

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-39152

**AVANGRID, INC., AVANGRID NETWORKS, INC.,
NM GREEN HOLDINGS, INC., IBERDROLA, S.A.,
PUBLIC SERVICE COMPANY OF NEW MEXICO, and
PNM RESOURCES, INC.,**

Appellants,

v.

**NEW MEXICO PUBLIC REGULATION
COMMISSION,**

Appellee,

and

**NEW ENERGY ECONOMY,
WESTERN RESOURCE ADVOCATES,
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS LOCAL 611,
THE OFFICE OF THE NEW MEXICO
ATTORNEY GENERAL, COALITION FOR
CLEAN AFFORDABLE ENERGY, DINE CITIZENS
AGAINST RUINING THE ENVIRONMENT, SAN
JUAN CITIZENS ALLIANCE, TO NIZHONI ANI,
NAVA EDUCATION PROJECT, BERNALILLO
COUNTY, ALBUQUERQUE BERNALILLO
COUNTY WATER UTILITY AUTHORITY, and
NEW MEXICO AFFORDABLE RELIANCE
ENERGY ALLIANCE,**

Intervenor-Appellees.

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,
NMPRC Case No. 20-00222-UT**

**NEW ENERGY ECONOMY’S MOTION FOR LEAVE TO SUPPLEMENT
ITS RESPONSE WITH ADDITIONAL AUTHORITY AND NEWLY-
DISCOVERED EVIDENCE**

Through this motion, New Energy Economy (“NEE”) requests that the Court consider the supplemental point of authority set forth in Point I and newly published information that underscores the need for due process according to the PRC’s normal procedures for reopening a prior decision addressed in Point 2.

Point 1 – The PRC’s actions, in closed, executive session, agreeing to reconsider the PNM/Avangrid merger and to do so in an expedited fashion under an inapplicable rule, undeniably violated the Open Meetings Act and are therefore void.

Appellee-Intervenor NEE, pursuant to Rule 12-318(D)(2) of the New Mexico Rules of Appellate Procedure (“NMRA”), respectfully advises the Court of a pertinent and, NEE respectfully submits, controlling authority, the New Mexico Open Meetings Act (“OMA”), that categorically forbids and nullifies the New Mexico Public Regulation Commission’s (“PRC” or “Commission”) decisions in closed session to agree to rehear the merger case, to do so by using the truncated

procedures of an inapplicable rule and to join with the other movants in requesting this Court, via a “stipulated dismissal”, to endorse these decisions. The PRC’s decision to take these actions violated the New Mexico’s Open Meetings Act (“OMA”) because they were made in closed session, without a public vote, without notice and therefore contrary to the letter and spirit of the OMA.

It appears to be undisputed that the PRC’s decision to rehear the merger case was arrived at outside of a public meeting, likely during the course of the five “executive closed sessions” of 2/2/2023, 2/17/2023 (twice on that date), 2/21/2023, and 2/27/2023, shortly after the new PRC took office. Notices of those closed meetings are attached as Group Exh. 1 to this Motion. Each of them included the following statement:

Executive Closed Session: New Mexico Supreme Court Case No. S-1-SC-39152, *Avangrid et al. v. NMPRC*: CLOSED SESSION MEETING – PURSUANT TO NMSA 10-15-1 (H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY

The first notice any of the other parties or the public had that the PRC was contemplating reconsideration of the Avangrid/PNM merger and had decided to do so was when Movants filed their Joint Motion for Stipulated Dismissal in this Court.

