF )  
IBERDROLA, S.A., AVANGRID, INC., AVANGRID )  
NETWORKS, INC., NM GREEN HOLDINGS, INC., PUBLIC )  
SERVICE COMPANY OF NEW MEXICO AND PNM )  
RESOURCES, INC. FOR APPROVAL OF THE MERGER OF )  
NM GREEN HOLDINGS, INC. WITH PNM RESOURCES, )  
INC.; APPROVAL OF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

Case No. 20-00222-UT

**New Energy Economy's Response to  
Joint Applicants' Exceptions to Certification of Stipulation**

Respectfully submitted this 19th day of November, 2021.

New Energy Economy,



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Through its counsel, New Energy Economy (“NEE”) files its Response to Joint Applicants’ Exceptions to Certification of Stipulation and states as follows:

## **I. Introduction**

The Hearing Examiner recommends that this Commission reject the merger on the basis that the potential harms and risks of the proposed merger outweigh the “promised benefits. The benefits are not meaningful if PNM’s customers do not have reliable service.”<sup>1</sup>

The Hearing Examiner unequivocally recommends rejection of the merger because the potential harm and risks of outages and unreliability,<sup>2</sup> diminished service quality,<sup>3</sup> corruption,<sup>4</sup> subsidization of non-utility activities,<sup>5</sup> and reduction in local control<sup>6</sup> are significantly outweighed by any benefits claimed by Avangrid/Iberdrola/PNM. Importantly, the Hearing Examiner denied that the merger is in the public interest even with the conditions that Joint Applicants and Signatories say that they will now accept.

PNM’s and Avangrid/Iberdrola’s response, which they immediately announced to the world, was “fine! We’ll agree to all of the conditions!” Not so. In their Exceptions, they have taken the position that the following four continuing fundamental objections remain contentious. Joint Applicants’ Exceptions (“JA Exceptions”) pp.1-2. Yet, to massage the public, the

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<sup>1</sup> Certification of Stipulation (“CS”) p. 53.

<sup>2</sup> CS p. 109, 174; See also, “outage numbers increasing and affecting more customers [], producing a larger number of outage hours” NEE Exhibit 24, Liberty Consulting Management Audit, p. 103.

<sup>3</sup> CS p. 107-126.

<sup>4</sup> CS p. 136-153.

<sup>5</sup> CS p. 127-131.

<sup>6</sup> CS pp. 196-197 (As NMAG expert witness Andrea Crane testified: “no matter how “local” the Joint Applicants want to spin this arrangement, the fact is that Avangrid and ultimately Iberdrola, will be the entity that is largely directing operations.”) pp. 209-203 (In Avangrid’s filings with the SEC it warns investors about risks: Risk Factors Relating to Ownership of Our Common Stock Iberdrola exercises significant influence over AVANGRID, and its interests may be different from [the interests of Avangrid, Inc. stockholders]. Additionally, future sales or issuances of our common stock by Iberdrola could have a negative impact on the price of our common stock. CS p. 210; Staff witness Reynolds asked: “Would regulation only by ultimatum become the future and why is that not an adverse impact of the Proposed Transaction?” CS p. 212.)

Legislature and the Governor, PNM and Avangrid/Iberdrola say they are accepting all the modifications proposed by the Hearing Examiner, but in their official filing to the PRC, they say they are not. This is not a public relations battle, it is a matter for the sober consideration of the PRC and parties, without consideration of the posturing by the parties in the press.

The Joint Applicants persist unpersuasively in resisting certain of the Hearing Examiner's conditions:

- 1) The reliability metrics and automatic penalties in Regulatory Commitment No. 36 of Appendix 2 proposed in the CS are necessary to protect ratepayers given Avangrid's poor performance in the states where it operates and its history of regulatory noncompliance.<sup>7</sup>
- 2) The requirement for a majority of independent directors at PNM is necessary to protect consumers from the parent company's interests which are in conflict with the interests of New Mexican ratepayers.<sup>8</sup>
- 3) The Regulatory Commitment prohibiting PNM employees from holding positions with upstream affiliated interests are necessary to further limit the potential influence of Avangrid/Iberdrola<sup>9</sup> and to protect ratepayers from wasteful expenditures.
- 4) The Hearing Examiner's recommendation for sanctions are necessary given Avangrid/Iberdrola's obstructionism during the proceeding.<sup>10</sup>

Admittedly all of the conditions are an improvement over the June 4<sup>th</sup> Stipulation (and subsequent commitments) – and provide greater consumer protections, yet perhaps the most important paragraph of the Hearing Examiner's *Certification of Stipulation* comes on p. 51 and it is a clarion call to this Commission:

**Even assuming the adoption of protections that appear sufficient, including protections to ensure service quality and reliability, the Commission will need to devote considerable enforcement resources to ensure that Avangrid, Inc. and PNM**

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<sup>7</sup> CS pp. 224-239 (At p. 238: "more than \$60 million for failures to provide reliable electric service and adequate customer service.")

<sup>8</sup> CS pp. 209-224. (At p. 223-4: "if not properly separated, the corporate interests of PNM may be negatively influenced by the interests of Iberdrola, S.A. and Avangrid, Inc.")

<sup>9</sup> CS p. 221.

<sup>10</sup> CS pp. 166-195. (discovery violations and overbroad confidentially designations)

**comply with those protections. Avangrid, Inc. has not been forthcoming regarding the penalties and disallowances that have been assessed against its Northeast public utilities, and it has violated and skirted Commission rules and orders in this proceeding. The Hearing Examiner is recommending sanctions against Avangrid, Inc. for its discovery violations in this case. Avangrid Renewables, LLC has also skirted and failed to comply with Commission rules and orders in regard to its current renewable energy projects in New Mexico.<sup>11</sup> (Emphasis supplied.)**

In formulating its decision, the Commission, must weigh the evidence and findings presented by the Hearing Examiner. It must look carefully at Avangrid/Iberdrola's track record and assess – even with conditions, if this is a company we should trust with our energy future and to which we should entrust the reliable and responsible provision of electricity for 800,000 New Mexicans.

## **II. Avangrid/Iberdrola Track Record Provides a Window**

New Energy Economy respectfully submits that rather than listening to the claims and spin of the Joint Applicants – the Commission should consider the following evidence which is illustrative of just who this company is and how much they respect the customers they serve and the communities in which they operate.<sup>12</sup>



Crews from Northern Clearing Inc. continue to clear a corridor Wednesday on land near Whipple Pond, south of Jackman. The work continued on the day after Maine residents voted to discontinue work on the \$1 billion transmission line.

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<sup>11</sup> *Id.* p. 51.

<sup>12</sup> <https://www.pressherald.com/2021/11/03/avangrid-vows-to-move-ahead-with-maine-power-line-project/>

A day after Mainers voted overwhelmingly, by 59%, to reject Avangrid’s “New England Clean Energy Connect” power line project, the company literally bulldozed ahead – continuing to decimate Maine’s pristine forest – brazenly defying the express will of the people. Avangrid and Central Maine Power (“CMP”), its utility subsidiary, claim that the transmission project is necessary to bring “clean” power from Canada through Maine to Massachusetts, which will financially benefit Avangrid handsomely because that is where the customer load center resides. Avangrid and others collectively spent approximately \$70 million in a dark money Political Action Committee (“PAC”) to influence voters,<sup>13</sup> to no avail.

As recently as November 3, 2021, Avangrid/Iberdrola’s actions in Maine demonstrated disregard for the will of the people, disregard for the rule of law, disregard for democracy, and disregard for the environment. **Fundamentally, this Commission must decide if it is in the public interest to allow Avangrid/Iberdrola to bulldoze the Land of Enchantment for the profit of a foreign corporation.**

“The Proposed Transaction is designed to provide the Iberdrola, S.A./Avangrid, Inc. group of companies a strategic ‘beachhead’ to develop non-utility activities in the Southwest.”<sup>14</sup> Iberdrola/Avangrid have admitted that they will use PNM as their “beachhead”<sup>15</sup> for the financial growth of their companies<sup>16</sup> (and have invested and will be investing in New Mexico regardless of the merger<sup>17</sup>). “Iberdrola/Avangrid didn’t choose PNMR so it could make PNM a better

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<sup>13</sup>CS pp. 149-153; <https://www.wmtw.com/article/maine-question-1-cmp-corridor-ban-approved/38145004#>; <https://www.utilitydive.com/news/avangrid-nextera-neccec-transmission-maine-ballot/608877/>

<sup>14</sup> CS p. 49.