It does not appear to be in dispute that a two-person quorum of the PRC decided during closed sessions, in coordination with PNM, Avangrid and Iberdrola (but no other parties to this case), that the PRC would reconsider its 2021 decision to deny the Avangrid/PNM merger. While the essence of the PRC's action was deciding to reconsider the merger case, the Commission also appears to have decided that it would join with PNM, Avangrid and Iberdrola in a stipulated dismissal of the appeal¹; to conduct the rehearing pursuant to an inapplicable PRC rule that would allow the process of reconsideration to be conducted summarily, and to decide, without any input from the public or the other parties to this case, that these actions would "serve[] the public interest."²

The PRC provided notice that it would be engaging in attorney-client privileged discussions relating to this case and other pending litigation and invoked the statutory exception that allows for such discussions in closed session, NMSA 1978 §10-15-1H(7). The notices are attached as Group Exh 1. NEE assumes that other parties to this case, like NEE, assumed when they saw these notices that the new commissioners were simply being "brought up to date" by counsel. The notices didn't inform the parties or the public, that the PRC commissioners were deciding to reconsider the merger case and join with PNM and Avangrid/Iberdrola

¹ Movants' Motion at p. 1.

² *Id.*, at p. 3 ¶3.

to settle on a strategy for setting up the reconsideration in the context of a pending appeal.

The OMA is categorical in forbidding the requirement of open meetings for actions and decisions such as these and the misuse of closed meetings:

Formation of public policy; procedures for open meetings; exceptions and procedures for closed meetings.

A....[T]he conduct of business by vote shall not be conducted in closed meeting. All meetings of any public body except the legislature and the courts shall be public meetings, and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings...

B. All meetings of a quorum of members of any board, **commission**, administrative adjudicatory body or other policymaking body of any state agency....held for the purpose of...discussing public business **or taking any action within the authority of...any commission...are declared to be public meetings open to the public at all times, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act.**

NMSA 10-15-1. Emphasis supplied.

The OMA also provides that the decisions by the PRC in its closed sessions are, by definition, invalid: “No... **action** of any board, commission, committee or other policymaking body shall be valid unless taken or made at a meeting held in accordance with the requirements of Section 10-15-1 NMSA 1978.” NMSA 1987 §10-15-3A. Emphasis supplied. *See also, Trujillo v. Gonzales, supra, at id.*

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If it is the PRC's position that even its decisions to rehear the merger case, agree to a joint strategy with PNM/Avangrid/Iberdrola to dismiss the appeal and set up the rehearing, there was no disclosure in its notices that any actions at all were contemplated or that that vote(s) were going to be taken. If it had disclosed those things, it is unimaginable that the other parties to this case, as well as members of the public who oppose the merger would have remained silent.³

It is difficult to imagine a clearer violation of the Open Meetings Act, which forbids an agency or commission "taking any action" in a closed session "except as otherwise provided in the constitution of New Mexico or the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]" *Id.*, at 10-15-1 B. "Public business is the public's business. The people have the right to know. Freedom of information [about public records and proceedings] is their just heritage... Citizens... must have the *legal* right to ... investigate the conduct of [their] affairs." *State ex rel. Newsome v. Alarid* 90 N.M. 790, 568 P.2d 1236, 1241 (1977), Citing, *MacEwan v. Holm*, 226 Or. 27, 38, 359 P.2d 413, 418 (1961). *See also, Guitierrez v. City of*

³ "The attorney-client privilege applies to "confidential communications made for the purpose of facilitating the rendition of professional legal services to the client." Rule 11-503(B) NMRA 2003. Section 10-15-1(H) incorporates the privilege by protecting confidential communications between attorneys and their public agency clients *Bd. of County Comm'rs v. Ogden*, 117 N.M. 181, 184, 870 P.2d 143, 146 (Ct.App.1994). "Settlement agreements entered into between parties are outside the privilege. As such, even the County admits the settlement agreements are public record." *Board of Com'rs v. Las Cruces Sun-News* 2003-NMCA-102, ¶ 25, 134 N.M. 283, 76 P.3d 36.

Albuquerque, 96 N.M. 398, 631 P.2d 304, 306, (1981). (Section 10-15-1(A) prohibits “closed meeting[s]”. “The intent of the legislature was to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret, [and] the purpose of this statute is clearly to open the meetings of governmental bodies to public scrutiny by allowing public attendance at such meetings.” [The government] “must allow reasonable public access for those who wish to attend and listen to the proceedings.”)