<sup>15</sup> beach·head/bēCHhed/ *noun*: a defended position on a beach taken from the enemy by landing forces, from which an attack can be launched. (Oxford English Dictionary and Google)

<sup>16</sup> See generally Tr. 8/12/21 (Kump) pp. 523-528. (“We view this transaction really as one about growth, and the opportunities we see in the state[.] ... We find that, if you would, a potential beachhead for further growth in the region as we move forward.”); TR. 8/11/2021 (Blazquez) p. 198. (“New Mexico’s abundant wind and solar resources provide immense opportunities to not only accelerate that clean energy transition, but to convert the state into a central hub to supply renewable electricity throughout the west[.]”)

<sup>17</sup> TR., 8/12/2021, Kump, p. 524.

utility. Iberdrola/Avangrid chose PNMR to get a Southwestern ‘platform’ – a government-protected monopoly platform from which to make more acquisitions and sell more renewable energy.”<sup>18</sup> “That is the reason they are proposing to pay PNMR shareholders \$2.3 billion more than the book value of PNMR’s assets (including \$1.5 billion more than the book value of PNM’s assets).”<sup>19</sup>

The methodical, serious, thoughtful, careful, and often legally conservative Hearing Examiner concluded that the merger should be rejected.<sup>20</sup> “Although the Joint Applicants’ attempted to satisfy the narrow interests of individual parties, the Proposed Transaction still does not satisfy the public interest standard necessary to approve this merger.”<sup>21</sup>

What does an electric utility company need to do to merge with PNM? At minimum, keep the lights on. Yet, “If PNM’s service under Iberdrola, S.A./Avangrid, Inc.’s ownership is anything like the service provided by the Iberdrola, S.A./Avangrid, Inc. utilities in the Northeast, the quality of PNM’s service is likely to be diminished. Maine Governor Janet Mills described Central Maine Power Company’s (CMP) service as “abysmal.” J.D. Power’s nationwide 2020 Electric Utility Customer Satisfaction Studies ranked CMP last -- 128th among the 128 investor-owned electric utilities surveyed for residential customer satisfaction.”<sup>22</sup>

Joint Applicants and signatories ask this Commission to overlook Avangrid/Iberdrola’s track record because of the purported strengths of Avangrid/Iberdrola, which are experience with renewable energy and financial strength, but the evidence at the hearing demonstrated otherwise.

- 1) Avangrid/Iberdrola are largely invested in gas and nuclear and wind and have less than 2% solar in their portfolios.<sup>23</sup> Further, they don’t have the technical

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<sup>18</sup> NMAG Exhibit 2 Direct Testimony of Scott Hempling, April 2, 2021 p. 56.

<sup>19</sup> CS, p. 38.

<sup>20</sup> CS, pp. 35, 37.

<sup>21</sup> *Id.* p. 36.

<sup>22</sup> *Id.* p. 43.

<sup>23</sup> TR., 8/11/2021, (Azagra Blazquez), pp. 16-162; NEE Exhibit 54 Testimony and Exhibits in Opposition to Proposed Transaction and Second Amended Stipulation of Christopher K. Sandberg, July 16, 2021, pp. 70, lines 3-5.



qualifications to actually effectuate the transition that regulators and the public are seeking. Avangrid's CEO testified: "I'm not an engineer by trade, but in talking to our team, it's a very, you know, complex issue, and one that we're quite frankly learning on the fly as we go through this";<sup>24</sup>

- 2) Avangrid's bond rating is the same as PNM's;<sup>25</sup> and
- 3) Avangrid/Iberdrola (and potentially PNM) have focused on financial and regulatory credentials, as opposed to electric operational experience, and state-of-the-art engineering experience to fill the top executive positions at Avangrid.<sup>26</sup> Future PNM CEO Terry follows in the same footsteps.

### III. Avangrid/Iberdrola's Disregard of Commission Rules

#### A. Regulatory Non-Compliance in this case

Mr. Azagra-Blazquez's repeated assertion that Iberdrola/Avangrid<sup>27</sup> complies with local laws, rules and standards,<sup>28</sup> and management dictates ("Our mission is based on a global company run locally," Azagra Blázquez.),<sup>29</sup> is belied by the evidence in New Mexico (and elsewhere). Evidence demonstrates that Iberdrola/Avangrid calls the shots and does what it wants. For example, Iberdrola/Avangrid violated Commission rules in the following ways, *in this case*:

- Violated the Commission's discovery rules and the Hearing Examiner's December 18, 2020 *Procedural Order* by providing incomplete responses and failing to supplement

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("Iberdrola/Avangrid have current investments as follows: a total of 16,965 MW of gas; 3,177 MW of nuclear; 8,560 MW of wind; and solar accounts for under 2% of their entire portfolio.") *See also*, CS pp. 157-158.

<sup>24</sup> TR., 8/12/21, Kump, p. 503.

<sup>25</sup> CS pp. 46, 48.

<sup>26</sup> CS p. 123-126.

<sup>27</sup> CS p. 4. "Pedro Azagra-Blazquez is an officer and board member of both Iberdrola and Avangrid."

<sup>28</sup> For instance, Direct Testimony in Support of Second Amended Stipulation of Pedro Azagra Blazquez, June 18, 2021, p. 32.

<sup>29</sup> NEE Exhibit 21, *Iberdrola exec addresses merger criticism*, Albuquerque Journal, 7/31/2021, ("We can't have subsidiaries (like Avangrid) buying companies – that's a higher level of strategic management. I'm here now meeting with people, but once we close, I'm out of here, and it will be local people running utility operations and projects.")

responses. The Hearing Examiner recommended sanctions against Avangrid for this violation.<sup>30</sup>

- Violated the Hearing Examiner’s Protective Order by overdesignating confidential material. The Hearing Examiner also recommended sanctions against Avangrid for this violation.<sup>31</sup>
- Provided incomplete responses to the Hearing Examiner’s May 11 Order,<sup>32</sup> which was an order that required Avangrid/Iberdrola to “answer questions about why they failed to notify the Commission” of regulatory decision in the Northeast that imposed penalties and negative revenue adjustments on their subsidiaries where Avangrid/Iberdrola currently does business.<sup>33</sup>
- Using non-record evidence: “Joint Applicants included the compromise positions in their Post-Hearing Brief as if the positions had been admitted into evidence,”<sup>34</sup> but this information was extracted outside the four-corners of the case, and therefore is extra-legal and contrary to NM law,<sup>35</sup> and as a result the Hearing Examiner struck a portion of PNM/Avangrid’s brief.<sup>36</sup> “It is not within the Joint Applicants’ authority to make determinations and take actions that violate Commission orders.”<sup>37</sup>
- Employing an attorney with a concurrent conflict of interest in violation of the New Mexico Rules of Professional Conduct.<sup>38</sup>

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<sup>30</sup> CS p. 49, 180.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* p. 49, 183-85.

<sup>33</sup> *Id.* p. 164.

<sup>34</sup> *Id.* p. 187.

<sup>35</sup> 1.2.2.37.E NMAC; *Hobbs Gas v. New Mexico Public Service Commission*, 1993-NMSC-032, 115 N.M. 8 (1993) (it would be an impermissible departure to diverge from Commission rules.)

<sup>36</sup> *Order Striking Portions of Joint Applicants Post-Hearing Brief*, 11/1/2021.

<sup>37</sup> *Id.* p. 3.; CS p. 187.