The exception to Open Meetings Act requirements invoked in the PRC’s notices of their closed meetings were all pursuant to Exception H7 of the Act, which allows for “meetings subject to the attorney-client privilege” pertaining to pending litigation. As the Open Meetings Act makes clear, none of the exceptions apply to *actions or decisions or votes* taken by the Commission. NMSA 1978 § 10-15-1 *et seq.*

The Commission had thus decided, before it approached this Court, to reconsider its decision in the PNM/Avangrid merger case and to jointly move for dismissal and remand so that the reconsideration could be carried out. This was not “an attorney-client privileged *discussion* of pending litigation to which the NMPRC is a party” (italics supplied) as the PRC stated in its notice. It was a non-public decision to reconsider the outcome of the enormously important and

enormously controversial Avangrid/PNM merger case and to take steps to arrange for it. It is not credible to suggest that it fell outside the category of “any action” by the Commission which, under the Open Meetings Act, can only be taken in a public meeting, with proper notice of what will be before the Commission. It is astonishing that the PRC would take this action not only without notice to the public as the Open Meetings Act requires, and without notice to the other parties.

“The OMA embodies the Legislature’s declaration that ‘[the] public policy of this state [is] that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.’ Section 10-15-1(A). In keeping with this policy, we construe the OMA’s provisions broadly and their exceptions narrowly.” *New Mexico State Inv. Council v. Weinstein*, 2016-NMCA- 069, ¶ 73, 382 P. 3d 923.

Finally, and of particular concern in the context of OMA violations, is this: Movants made a particular point of saying that although there was agreement to reconsider the merger case, the result of that reconsideration had not been decided.⁴ This disclaimer hardly salvages the OMA violations, which at least superficially

⁴ Movants’ Motion at p. 3 ¶3. (“The Commission has not agreed to, nor made any determinations, with regard to any specific outcome or decision that may result upon the Court’s dismissal and remand to the Commission for rehearing and reconsideration of the Commission Order.”)

only involve the decision to rehear the case and the associated strategy for dealing with the appeal. Ominously, moreover, just last month, on March 14, 2023, Iberdrola's CEO, Sr. Ignacio Sánchez Galán, told the Spanish press that he anticipated the outcome of the reconsideration will be to allow the merger. As reported, what he communicated to the Spanish press (translated here by Google) was reported as: "One of the main objectives for Sanchez-Galan is to close the purchase of the American company, PNM Resources, an operation that the energy company expects to be unblocked in the coming months." The article in Spanish and as Google translated into English are attached as Exh. C to Ms. Nanasi's declaration.

If Sr. Galán's statement means what it implies, there was far more decided during those closed meetings than Movants are disclosing to the Court, the parties and the public.

Whatever he may have meant, the requests by the Movants that the Court dismiss the case and remand for a truncated reconsideration hearing should be dismissed as violative of the New Mexico Open Meetings Act.

Point 2 – Newly discovered eye witness testimony critical for public interest determination; due process requires full and fair process

On March 23, 2023, NEE filed *New Energy Economy's Response in Opposition to Joint Motion for Stipulated Dismissal of Appeal and Remand for Rehearing and Reconsideration and Expedited Treatment*.

In addition to the evidence regarding Iberdrola's CEO's statement that he expects Avangrid's acquisition of PNM to be approved, notwithstanding Movants' disclaimer, there is other new evidence summarized in the attached declaration of Mariel Nanasi, NEE's attorney and director, who was contacted on March 30, after NEE filed its response to the pending motion, by Dr. Corneliu Dică, engineer and principal with Eólica Dobrogea, a wind company in Romania, who conducted business transactions with Iberdrola. Exh. A, Affirmation of Mariel Nanasi, attached hereto. The information Dr. Dică provided, among other things, explains the pendency of the criminal cases before the Spanish courts that involve activities of Iberdrola. Because of the press of time created by Movants' sudden and hurried effort to get this Court to direct that the PRC "reconsider" the existing PRC order in an expedited and summary proceeding, NEE is submitting the attached without elaboration. The supplemental information does not repeat the information in NEE's Response but adds more and substantially new specific detail about Iberdrola's civil and criminal misconduct from an eye witness. Dr. Corneliu Dică

has indicated his willingness to travel to New Mexico to testify, so it is evidence that NEE reasonably believes will be available to the PRC if the PRC follows the ordinary procedures for hearings involving matters such as mergers, rates, abandonments, etc. The Spanish investigation about which he provides his declaration goes to the ultimate question about the fitness of Avangrid, Inc./Iberdrola, S.A., etc., to merge with PNM/PNM Resources.

Counsel for Appellants and Appellee were contacted regarding this Motion. The NMPRC, PNM/Avangrid oppose and no other party responded.

New Energy Economy has no objection should Appellants or any party seek more time beyond April 7th to respond to issues raised herein.

For the foregoing reasons, New Energy Economy respectfully requests that the Court allow this Supplemental Response. Further, that the Court

- a) deny the motion to dismiss as proposed by PNM, Avangrid and the PRC and proceed with the appeal or
- b) in the alternative, enter an order granting dismissal pursuant to Rule 12-401(B)(2) NMRA without conditions, which would leave Movants free to pursue the procedure provided for by the PRC's own rules, which is to move to reopen pursuant to 1.2.2.37 E (4) NMAC. The latter alternative

would protect the rights of all parties to this appeal and protect the public's and the state's interest in this important issue.

- c) determine all votes taken, decisions made, and actions taken during closed sessions of the PRC regarding rehearing of the Avangrid/PNM merger case are invalid and that the pending "Stipulated Dismissal" be stricken as filed without the proper authority of the PRC.

Respectfully submitted this 4th day of April, 2023,

/s/ John W. Boyd, Esq.
FREEDMAN BOYD HOLLANDER
& GOLDBERG, P.A.
20 First Plaza, Suite 700
Albuquerque, NM 87102
(505) 842-9960

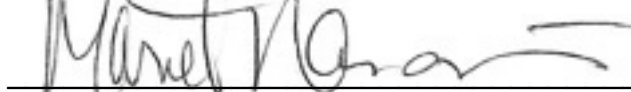
/s/ Mariel Nanasi, Esq.
300 East Marcy St.
Santa Fe, NM 87501
(505) 469-4060

Attorneys for Intervener/Appellee New Energy Economy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *New Energy Economy's Motion for Leave to Supplemental It's Response With Additional Authority and Newly-Discovered Evidence* was electronically served on all counsel of record through the New Mexico Supreme Court's Odyssey filing system on April 4, 2023.

NEW ENERGY ECONOMY



Mariel Nanasi, Esquire



NEW MEXICO PUBLIC REGULATION COMMISSION

**NOTICE OF MEETING
SPECIAL EXECUTIVE CLOSED SESSION MEETING
Thursday, February 2, 2023
1:30 p.m.
142 W. Palace Ave., Santa Fe, NM 87501**

AGENDA

I. EXECUTIVE CLOSED SESSION

New Mexico Supreme Court Case No. S-1-SC-39152, <i>Avangrid, Inc., et al. v. NMPRC</i> (NMPRC Case No. 20-00222-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
New Mexico Supreme Court Case No. S-1-SC-39440, <i>Public Service Company of New Mexico v. NMPRC</i> (NMPRC Case No. 19-00018-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
New Mexico Supreme Court Case No. S-1-SC-39401, <i>Public Service Company of New Mexico et al. v. NMPRC</i>, and consolidated Case No. S-1-SC-39406, <i>Coalition for Clean Affordable Energy et al. v. NMPRC</i> (NMPRC Case No. 20-00212-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY

II. ADJOURNMENT

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NEW MEXICO PUBLIC REGULATION COMMISSION

**NOTICE OF MEETING
SPECIAL EXECUTIVE CLOSED SESSION MEETING
Friday, February 17, 2023
9:00 a.m.
142 W. Palace Ave., Santa Fe, NM 87501**

AGENDA

I. EXECUTIVE CLOSED SESSION

New Mexico Supreme Court Case No. S-1-SC-39152, <i>Avangrid, Inc., et al. v. NMPRC</i> (NMPRC Case No. 20-00222-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
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II. ADJOURNMENT