<sup>38</sup> *Id.* pp. 49, 189-195. (At p. 195: “The Hearing Examiner’s August 6 Order Disqualifying Iberdrola Attorney cited the Supreme Court’s statement in *Living Cross* that, if left unchecked, conflicts of interest will taint an entire case

Due to these violations, the Hearing Examiner warned that “violation and skirting of Commission rules and orders” in this case raises concerns about the “significant effort” needed to enforce the terms of the Proposed Transaction.<sup>39</sup> He reiterated this point when discussing his recommendation of sanctions against Avangrid, “**The Avangrid, Inc./Iberdrola, S.A. group of companies have experienced compliance issues in this proceeding that may foretell future compliance issues if the Proposed Transaction is approved.**”<sup>40</sup> (Emphasis supplied.)

B. Regulatory Non-Compliance in New Mexico

Avangrid additionally skirted Commission rules and orders with its El Cabo and La Joya wind projects. As the Hearing Examiner pointed out, Avangrid’s affiliate, Avangrid Renewables (“Renewables”) described its El Cabo wind project “as a 298 MW project, avoiding the Commission location control review for projects sized at 300 MW” and failed to provide documentation for the La Joya wind farm project under the Commission order approving the project’s location.”<sup>41</sup>

C. The Spanish criminal investigation of active bribery, the crime of violation of privacy, and the continuous offense of forgery; harassment of persons who are adverse to Iberdrola/Avangrid positions

Counsel for New Energy Economy has been practicing before this administrative agency for more than 10 years. Never has a Hearing Examiner issued two different sets of Orders a specific *Certification of Stipulation* to the Commissioners, Office of General Counsel, etc. and a different **redacted** *Certification of Stipulation* to the parties and the public. However, this case has required a new set of rules. This case requires a new set of rules because this case includes

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and call into question the integrity of the attorney-client relationship. . . . It is crucial that the proceeding and the Commission’s final decision are viewed by the public as credible and without any taint of improper influence.”)

<sup>39</sup> CS p. 50.

<sup>40</sup> *Id.* p. 166

<sup>41</sup> *Id.* p. 28, 50, 158-162, 440.

Iberdrola/Avangrid; this corporate conglomerate involves “Iberdrola, S.A., Ignacio Galán (who is both the Chairman and CEO of Iberdrola, S.A. and the Chairman of Avangrid, Inc.) and a number of current and former Iberdrola, S.A. executives”<sup>42</sup> who are entangled in a Spanish criminal investigation into the Chairman and other top executives of Iberdrola, S.A. for **bribery, forgery, and a violation of privacy and falsification of commercial documents.**<sup>43</sup> This investigation “is relevant as it may reflect the culture” of Iberdrola/Avangrid.<sup>44</sup>

#### IV. Avangrid/Iberdrola’s Record in the Northeast

Outside of New Mexico, Avangrid and its affiliates in the Northeast have accumulated \$63.1M in fines and violations over the last 5 years.<sup>45</sup> Avangrid/Iberdrola’s record in the Northeast indicates that the quality of PNM’s service could diminish post-merger.<sup>46</sup>

Avangrid’s political action committee in Maine is also concerning, because it “hired private investigators and consultants to research and allegedly interfere[] with Maine residents attempting to organize a citizens’ initiative opposing a transmission line proposed by [Avangrid’s subsidiary] CMP.”<sup>47</sup> Although, hiring private investigators to research and follow your opponents is not necessarily illegal, it is not the type of behavior we view as appropriate in New Mexico.<sup>48</sup>

Regulatory agencies have found that Avangrid’s wholly owned subsidiary, CMP, fails to comply with regulatory requirements and does not provide quality customer service. For example, CMP settled with the Northeast Power Coordinating Council after admitting to two

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<sup>42</sup> CA p. 14.

<sup>43</sup> *Id.* pp. 47, 140-148.

<sup>44</sup> *Id.* p. 47.

<sup>45</sup> *Id.* p.44.

<sup>46</sup> *Id.* p. 43.

<sup>47</sup> *Id.* p. 50.

<sup>48</sup> CS p. 147.

separate violations relating to Transmission Operations (“TOP”) Reliability Standards.<sup>49</sup>

Avangrid subsidiaries New York State Electric and Gas Corporation (“NYSEG”) and Rochester Gas and Electric Corporation (“RG&E”) also admitted to two TOP violations apiece and settled with the NPCC.<sup>50</sup> In total Avangrid paid a penalty of \$450,000 for these violations in addition to other remedies.<sup>51</sup> The NPCC noted that among the reasons for its penalty assessment, it “aggravated the penalty for CMP violations because of the prior violations by NYSEG and RG&E that are resolved in the Settlement Agreement.”<sup>52</sup>

Less than a year and a half later, on April 29, 2021, CMP admitted to additional TOP violations and paid a \$360,000 penalty in addition to other remedies.<sup>53</sup> Again, NPCC considered past violations to be an aggravating factor in the penalty determination.<sup>54</sup>

The Maine Public Utilities Commission (“MPUC”) has taken several actions in response to CMP management, billing, and customer service failures. For example, in February 2019, the MPUC imposed a reduction in ROE equivalent to \$9.9 million, in response to a finding of imprudence regarding the rollout of CMP’s SmartCare billing system and customer service failures.<sup>55</sup> Mr. Kump admitted,<sup>56</sup> and the MPUC Order confirms, that this is the largest reduction in Maine’s history, and “results in an allowed return considerably below” any other in the country.

In addition to the \$9.9 million negative ROE adjustment discussed above, the MPUC also fined CMP \$500,000 in August of 2020 for violating Maine consumer-protection rules by

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<sup>49</sup> NEE Exhibit 32, p. 1

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*, p. 2.

<sup>52</sup> *Id.*, p. 5.

<sup>53</sup> NEE Exhibit 30, p. 1.

<sup>54</sup> *Id.*, p. 4.

<sup>55</sup> NEE Ex. 27, February 26, 2020 Order of the MPUC Docket No. 2019-00015, p. 1.

<sup>56</sup> TR., 8/12/2021, Kump, pp. 400-402.

sending notices stating that CMP would disconnect customer in the winter,<sup>57</sup> and opened an investigation into its interconnection practices in April of 2021 in response to a complaint received from two community solar advocacy organizations in Maine.<sup>58</sup>

There were also a series of settlements or negative revenue adjustments that also involved reliability, regulatory non-compliance or safety concerns, as testified to by Mr. Kump and they are detailed extensively in NEE's Post-Hearing Brief-in-Chief and Response Brief and the Certification of Stipulation.<sup>59</sup>

## **V. Avangrid/Iberdrola lack technical experience with Solar and are being investigated for undermining community and rooftop solar**

Using a green leaf logo and making the promise of ESG and the most ethical company – is hollow.<sup>60</sup> The primary selling point for the Avangrid/Iberdrola merger is the attractiveness of a renewable energy leader to help New Mexico transition away from fossil fuels. However, Mr. Kump's answer to Commissioner Hall's question about a "satisfactory distribution grid that can accommodate" all the solar residential consumers and small, medium and large commercial customers seeking interconnection access<sup>61</sup> shows that Avangrid is not up to the task. Mr. Kump stated, "in talking to our team, it's a very, you know, complex issue, and one that we're quite frankly learning on the fly as we go through this."<sup>62</sup> Mr. Kump's admission that Avangrid does not have technical expertise in solar interconnection, shows that Avangrid does not have the professional expertise to help New Mexico transition to a renewable energy future.

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<sup>57</sup> NEE Exhibit 28, MPUC Order Docket No. 00017

<sup>58</sup> NEE Exhibit 30, April 6, 2021 MPUC Notice of Formal Investigation.

<sup>59</sup> CS, pp. 107-127.

<sup>60</sup> CS pp. 158-159.

<sup>61</sup> TR., 8/12/2021, (Commissioner Hall), p. 502

<sup>62</sup> CS pp. 157-158.