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NEW MEXICO PUBLIC REGULATION COMMISSION

**NOTICE OF MEETING
SPECIAL EXECUTIVE CLOSED SESSION MEETING
Friday, February 17, 2023
10:00 a.m.
142 W. Palace Ave., Santa Fe, NM 87501**

AGENDA

I. EXECUTIVE CLOSED SESSION

New Mexico Supreme Court Case No. S-1-SC-39152, <i>Avangrid, Inc., et al. v. NMPRC</i> (NMPRC Case No. 20-00222-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
New Mexico Supreme Court Case No. S-1-SC-39440, <i>Public Service Company of New Mexico v. NMPRC</i> (NMPRC Case No. 19-00018-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
New Mexico Supreme Court Case No. S-1-SC-39401, <i>Public Service Company of New Mexico et al. v. NMPRC</i>, and consolidated Case No. S-1-SC-39406, <i>Coalition for Clean Affordable Energy et al. v. NMPRC</i> (NMPRC Case No. 20-00212-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
Case No. 22-00270-UT IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR	Pursuant to NMSA 1978 Section 10-15-1 (H) (3): deliberations by a public body in connection with an administrative adjudicatory proceeding

REVISION OF ITS RETAIL ELECTRIC RATES PURSUANT TO ADVICE NOTICE NO. 595	
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II. ADJOURNMENT

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NEW MEXICO PUBLIC REGULATION COMMISSION

**NOTICE OF MEETING
SPECIAL EXECUTIVE CLOSED SESSION MEETING
Tuesday, February 21, 2023
2:00 p.m.
142 W. Palace Ave., Santa Fe, NM 87501**

AGENDA

I. EXECUTIVE CLOSED SESSION

New Mexico Supreme Court Case No. S-1-SC-39152, <i>Avangrid, Inc., et al. v. NMPRC</i> (NMPRC Case No. 20-00222-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
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II. ADJOURNMENT

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NEW MEXICO PUBLIC REGULATION COMMISSION

**NOTICE OF MEETING
SPECIAL EXECUTIVE CLOSED SESSION MEETING
Monday, February 27, 2023
1:30 p.m.
142 W. Palace Ave., Santa Fe, NM 87501**

AGENDA

I. EXECUTIVE CLOSED SESSION

New Mexico Supreme Court Case No. S-1-SC-39152, <i>Avangrid, Inc., et al. v. NMPRC</i> (NMPRC Case No. 20-00222-UT)	CLOSED SESSION MEETING - PURSUANT TO NMSA 1978 § 10-15-1(H)(7): ATTORNEY-CLIENT PRIVILEGED DISCUSSION OF PENDING LITIGATION TO WHICH THE NMPRC IS A PARTY
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II. ADJOURNMENT

To obtain a copy of this agenda please log in to the Commission's website at <https://www.nmprc.org/>.

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-39152

**AVANGRID, INC., AVANGRID NETWORKS, INC.,
NM GREEN HOLDINGS, INC., IBERDROLA, S.A.,
PUBLIC SERVICE COMPANY OF NEW MEXICO, and
PNM RESOURCES, INC.,**

Appellants,

v.

**NEW MEXICO PUBLIC REGULATION
COMMISSION,**

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and

**NEW ENERGY ECONOMY,
WESTERN RESOURCE ADVOCATES,
INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS LOCAL 611,
THE OFFICE OF THE NEW MEXICO
ATTORNEY GENERAL, COALITION FOR
CLEAN AFFORDABLE ENERGY, DINE CITIZENS
AGAINST RUINING THE ENVIRONMENT, SAN
JUAN CITIZENS ALLIANCE, TO NIZHONI ANI,
NAVA EDUCATION PROJECT, BERNALILLO
COUNTY, ALBUQUERQUE BERNALILLO
COUNTY WATER UTILITY AUTHORITY, and
NEW MEXICO AFFORDABLE RELIANCE
ENERGY ALLIANCE,**

Intervenor-Appellees.