Additionally, the MPUC is investigating Avangrid subsidiary, CMP, for interconnection practices after community groups complained that CMP “increased the costs to be charged renewable energy developers to connect their projects to CMP’s system months after entering agreements with the developers on the proper amounts.”<sup>63</sup>

## **VI. Responses to Specific Portions of PNM’s Exceptions to Certification of Stipulation**

### **1. Exception: 1**

A. “The record reflects that there is substantial agreement among all but one party that the Proposed Transaction can and should be approved.” JA Exceptions, p.3. Joint Applicants describe NEE as the only opponent, but it speaks volumes that the parties representing the vast number of ratepayers’ interests have refused to sign on to the Stipulation: City of Albuquerque, Bernalillo County, Albuquerque Bernalillo County Water Utility Authority, and New Mexico Affordable Reliable Energy Association. Put lipstick on a pig but the merger still stinks: shareholders gain,<sup>64</sup> questionable environmental benefits,<sup>65</sup> \$63M of violations and penalties,<sup>66</sup> skepticism “about the extent to which the Iberdrola, S.A./Avangrid, Inc. group will benefit PNM financially,”<sup>67</sup> dubious claims about financial health and whether the acquiring companies are precipitously leveraged,<sup>68</sup> and more. Further, PRC Staff is not a signatory, and noticeably, did not file Exceptions to the *Certification of Stipulation*. While the Signatories did file Exceptions<sup>69</sup>

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<sup>63</sup> CS p. 48.

<sup>64</sup> CS p. 38. “The Proposed Transaction will provide PNMR shareholders \$391 million more than the market value of the shares of PNMR stock. Three PNMR officers departing after the merger will receive approximately \$29 million in “Golden Parachute compensation.

<sup>65</sup> CS p. 54. “The environmental commitments pursue worthy goals, but they lack enforceable near-term results that are sufficient to outweigh PNM customers’ immediate interests in reliable service at just and reasonable rates.”

<sup>66</sup> CS 107-127.

<sup>67</sup> CS p. 89.

<sup>68</sup> CS 131-134.

<sup>69</sup> Signatories’ Exceptions: New Mexico Attorney General (“NMAG”), Western Resource Advocates (“WRA”), International Brotherhood of Electrical Workers Local 611 (“IBEW Local 611”), Diné Citizens Against Ruining Our Environment (“Diné CARE”), NAVA Education Project (“NAVA EP”), San Juan Citizens Alliance (“SJCA”), Tó

noting their continued support of the June 4<sup>th</sup> Stipulation and “the post-stipulation regulatory commitments that Joint Applicants made in order to address issues raised by non-signatories”<sup>70</sup> there is simply no evidence, as Joint Applicants claim<sup>71</sup> that the differences noted in the CS at pp. 50-63 have been resolved.

B. The “benefits significantly exceed the benefits offered in any previous utility merger proceeding in the State’s history.” JA Exceptions p. 5. First, while it is true that the actual numbers are higher the relative percentage differences are actually lower than any other previous utility merger. For instance, Joint Applicants cite Case No. 19-00234-UT and the customer rate credit and the economic development credit for EPE customers, however, PNM now has approximately 8 times the number of customers that EPE has. Additionally, this is the largest merger in the State’s history, so the benefits should be larger than previously contemplated. Further, the “benefits” generally fall into four categories:

i) actual additions to the status quo: 150 new full-time jobs (if they are actually located in New Mexico); \$1 million over two years to create or supplement a scholarship program in the Albuquerque/Bernalillo County metropolitan area, and \$1 million to create or enhance apprenticeships in local high schools and colleges; \$15 million for new low-income energy efficiency programs.

ii) inadequate or grossly inadequate: \$67 million rate credits and kWh allocation<sup>72</sup>; \$25 million of shareholder funding for economic development projects in New Mexico *over ten years*; \$10 million in arrearage forgiveness – instead of full arrearage forgiveness; \$12.5 million in shareholder funding over five years for economic development projects by indigenous community groups in the Four Corners region (a pittance relative to the pollution that has decimated and stolen lives).

iii) looks good but actually amounts to the status quo: No involuntary worker terminations; maintain funding for Good Neighbor Fund, for at least *five* years following closing;

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Nizhóni Aní (“TNA”), the Coalition for Clean Affordable Energy (“CCAЕ”), Interwest Energy Alliance (“Interwest”), Walmart, Inc., Onward Energy Holdings, LLC (“Onward”), the Incorporated County of Los Alamos (“LAC”), and M-S-R Public Power Agency (“M-S-R”); CCAЕ filed Exceptions on its own as well; Exceptions of the Incorporated County of Los Alamos (“LAC”), and M-S-R Public Power Agency (“M-S-R”) to the Initial Certification of Stipulation were also filed separately.

<sup>70</sup> Signatories’ Exceptions p. 2.

<sup>71</sup> This statement is made without basis: “none of these parties has indicated that if particular requests outside the fundamental agreements are not fully adopted it would be a “deal breaker” for approval of the Proposed Transaction.” JA Exceptions p. 4.

<sup>72</sup> CS p. 54 “\$1.64 per month and \$19.68 per year over three years.”



Maintaining PNM and PNMR's charitable contributions in New Mexico at historical levels for a minimum of *five* years.

iv) non-enforceable, meaningless or generally immaterial: reasonable efforts to find or participate in the development of a Regional Transmission Organization; agreement to adhere to collective bargaining agreement in good faith; will use its good faith efforts to address decommissioning at San Juan Generating Station; PNM will name a Chief Environmental Officer.

"[T]he benefits the Joint Applicants cite may not be as significant as they are portrayed. ...[T]he \$67 million in rate credits may be a significant cost to the Joint Applicants, but the amounts to be received by each customer are relatively small."<sup>73</sup> "Attorney General witness Andrea Crane said "[e]ven if we did \$67 million on a per customer basis, you know, there's still a relatively small impact on people's lives, and that's how ultimately, at the end of the day, I think the rate credits have to be evaluated."<sup>74</sup>

The reference point to determine net public benefit must take into consideration the distribution of benefits between ratepayers (\$1.64 per month for three years for residential ratepayers<sup>75</sup>), senior management (golden parachutes for three PNMR/PNM Executives equaling more than \$29 million far exceeds the amount *all* residential ratepayers will receive<sup>76</sup>) and hundreds of millions to shareholders. If the Four Corner divestiture, required by this merger, is approved as recommended by the Hearing Examiner in Case No. 21-00017-UT, ratepayers will be required to pay \$300 million in a non-bypassable charge on their monthly bill, and this will adversely impact ratepayers' existing rates and result in a *net loss as a result of the merger*.<sup>77</sup>

"Three- to five-year commitments for economic development benefits are likewise

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<sup>73</sup> CS p. 53.

<sup>74</sup> CS p. 54.

<sup>75</sup> CS p. 54. (This calculation was based on 500,000 ratepayers, not the current approximate number of ratepayers, 800,000: <https://www.pnmresources.com/about-us/at-a-glance.aspx>)

<sup>76</sup> TR., 8/13/2021, Tarry, p. 720-722; JA Exhibit 21, Supplemental Testimony of Joseph D. Tarry, JDT-1, p. 6 of 7.

<sup>77</sup> As Ms. Crane testified: "[I]f we're looking at the \$300 million [cost for Four Corners] on one hand, and we're looking at the stated and quantified conditions, like the rate credits, and the economic development, then I may very well agree with you that \$300 [million] of harm outweighs, you know, half of that in benefits or whatever." TR., 8/16/2021, (Crane), pp. 1020-1021.

insufficient when compared to PNM customers' longer-term interests in reliable service.”<sup>78</sup>

Taken together, the promised benefits do not outweigh the potential risks and harms.<sup>79</sup>

C. Avangrid/Iberdrola's Defense: *our penalties are far lower than peer utilities*

Since when is: *I don't harm, as violently as another* a recognizable defense? (That isn't a legally cognizable defense with domestic violence and should be roundly rejected here.)