**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,
NMPRC Case No. 20-00222-UT**

AFFIRMATION OF ATTORNEY MARIEL NANASI

Mariel Nanasi, affirms and states as follows:

1. I am over the age of eighteen and have personal knowledge of the matters set forth in this affidavit.
2. My name is Mariel Nanasi. My business address is 300 East Marcy St. Santa Fe, NM 87501.
3. I have prepared this affirmation on behalf of New Energy Economy.
4. Dr. Corneliu Dică was first in touch via zoom with me, on March 30, 2023.
5. Dr. Dică is a Romanian businessman who had an agreement with Iberdrola to install wind power in Romania. He related to me that he had extensive business dealings in his native country, Romania, that ended up with Iberdrola

breaching its contract and cheating him, and his business, Eólica Dobrogea. As a result of that, he became an officially designated “aggrieved party” in the pending criminal case in Spain regarding the criminal activities alleged to have been committed by representative of, or persons hired by, Iberdrola, and its subsidiary, Iberdrola Renovables, S.A.

In December, 2019 following the arrest of former Spanish Secret Commissioner José Manuel Villarejo, Dr. Dică came to learn that Iberdrola/Iberdrola Renovables, S.A. ordered illegal espionage activities carried out by CENYT an investigations business operated by Mr. Villarejo against him and his company, Eólica Dobrogea, in Romania during 2011 and 2012. CENYT prepared 3 reports for the Board of Iberdrola recommending a course of action to deal with Dr. Dică, including his “liquidation”. Iberdrola Renovables S.A. made significant payments to CENYT for each report CENYT produced. The judge overseeing the renewed criminal investigation has extended it until 7/29/2023 based on the discovery of new evidence including audio recordings. The next trial date is, coincidentally, the day Appellants sought to wrap up the merger approval, 4/12/2023. The new “Aglow” project (a CENYT code name for the “permanent collaboration” between Asenjo and Villarejo to carry out intelligence work, strategy, investigation, and “operational tasks” that could be relevant to Iberdrola)

specifically references Dr. Dică's wind project with Iberdrola/Iberdrola

Renovables, S.A.¹ *See*, attached Google translation of article as Exhibit B.

There is a great deal of information that Dr. Dică is willing to share with the PRC regarding Iberdrola's conduct, including his knowledge of a pattern of alleged criminal and civil misconduct, that he learned first-hand as a result of his inclusion as an aggrieved party in the Spanish court's investigation in the "Villarejo case," of investigations carried out by CENYT on Iberdrola's competitors, a judge, politicians, ecologists and trade unionists and to develop work aimed at opening up lucrative projects for Iberdrola. *See*, **80RP39943-55**.

6. Given the suddenness of Dr. Dică's contact after NEE responded to PNM/Avangrid/PRC's pending motion and the volume of information supplied, it is not reasonably possible for me to cogently detail or explain the extent of the new information, other than to state that Dr. Dică has a great deal to say and a great deal of evidence in hand regarding Iberdrola's pattern of misconduct, including espionage and a disinformation campaign against Iberdrola's rivals, all of which is the type of information that the PRC regarded as forming one of the many bases for its 2021 decision to deny the merger.

¹ <https://cincodias.elpais.com/companias/2023-03-28/el-caso-iberdrola-se-amplia-hasta-julio-a-la-espera-del-analisis-de-nueva-documentacion-sobre-villarejo.html>

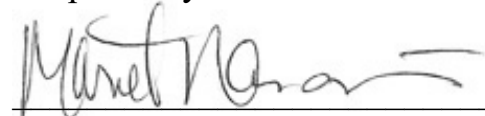
7. He has assured me that he is prepared to come to New Mexico to testify under oath regarding Iberdrola's conduct. Aside from his testimony, Dr. Dică provided many documents in his possession, along with news articles regarding not only about Iberdrola itself but about the merger Iberdrola's CEO, Ignacio Sánchez Galán, is attempting to accomplish, through Avangrid, with PNM. One of the items Dr. Dică sent me was a news article in Spanish, that was translated via "Google translate" entitled "Ignacio Sánchez Galán heads for a new term as Chairman of Iberdrola." The article reported that "[o]ne of the main objectives for Sánchez Galán is to close the purchase of the American company PNM Resources, an operation that the energy company expects to be unblocked in the coming months." This indicates Galán's confidence, as of March 14, 2023, that the "blockage" of the merger would be shortly removed. From this statement, I infer that he is likely satisfied that the "new" PRC will approve the merger. I take this to mean that Movants' statement that the decision on whether to approve the merger had not been made² has, in fact, been made by the "new" PRC, in the course of its brief tenure in office. *See*, attached translation of article as Exhibit C.³

² Movants' Motion p. 3, ¶3.

³ <https://www.msn.com/es-es/dinero/empresa/ignacio-s%C3%A1nchez-gal%C3%A1n-enfila-un-nuevo-mandato-como-presidente-de-iberdrola/ar-AA18CLV2>

8. If there is a reopening or reconsideration of the Avangrid/Iberdrola takeover of PNM, it will be important for the regulators and the public to hear Dr. Dică's testimony because he is personally familiar with the history of Iberdrola's and its affiliates' alleged criminal and civil misconduct and the manner in which it uses its affiliate companies to undermine law and hide financial transactions. The history of Iberdrola and its affiliates' activities is, of course, critical information when making the required determination of whether the merger is or is not in the public interest, should the PRC actually take up the case again.

Respectfully Submitted on this 4th day of April, 2023.

A handwritten signature in dark ink, appearing to read "Mariel Nanasi", is written over a horizontal line.

Mariel Nanasi
Attorney at Law
New Energy Economy
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Santa Fe, NM 87501
mariel@seedsbeneaththesnow.com
505.469.4060.

The Iberdrola case is extended until July pending the analysis of new documentation on Villarejo

The judge of the National Court recalls that he has to take a statement from the retired commissioner

New extension of the investigation into the work that retired commissioner **José Manuel Villarejo** carried out for Iberdrola. The judge of the National Court Manuel García Castellón has agreed to a new extension of the investigations until July 29. The investigating magistrate approved last January to continue investigating these facts only two months, until the end of this month of March, although he has now decided to keep the case open, pending the police analysis of new documentation and audios of the undercover agent. He also recalls that he still has to hear, again, the former policeman, whom he has summoned on **April 12**, according to legal sources reported to CincoDías.

In a car, dated this Tuesday, to which this medium has had access, the head of the Central Court of Instruction number 6 has accepted the request of the Anti-Corruption Prosecutor's Office to extend **piece 17 of the well-known Villarejo case** -part of the macrocausa dedicated to the orders made by the former head of Security of the electric company, Antonio Asenjo- another **four months**, understanding that, once "the proceedings have been reviewed", there is still "room to exhaust the instruction in terms that satisfy the right of defense and the right of prosecution".

The magistrate recalls that, to "complete" the investigation, at the beginning of this year he already ordered the Internal Affairs Unit (UAI) to examine some microtapes that were found in the registry of Villarejo's house, as well as documentation that was incorporated into

piece 31 (the main one), in which certain **files are found that had not been previously accessible**, and whose content could be of interest to the separate piece relating to Iberdrola.

On the other hand, the investigating judge also agreed to a new round of interrogations to hear the version of retired commissioner José Manuel Villarejo; the lawyer of his companies, Rafael Redondo; and the former head of Security of Iberdrola Antonio Asenjo, in relation to one of the first jobs developed by Cenyt, the business group of the undercover agent, and about which they have never been asked. This is the '**Aglow project**', which was contracted in 2004 to prevent and protect the electricity company against aggressive actions that it could suffer in the sector.

Initially, this order would last six months, although it was updated in 2007 as a '*New Aglow project*' to accommodate **a request for "permanent collaboration" with Iberdrola**, as explained by the judge of the National Court in the extension order agreed in January 2023.+

Judge García Castellón acknowledges in his new resolution that none of the investigative measures (the analysis of documentation and interrogations) have been carried out during this time. It thus justifies a further extension. Thus, it indicates that the cause has a "plurality of elements of investigation, of a heterogeneous nature" pending that makes it understood that **"the instruction has not yet been completed"**.