Avangrid/Iberdrola argue that in 2021 they are *not as bad* as all of the major utilities “in those states,”<sup>80</sup> even if they inadequately served customers' needs; Except, isn't providing electricity their mandate, and adjusting to a changing climate within their business wheelhouse?

A pattern has emerged: Iberdrola/Avangrid skirt the law or rules to their own advantage, and if caught, either blame external circumstances,<sup>81</sup> claim confusion (by the company or the interrogator),<sup>82</sup> downplay the “relative” seriousness of the claim,<sup>83</sup> and then settle<sup>84</sup> or litigate.<sup>85</sup> Iberdrola/Avangrid avoid responsibility and ironically blame climate change as an excuse for their inability to serve customers.<sup>86</sup>

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<sup>78</sup> CS p. 54.

<sup>79</sup> CS p. 53.

<sup>80</sup> JA Exceptions p. 12.

<sup>81</sup> Commission Exhibit 6 Kump Response to Hearing Examiner 5-11-21 Order, p. 5 of 26, 5/18/2021.

(“Management audits are a common tool used by regulators in the Northeast to review utility operations and management structure.”)

<sup>82</sup> JA Exhibit 14, Kump, p. 3. (When discovered Avangrid testifies that the company merely should have provided “some explanation” which “may have added context and helped to avoid confusion.”)

<sup>83</sup> At least Avangrid is not as bad as other utilities, they claim: “actions and measures should be evaluated in the context of the regulatory construct in Connecticut, Maine and New York.” Commission Exhibit 6 Kump Response to Hearing Examiner 5-11-21 Order, p. 2 of 26, 5/18/2021.

<sup>84</sup> R-NEE Exhibit 12b - JA Exhibit NEE 12-6b; R-NEE Exhibit 12a- JA exhibit NEE 12-6a; R-NEE Exhibit 54 Christopher Sandberg Opposition to the Stipulation, pp. 58-60.

<sup>85</sup> See, R-NEE Exhibit 12-5 (Extensive litigation: 1) findings as of 5/24/2021, in California, the price of the Avangrid Renewables PPA imposed an excessive cost burden on customers, but otherwise denied the accusation of “energy fraud and market manipulation”; 2) in Massachusetts, accused of unfair competition and violation of consumer protection laws and unjust enrichment - case ultimately dismissed; 3) in New England involving purchases in the day-ahead and real time wholesale electric market, accused of artificially inflating natural gas and electricity prices and anticompetitive conduct- case ultimately dismissed.)

<sup>86</sup> JA Exceptions p. 12. (fined less than other utilities “for storm-related performance”).

Avangrid has already re-written history when it tells the Commission that they have “moved quickly to add resources, implement system changes, and promote new leaders to improve customer service.”<sup>87</sup> This couldn’t be further from the truth; the independent audit finalized in 7/12/2021 analyzes their corporate management structure and in a 138 page report details a very different story.<sup>88</sup> The full analysis is worth this Commission’s time and below are a few telling excerpts from the management audit:

Management’s overemphasizing of cuts in and limits on resources as a means for closing gaps in meeting the earnings expectations of the equity investment community has sacrificed effectiveness in providing service.<sup>89</sup>

The persistence of change, driven significantly by leadership’s overemphasis on closing earnings gaps, has produced staffing instability, first bringing cuts in service-affecting resources, followed more recently by substantial increases in those personnel, all in the context of organizational flux and rapid cycling of those holding senior management and executive positions. The major and frequent change in those positions have produced an unusually short-tenured leadership team. Networks has also experienced overly frequent cycling of personnel, many from offshore, through important positions held for unusually short periods of time overall.<sup>90</sup>

This is not our first encounter with financial-driven measures at Iberdrola, S.A.’s U.S. utilities. A decade or so ago, we saw similar measures, at that time driven by Spanish leadership’s overarching focus on controlling its New York utility financial results through pressure on reducing headcount and vegetation management expenditures and even on transferring core utility functions to a profit-making subsidiary. . . .one thing that has not changed is the leadership focus we saw on these headcount and vegetation management as sources of cost cutting today.<sup>91</sup>

In Joint Applicants’ Exceptions they state, at p. 12: “Avangrid acknowledged Central Maine Power Company (“CMP”) did not perform to Avangrid’s expectations for customer

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<sup>87</sup> JA Exceptions p. 12-13.

<sup>88</sup> CS p. 53; Final Report, Central Maine Power’s Management Structure and Affiliate Services, Liberty Consulting Group, July 12, 2021, attached to Sandberg (7/16/21), as Exhibit CKS-2 (hereafter “Maine Audit”).

<sup>89</sup> Maine Audit, p.1; CS p. 122-124.

<sup>90</sup> *Id.*

<sup>91</sup> Maine Audit p. 4; CS p. 122-124.

service between 2016 and 2019 and agrees that the billing system rollout in Maine was not executed well, and that there were initially not enough customer service representatives to help with customer questions and concerns.”<sup>92</sup> Contrary to evidence Avangrid states that its subsidiary “moved quickly to add resources” and ameliorate the problem,<sup>93</sup> yet the management audit reviewing the same states otherwise: quality of service deterioration, staffing instability, organizational flux, and mismanagement lead to widespread system unreliability, customer dissatisfaction, and failure to abide by regulatory rules. The roll out of the SmartCare billing system, which was an utter debacle, was first denied by the company and blamed on the customers themselves, and took more than **three years to fix**.<sup>94</sup>

Avangrid claims that it is not as bad as the other Northeast utilities<sup>95</sup> and therefore the Commission should evaluate its inadequate service relative to those others more inadequately served.<sup>96</sup> Avangrid/Iberdrola have chosen the electric utility business, and, thereby voluntarily and knowingly have taken on the duty bound to provide reliable and affordable electric service and efficient customer service. Climate chaos is a reality (which in part it helped foment) and Avangrid/Iberdrola can’t excuse its operational failure on knowable and likely circumstances.

D. Avangrid/Iberdrola paid Marcus Real \$350,000 to get the NMAG Balderas, his personal friend and former law partner, to sign onto the Stipulation; the Hearing Examiner,

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<sup>92</sup> JA Exceptions p. 12.

<sup>93</sup> *Id.*

<sup>94</sup> NEE Exhibit 27, February 26, 2020 Order of the MPUC Docket No. 2019-00015, pp. 2 and 4; CS p. 172.

<sup>95</sup> JA Exceptions p. 12. “This criticism overlooks the broader context of state-wide penalties for all of the major utilities in those states, which are the result of more frequent and more intense weather events in the Northeast due to climate change.”

<sup>96</sup> JA Exceptions p. 12.

pursuant to NM Supreme Court law,<sup>97</sup> held that Rael had a “concurrent conflict of interest”, and was disqualified from representing Avangrid/Iberdrola.<sup>98</sup>

Marcus Real performed possibly 40 hours of work,<sup>99</sup> with New Mexico Attorney General, Hector Balderas. Despite being the statutorily-required representative of New Mexico residential ratepayers and small businesses, (NMSA 8-5-17(B)(2)), Balderas quickly signed on to the Avangrid/Iberdrola deal after Rael was hired. Rael will be paid by Avangrid/Iberdrola in excess of \$10,000/an hour. Not bad remuneration, even for a NY or DC firm.

Avangrid/Iberdrola’s response was that they didn’t see any conflict; but the precise reason they hired Rael was his access to Balderas. Notably, Rael and his firm were recently disqualified for concurrent conflict of interest, NM Supreme Court, No. S-1-SC-38555, and all Rael firm filings were struck, including his client’s appeal. *See*, Exhibit A, No. S-1-SC-38555, Order.

## **2. Exception: 2 – in four parts**

### **A. Sanctions against Avangrid/Iberdrola**

Joint Applicants don’t want sanctions to be applied; When a party fails to comply with the Court’s Orders and the Rules of Discovery sanctions are appropriate. *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, ¶ 54, 629 P.2d 231, 246 (1980); NMSA 1978, Section 62-12-4 ; Section 1.2.2.25.I NMAC; See NEE’s Brief in Chief pp. 21-29; CS pp. 166-181.

### **B. Reliability Metrics**

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<sup>97</sup> CS pp. 189-195. At p. 194: *Living Cross Ambulance Serv., Inc. v. N.M. Pub. Regulation Comm’n*, 2014-NMSC-036, 338 P.3d 1258

<sup>98</sup> CS pp. 189-195.

<sup>99</sup> CS pp. 192-193.

Despite Avangrid/Iberdrola's track record Joint Applicants don't want to abide by Commission determined reliability metrics to protect customers; their request for a pass should be soundly rejected. *s* above §§ **I, II, IV**1C, and the CS pp. 43-45, 107-127.

- C. Avangrid/Iberdrola argue that an independent isn't necessary despite all Northeast management audits calling for this oversight

While Avangrid/Iberdrola have claimed numerous times throughout this proceeding that PNM will operate under local control post-merger, they still resist an independent PNM board. Evidence at the hearing also shows that upstream companies in the Iberdrola group exert undue pressure on subsidiaries. The United States District Court in Maine found in *Levesque et al. v. Iberdrola, S.A. et al.*, 021 U.S. Dist. LEXIS 147847, 2021 WL 3476092, August 6, 2021, that an Iberdrola executive pressured CMP to roll out a new billing system even though the companies knew it was not ready.<sup>100</sup> This led to a finding of imprudence by the Maine Public Utilities Commission.<sup>101</sup> In fact, the Hearing Examiner in this case noted that "a primary cause of [Avangrid's Northeast utilities'] service problems . . . appears to have been Avangrid, Inc.'s insistence that the utilities cut resources to meet Avangrid Inc.'s financial goals."<sup>102</sup> This means that "[p]rotections are needed to shield PNM board of directors and management from [Avangrid and Iberdrola] earnings priorities."<sup>103</sup> Avangrid/Iberdrola maintain that an independent PNM board is unnecessary yet the potential risks of unreliability and diminished service quality outlined above and in the *Certification of Stipulation* demand otherwise.

- D. Without explanation, Avangrid/Iberdrola oppose the Hearing Examiner's prohibition against having PNM and PNMR employees, including the President and senior management hold positions with upstream affiliated interests.

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<sup>100</sup> *Id.* p. 181-82.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* p. 50.

<sup>103</sup> *Id.*

PNM and PNMR employees must be prohibited from holding positions in Iberdrola/Avangrid affiliates. “Protections are needed to shield the PNM board of directors and management from the earnings priorities of the upstream holding companies of Avangrid, Inc. and Iberdrola, S.A.”<sup>104</sup>

## VII. CONCLUSION

The PRC is already stretched thin and underfunded.<sup>105</sup> Is the Commission prepared to create an entire new regulatory wing: just to ensure that Avangrid/Iberdrola comply with the law? Will an enforcement effort require even more capacity, more oversight, more data, more personnel, and more money from the legislature to hold Avangrid/Iberdrola accountable in New Mexico?<sup>106</sup> And how will we ever compete with Avangrid/Iberdrola’s money? Practiced obfuscation? Propaganda machine and political influence?

Will the Commission need to establish a new enforcement wing just to monitor, supervise, control and penalize an Avangrid/Iberdrola controlled PNM? The merger is too risky an investment for New Mexico.

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<sup>104</sup> CS p. 50.

I. <sup>105</sup> CCAE Energy acknowledges the “the difficult circumstances and challenging regulatory environment in which the PRC has been operating over the past couple of years, making its essential work challenging.” Coalition for Clean Affordable Energy Exceptions to Certification of Stipulation, p. 5. Yet, disagrees without evidence or explanation regarding *one* of the articulated risks: “that the PRC is not up to the task of regulating an Avangrid-owned PNM, but recognizes that proper resources and staffing for the PRC is needed for the PRC to do its job.” *Id.*, p.6. Yet, compare CCAE’s wishful thinking to another state agency with the responsibility to account for water quality and quantity: On 11/11, 2021, the State Engineer announced that he will step down due to “persistent lack of financial resources” and inadequate staffing (“67 fewer employees now than it did under then-Gov. Bill Richardson a decade ago”). “NM’s top water official to step down, citing understaffing,” *Albuquerque Journal*, 11/11/2021, <https://www.abqjournal.com/2445533/nms-top-water-official-to-step-down-citing-understaffing.html>

II. <sup>106</sup> “PRC needs full funding to do its job,” *Santa Fe New Mexican*, 11/14/2021, [https://www.santafenewmexican.com/opinion/my\\_view/prc-needs-full-funding-to-do-its-job/article\\_4629f488-4364-11ec-a8bc-a380bf240fa0.html](https://www.santafenewmexican.com/opinion/my_view/prc-needs-full-funding-to-do-its-job/article_4629f488-4364-11ec-a8bc-a380bf240fa0.html) (“Unfortunately, recent budgets have proved insufficient to hire and retain staff and outside experts to help guide the commission in an ever-increasingly complex global energy and regulatory environment. ... [T]he National Regulatory Research Institute [concluded]: This death-spiral-type condition [of increasing demands and shrinking resources] ... has seriously jeopardized the capability of the PRC to protect the public interest.”)

There are other viable alternatives that will more democratically serve the energy and economic needs of New Mexicans in perpetuity.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>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 )  <u>TRANSACTION</u> )</b>	<b>Case No. 20-00222-UT</b>
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**CERTIFICATE OF SERVICE**