It adds that the extension of the investigation gives guarantees to those investigated, because "if the extension of the investigation were denied, there would be the circumstance that they could **not propose further proceedings**, in line with the result of those already agreed, which could curtail their right of defense."

The judge of the National Court **opened this seventeenth separate piece at the end of 2019**. Since then, the focus has been on the various espionage contracts that Asenjo, on behalf of Iberdrola, signed with Villarejo's companies **between 2004 and 2017**.

For these facts, the magistrate came to give the condition of investigated to the president of the company, **Ignacio Sánchez Galán**, as well as to the one who was his top management at the time of the orders. After a year of indictment, the investigator filed his alleged criminal responsibility when he saw that the alleged crimes attributed to him were prescribed, as had previously been marked by the Criminal Chamber of the National Court. The same happened with the subsidiary Iberdrola Renovables Energía, the only company of the electricity group that has been investigated.



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[Ignacio Sánchez Galán](#) caresses a new term as president of Iberdrola **after the company's record profits in 2022 and being dismissed from the 'Villarejo case'**. The electric company has convened a general meeting of shareholders for April 28 and among the points of the day the proposal for re-election of the manager as executive director stands out, as the company notified the National Securities Market Commission (CNMV) on Tuesday.

Company shareholders approved the re-election of Sánchez Galán as president for the last time at the 2019 board meeting for four years. Appointed in 2001 executive vice president and CEO of the electricity company, **Sánchez Galán has held the positions of president and CEO for 16 years** of the group, but the surprise came in October of last year when the board of directors of the energy company agreed to [separate the positions of executive president and CEO](#) : the first continued to be for Sánchez Galán, while Armando Martínez was appointed to the second. Sánchez Galán **has been criticized for the concentration of power** , but this has been backed by the [record profits of the electric company](#). The advisory firm **International Shareholder Services (ISS) recommended to the three funds that control the energy company to reject his continuation as president and CEO**. Qatar's sovereign wealth fund is the main shareholder of Iberdrola with a stake in the share capital of 8.69%, followed by BlackRock and Norges Bank with 5.16% and 3.36%, respectively. One of the main **objectives for Sánchez Galán is to close the purchase of the American company PNM Resources**, an operation that the energy company expects to be unblocked in the coming months. The president of Iberdrola obtained a total remuneration of 13.06 million euros in 2022, according to the company's annual report on remuneration. Sánchez Galán received a salary of 6.35 million, 1.26% more than the previous year; Of that amount, 2.25 million corresponded to his salary, 3.25 million to variable remuneration and 567,000 euros to remuneration as Chairman of the Board of Directors. In addition to that of Sánchez Galán, the re-election of María Helena will be proposed to the board Antolín as external director, Manuel Moreu, Sara de la Rica and Xabier Sagredo as independent directors and Armando Martínez as executive director. Likewise, it will be voted to keep the number of board members at 14. The company has also proposed **for the second consecutive year an involvement dividend**. Thus, if the meeting approves this new incentive on April 28 and a certain quorum is reached, Iberdrola will pay an additional amount to all its shareholders with the right to participate in the meeting. Both the percentage of the quorum and the amount of this participation dividend will be published in the coming days. The agenda includes a total of 22 resolution proposals, among which are also noteworthy amendments to the bylaws, which aim to "strengthen the corporate structure of the group for more efficient risk management and to give full statutory recognition to the compliance system of the company and of each one of the companies of the Iberdrola group", as explained by the company itself. **Investigation of Iberdrola Clients for alleged irregularities in contracting clients** . Specifically, the Energy Directorate has agreed to initiate disciplinary proceedings against him for alleged breach of contracting and power of attorney requirements with customers, as it has recently done with Endesa Energía. The infraction is linked to article 66.4 of Law 24/2013, of December 26, of the Electricity Sector, which includes a fine of up to 600,000 euros for the commission of minor infractions.

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