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

**New Energy Economy's Response to  
Joint Applicants' Exceptions to Certification of Stipulation**

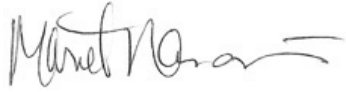
Stacey Goodwin	<a href="mailto:Stacey.Goodwin@pnmresources.com">Stacey.Goodwin@pnmresources.com</a> ;	Kyle J. Tisdell	<a href="mailto:tisdell@westernlaw.org">tisdell@westernlaw.org</a> ;
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<p>Carey Salaz Steven Schwebke Patrick V. Apodaca Mariel Nanasi Christopher Sandberg Joan Drake Lisa Tormoen Hickey Nann M. Winter Keith Herrmann Dahl Harris Peter Auh Andrew Harriger Jody García Steven S. Michel April Elliott Cydney Beadles Pat O'Connell Douglas J. Howe Cholla Khoury Gideon Elliot Robert F. Lundin Andrea Crane Doug Gegax Joseph Yar Jeffrey Spurgeon Bruce C. Throne Rob Witwer Jeffrey Albright Michael I. Garcia Amanda Edwards Matt Dunne Maureen Reno Richard L. C. Virtue Daniel A. Najjar Philo Shelton Kevin Powers Robert Cummins Steven Gross Martin R. Hopper Kurt J. Boehm Bill Templeman Justin Bieber Karl F. Kumli, III Mark Detsky K. C. Cunilio Julie A. Wolfe Andrew Wernsdorfer Joel Johnson</p>	<p><a href="mailto:Carey.salaz@pnm.com">Carey.salaz@pnm.com</a>; <a href="mailto:Steven.Schwebke@pnm.com">Steven.Schwebke@pnm.com</a>; <a href="mailto:Patrick.Apodaca@pnmresources.com">Patrick.Apodaca@pnmresources.com</a>; <a href="mailto:Mariel@seedsbeneaththesnow.com">Mariel@seedsbeneaththesnow.com</a>; <a href="mailto:cksandberg@me.com">cksandberg@me.com</a>; <a href="mailto:jdrake@modrall.com">jdrake@modrall.com</a>; <a href="mailto:lisahickey@newlawgroup.com">lisahickey@newLawgroup.com</a>; <a href="mailto:nwinter@stelznerlaw.com">nwinter@stelznerlaw.com</a>; <a href="mailto:kherrmann@stelznerlaw.com">kherrmann@stelznerlaw.com</a>; <a href="mailto:dahlharris@hotmail.com">dahlharris@hotmail.com</a>; <a href="mailto:pauh@abcwua.org">pauh@abcwua.org</a>; <a href="mailto:akharriger@sawvel.com">akharriger@sawvel.com</a>; <a href="mailto:JGarcia@stelznerlaw.com">JGarcia@stelznerlaw.com</a>; <a href="mailto:smichel@westernresources.org">smichel@westernresources.org</a>; <a href="mailto:April.elliott@westernresources.org">April.elliott@westernresources.org</a>; <a href="mailto:Cydney.Beadles@westernresources.org">Cydney.Beadles@westernresources.org</a>; <a href="mailto:pat.oconnell@westernresources.org">pat.oconnell@westernresources.org</a>; <a href="mailto:dhowe@highrocknm.com">dhowe@highrocknm.com</a>; <a href="mailto:ckhoury@nmag.gov">ckhoury@nmag.gov</a>; <a href="mailto:gelliot@nmag.gov">gelliot@nmag.gov</a>; <a href="mailto:rlundin@nmag.gov">rlundin@nmag.gov</a>; <a href="mailto:ctcolumbia@aol.com">ctcolumbia@aol.com</a>; <a href="mailto:dgegax@nmsu.edu">dgegax@nmsu.edu</a>; <a href="mailto:joseph@yarlawoffice.com">joseph@yarlawoffice.com</a>; <a href="mailto:spurgeonJ@southwestgen.com">spurgeonJ@southwestgen.com</a>; <a href="mailto:bthronetty@newmexico.com">bthronetty@newmexico.com</a>; <a href="mailto:witwerr@southwestgen.com">witwerr@southwestgen.com</a>; <a href="mailto:JA@Jalblaw.com">JA@Jalblaw.com</a>; <a href="mailto:mikgarcia@bernco.gov">mikgarcia@bernco.gov</a>; <a href="mailto:AE@Jalblaw.com">AE@Jalblaw.com</a>; <a href="mailto:dunneconsultingllc@gmail.com">dunneconsultingllc@gmail.com</a>; <a href="mailto:mreno@reno-energy.com">mreno@reno-energy.com</a>; <a href="mailto:rvirtue@virtuelaw.com">rvirtue@virtuelaw.com</a>; <a href="mailto:dnajjar@virtuelaw.com">dnajjar@virtuelaw.com</a>; <a href="mailto:Philo.Shelton@lacnm.us">Philo.Shelton@lacnm.us</a>; <a href="mailto:Kevin.Powers@lacnm.us">Kevin.Powers@lacnm.us</a>; <a href="mailto:Robert.Cummins@lacnm.us">Robert.Cummins@lacnm.us</a>; <a href="mailto:gross@portersimon.com">gross@portersimon.com</a>; <a href="mailto:mhopper@msrpower.org">mhopper@msrpower.org</a>; <a href="mailto:kboehm@bkllawfirm.com">kboehm@bkllawfirm.com</a>; <a href="mailto:WTempleman@cmtisantafe.com">WTempleman@cmtisantafe.com</a>; <a href="mailto:jbieber@energystrat.com">jbieber@energystrat.com</a>; <a href="mailto:karlk@dietzedavis.com">karlk@dietzedavis.com</a>; <a href="mailto:mdetsky@dietzedavis.com">mdetsky@dietzedavis.com</a>; <a href="mailto:kcunilio@dietzedavis.com">kcunilio@dietzedavis.com</a>; <a href="mailto:julie@dietzedavis.com">julie@dietzedavis.com</a>; <a href="mailto:andy@berrendoenergy.com">andy@berrendoenergy.com</a>; <a href="mailto:Joel@berrendoenergy.com">Joel@berrendoenergy.com</a>;</p>	<p>Nicole Horseherder Jessica Keetso Thomas Singer Mike Eisenfeld Robyn Jackson Jane L. Yee Larry Blank, Ph.D. Saif Ismail Peter J. Gould Kelly Gould Jim Dauphinais Michael Gorman Justin Lesky Stephanie Dzur Ramona Blaber Don Hancock April Elliott Brian J. Haverly Jason Marks Matthew Gerhart R. Scott Mahoney David L. Schwartz Katherine Coleman Thompson &amp; Knight Randy S. Bartell Sharon T. Shaheen Jennifer Breakell Hank Adair Cindy A. Crane Peter Mandelstam Steve W. Chriss Barbara Fix Katherine Lagen Camilla Feibelman Michael C. Smith Bradford Borman Peggy Martinez-Rael Elizabeth Ramirez Gilbert Fuentes Jack Sidler John Bogatko Milo Chavez Marc Tupler Elisha Leyba-Tercero Gabriella Dasheno Dhiraj Solomon John Reynolds Ana Kippenbrock</p>	<p><a href="mailto:nhorseherder@gmail.com">nhorseherder@gmail.com</a>; <a href="mailto:jkeetso@yahoo.com">jkeetso@yahoo.com</a>; <a href="mailto:Singer@westernlaw.org">Singer@westernlaw.org</a>; <a href="mailto:mike@sanjuancitizens.org">mike@sanjuancitizens.org</a>; <a href="mailto:Robyn.jackson@dine-care.org">Robyn.jackson@dine-care.org</a>; <a href="mailto:jyee@cabq.gov">jyee@cabq.gov</a>; <a href="mailto:lb@tahoeconomics.com">lb@tahoeconomics.com</a>; <a href="mailto:sismail@cabq.gov">sismail@cabq.gov</a>; <a href="mailto:peter@thegouldlawfirm.com">peter@thegouldlawfirm.com</a>; <a href="mailto:Kelly@thegouldlawfirm.com">Kelly@thegouldlawfirm.com</a>; <a href="mailto:jdauphinais@consultbai.com">jdauphinais@consultbai.com</a>; <a href="mailto:mgorman@consultbai.com">mgorman@consultbai.com</a>; <a href="mailto:jlesky@leskylawoffice.com">jlesky@leskylawoffice.com</a>; <a href="mailto:Stephanie@Dzur-law.com">Stephanie@Dzur-law.com</a>; <a href="mailto:Ramona.blaber@sierraclub.org">Ramona.blaber@sierraclub.org</a>; <a href="mailto:srcidon@earthlink.net">srcidon@earthlink.net</a>; <a href="mailto:ccae@elliottanalytics.com">ccae@elliottanalytics.com</a>; <a href="mailto:bjh@keleher-law.com">bjh@keleher-law.com</a>; <a href="mailto:lawoffice@jasonmarks.com">lawoffice@jasonmarks.com</a>; <a href="mailto:matt.gerhart@sierraclub.org">matt.gerhart@sierraclub.org</a>; <a href="mailto:Scott.Mahoney@avangrid.com">Scott.Mahoney@avangrid.com</a>; <a href="mailto:david.schwartz@lw.com">david.schwartz@lw.com</a>; <a href="mailto:Katie.coleman@tklaw.com">Katie.coleman@tklaw.com</a>; <a href="mailto:Tk.eservice@tklaw.com">Tk.eservice@tklaw.com</a>; <a href="mailto:rbartell@montand.com">rbartell@montand.com</a>; <a href="mailto:sshaheen@montand.com">sshaheen@montand.com</a>; <a href="mailto:jbreakell@fmtn.org">jbreakell@fmtn.org</a>; <a href="mailto:hadair@fmtn.org">hadair@fmtn.org</a>; <a href="mailto:ccrane@enchantenergy.com">ccrane@enchantenergy.com</a>; <a href="mailto:peterm@enchantenergy.com">peterm@enchantenergy.com</a>; <a href="mailto:Stephen.chriss@wal-mart.com">Stephen.chriss@wal-mart.com</a>; <a href="mailto:baafix@earthlink.net">baafix@earthlink.net</a>; <a href="mailto:Katherine.lagen@sierraclub.org">Katherine.lagen@sierraclub.org</a>; <a href="mailto:Camilla.Feibelman@sierraclub.org">Camilla.Feibelman@sierraclub.org</a>; <a href="mailto:Michaelc.smith@state.nm.us">Michaelc.smith@state.nm.us</a>; <a href="mailto:Bradford.Borman@state.nm.us">Bradford.Borman@state.nm.us</a>; <a href="mailto:Peggy.Martinez-Rael@state.nm.us">Peggy.Martinez-Rael@state.nm.us</a>; <a href="mailto:Elizabeth.Ramirez@state.nm.us">Elizabeth.Ramirez@state.nm.us</a>; <a href="mailto:GilbertT.Fuentes@state.nm.us">GilbertT.Fuentes@state.nm.us</a>; <a href="mailto:Jack.sidler@state.nm.us">Jack.sidler@state.nm.us</a>; <a href="mailto:John.Bogatko@state.nm.us">John.Bogatko@state.nm.us</a>; <a href="mailto:Milo.Chavez@state.nm.us">Milo.Chavez@state.nm.us</a>; <a href="mailto:Marc.Tupler@state.nm.us">Marc.Tupler@state.nm.us</a>; <a href="mailto:Elisha.Leyba-Tercero@state.nm.us">Elisha.Leyba-Tercero@state.nm.us</a>; <a href="mailto:Gabriella.Dasheno@state.nm.us">Gabriella.Dasheno@state.nm.us</a>; <a href="mailto:Dhiraj.Solomon@state.nm.us">Dhiraj.Solomon@state.nm.us</a>; <a href="mailto:John.Reynolds@state.nm.us">John.Reynolds@state.nm.us</a>; <a href="mailto:Ana.Kippenbrock@state.nm.us">Ana.Kippenbrock@state.nm.us</a>;</p>
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Respectfully submitted this 19th day of November, 2021.

New Energy Economy,



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**Exhibit A**



**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**October 29, 2021**

**NO. S-1-SC-38555**

**GOVERNING BODY for the  
Town of Edgewood,**

Petitioner,

v.

**HON. MARIA SANCHEZ-GAGNE,  
First Judicial District Court Judge,**

Respondent,

and

**THOMAS MCGILL, JERRY POWERS,  
and HOWARD CALKINS,**

Real Parties in Interest,

and

**SHERRY ABRAHAM and  
AUDREY JARAMILLO,**

Intervenors.

**CONSOLIDATED WITH**

**NO. S-1-SC-38559**

**JOHN BASSETT,**

Petitioner,

1 v.

2 **HON. MARIA SANCHEZ-GAGNE,**  
3 **First Judicial District Court Judge,**

4 Respondent,

5 and

6 **STATE OF NEW MEXICO, ex rel.**  
7 **THOMAS MCGILL, JERRY POWERS,**  
8 **and HOWARD CALKINS,**

9 Real Parties in Interest,

10 and

11 **SHERRY ABRAHAM and**  
12 **AUDREY JARAMILLO,**

13 Intervenors.

14 **ORDER**

15 WHEREAS, this matter come on for consideration by the Court in cause  
16 number S-1-SC-38555 upon amended emergency, verified petition for writ of  
17 superintending control, response of the real parties in interest, intervenors' motion  
18 to strike pleadings and disqualify law firm, response thereto and errata to said  
19 response, motion for leave to file reply to response to amended petition and reply,  
20 motion for leave to file reply to response to motion to strike and disqualify and reply;  
21 and motion for expedited or speedy hearing pursuant to NMSA 1978, Section 44-3-  
22 16 and response;

1       WHEREAS, this matter came on for consideration by the Court in cause  
2 number S-1-SC-38559 upon emergency, verified petition for writ of prohibition or  
3 writ of superintending control and request for stay, response of the real parties in  
4 interest and supplemental exhibits to the response, intervenors' motion to expand  
5 stay and notice of supplemental authority, response to motion to expand stay,  
6 amended motion to vacate stay and responses thereto, motion for leave to file reply  
7 to response to petition and reply, petitioner's motion to expand stay, and response of  
8 real parties in interest;

9       WHEREAS, cause numbers S-1-SC-38555 and S-1-SC-38559 were  
10 CONSOLIDATED in cause number S-1-SC-38555;

11       WHEREAS, the direct appeals in *State v. Bassett*, Case No. A-1-CA-39388,  
12 and *State v. Bassett*, Case No. A-1-CA-39399, which concern the same issues as the  
13 petitions filed in this Court, were certified to this Court by the Court of Appeals;

14       WHEREAS, the district court's default judgment on Plaintiffs' complaint for  
15 quo warranto entered on October 14, 2020, determining that John Bassett forfeited  
16 his office as mayor for the Town of Edgewood remained in effect at the time Bassett  
17 voted to retain Robles, Rael & Anaya, P.C. to represent the Town of Edgewood;

18       WHEREAS, the Court having considered the foregoing pleadings and being  
19 sufficiently advised, Chief Justice Michael E. Vigil, Justice C. Shannon Bacon,  
20 Justice David K. Thomson, and Justice Julie J. Vargas concurring;

1 NOW, THEREFORE, IT IS ORDERED that the motion to strike pleadings  
2 and disqualify law firm in cause number S-1-SC-38555 is GRANTED, as the district  
3 court's October 14, 2020 default judgment precluded John Bassett from voting to  
4 retain Robles, Rael & Anaya, P.C. to represent the Town of Edgewood and  
5 paragraph 11 of the district court's order dated October 30, 2020, requires:

6 Until such time as Robles, Rael & Anaya, P.C. is duly authorized to  
7 appear in, or defend against, Plaintiffs' First Amended Complaint on  
8 behalf of Defendant Governing Body for the Town of Edgewood,  
9 Robles, Rael & Anaya, P.C. shall be restrained from filing any papers  
10 or pleadings in this action on behalf of Defendant Governing Body for  
11 the Town of Edgewood.

12  
13 The October 14, 2020 default judgment and October 30, 2020 order of the district  
14 court were in place at the time the Notice of Appeal was filed by Robles, Rael &  
15 Anaya, P.C. on behalf of the Governing Body for the Town of Edgewood. Therefore,  
16 the Notice of Appeal must be stricken.

17 IT IS FURTHER ORDERED that the Court of Appeals shall strike the Notice  
18 of Appeal filed by the Governing Body for the Town of Edgewood in *State v.*  
19 *Bassett*, Case No. A-1-CA-39399. The Court of Appeals shall determine whether the  
20 notices of appeal filed by Defendant, John Bassett in Case No. D-101-CV-2020-  
21 00328 and the docketing statement filed in *State v. Bassett*, Case No. A-1-CA-39388,  
22 were rightly filed in accordance with the district court's order issued on October 30,  
23 2020;

1 IT IS FURTHER ORDERED that the petitions in this consolidated cause are  
2 DENIED;

3 IT IS FURTHER ORDERED that the stay issued by this Court on November  
4 18, 2020, is LIFTED;

5 IT IS FURTHER ORDERED that the motion for expedited or speedy hearing  
6 pursuant to NMSA 1978, Section 44-3-16, filed with this Court September 14, 2021,  
7 is DENIED; and

8 IT IS FURTHER ORDERED that certification of *State v. Bassett*, Case No.  
9 A-1-CA-39388, and *State v. Bassett*, Case No. A-1-CA-39399, consolidated in cause  
10 number S-1-SC-38991, is declined and those matters are returned to the Court of  
11 Appeals for further proceedings not inconsistent with this order.

12 IT IS SO ORDERED.



WITNESS, the Honorable Michael E. Vigil, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 29th day of October, 2021.

Jennifer L. Scott, Clerk of Court  
Supreme Court of New Mexico

I CERTIFY AND ATTEST:  
A true copy was served on all parties  
or their counsel of record on date filed.  
Sally Parz  
Deputy Clerk of the Supreme Court  
of the State of New Mexico

By: Sally Parz  
Deputy Clerk of Court