

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CASE NO. 20-00222-UT

REBUTTAL TESTIMONY AND EXHIBITS

OF

CHRISTOPHER K. SANDBERG

ON BEHALF OF

NEW ENERGY ECONOMY

April 21, 2021

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

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

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

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

6 **Q. Have you previously filed testimony in this proceeding?**

7 A. Yes. I submitted my Direct testimony on April 2, 2021.

8 **Correction**

9 **Q. Is there a correction you need to make to your Direct testimony?**

10 A. Yes. On page 51, at lines 4-6, I said, "The difference between the \$50.30/share to be
11 paid at closing and the \$45.74/share market price times 80 million shares shows an
12 acquisition premium of \$204,000,000 flowing to shareholders." The number of
13 "\$204,000,000" is incorrect; it should have been stated as "\$364,800,000", and I hereby
14 correct that number.

15 **Executive Summary**

16 **Q. Have you reviewed the testimony filed by intervenors and Staff on May 2, 2021, in
17 this proceeding?**

18 A. Yes, I have.

19 **Q. Are there issues raised by those parties to which you want to respond?**

20 A. Yes, there are several.

21 **Q. Can you summarize those issues?**

1 A. Yes. Based on my review of those parties' Direct testimony, I continue to believe that
2 the proposed acquisition should not be approved as filed.

3 • The rate credits proposed by the Joint Applicants, if the Commission were to
4 approve the proposed acquisition, should be allocated on a per-customer basis,
5 not on a volumetric basis.

6 • The Joint Applicants' responses to NEE's discovery, coupled with their past
7 actions, raise doubt that they will comply with Commission governing New
8 Mexico regulatory principles, practices, and policies if the proposed acquisition
9 is approved.

10 • FCPP is a condition precedent that is a cost burden of the merger, is contrary to
11 Commission regulatory principles and practice, New Mexico Supreme Court
12 decisions, and is contrary to the "commitments" made by Joint Applicants that
13 ratepayers would not be adversely affected and would be held harmless from the
14 costs of the merger.

15 • The Joint Applicants have not been consistent and forthcoming about future
16 PNM costs of capital.

17 • The Joint Applicants have failed to address underfunded retirement plans.

18 • Transmission-related issues must be addressed here.

19 • Ratepayers must be shielded from the effects of the New Mexico utility shut-off
20 moratorium.

- 1
 - Legacy issues must be addressed by Avangrid.
- 2
 - CCAE's recommendation regarding decoupling must be rejected.
- 3

1 Rate Credits

2 **Q. What is your response to testimony about the proposed rate credits?**

3 A. In my Direct testimony, I said:

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

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

10 Page 59 at lines 13-18.

11 **Q. What was the basis for that answer?**

12 A. I was primarily concerned with getting the amount of any rate credit established at a
13 proper level, and with paying the rate credit out quickly to avoid the decreasing value
14 of the credit over time and avoid having the credit displaced by a general rate increase.
15 The first sentence of that answer was merely intended to avoid creating more issues.

16 **Q. What have you seen to change your opinion?**

17 A. In their Direct testimony, witnesses for the Attorney General and Bernalillo County
18 include calculations based upon paying out the rate credit on a per-customer basis,
19 rather than volumetrically. I had not given that option sufficient consideration at the
20 time of preparing my Direct testimony.

21 **Q. Have you revisited that issue now, in response to those parties' testimony?**

22 A. Yes. Moving from a volumetric distribution to a per-customer distribution will result
23 in (1) a simpler calculation, (2) individuals, families, and small businesses receiving a

larger proportion of the rate credit, and (3) certainty in the amount of the monthly credit over the 12 months of distribution, rather than varying amounts.

Q. Please explain those effects.

A. First, making a per-customer distribution permits an immediate calculation of the credit, rather than the need for protracted computations and bill adjustments over months of billing cycles. PNM can calculate the number of its customers at closing, and divide the Commission-ordered rate credit by that number to immediately have the per-customer credit amount in hand.

Second, a per-customer distribution would produce a noticeable positive effect on smaller users, compared to the vanishingly tiny effect on them of a volumetric credit. I computed in my Direct testimony that an average Residential Class customer would receive a total of \$21.00 spread out over the three years at PNM's proposed \$24.6 million level and a volumetric distribution. If that same \$24.6 million total credit were distributed on a per-customer basis, it would produce a credit per customer of \$45.73. If a \$75 million rate credit were distributed per customer, each customer would get a \$139 credit. At a \$125 million total credit, the average per customer would be \$232.

Q. Why is that more equitable?

A. I note that witness Crane for the New Mexico Attorney General calculated that, even though residential customers comprise close to 90% of the customer base, they would receive only 38% of the rate credit in a volumetric distribution. Crane Direct at p. 19. That level of disparity is inequitable to the largest portion of PNM's customers, and the Commission should change the distribution method to avoid that disparity.

1 That method also produces greater rate relief to individual, family, and small business
2 users of PNM services. Those are the groups which have been heavily impacted by the
3 continuing COVID-19 pandemic, and rate relief to them would be highly beneficial.

4 **Q. What is the third benefit of distributing the rate credit on a per-customer basis?**

5 A. The credit would now become a fixed, reliable amount on each of the 12 bills, rather
6 than an amount varying from month to month. That will allow both residential and
7 business customers to budget for the credit as a stable amount.

8 **Q. Do you continue to recommend that the rate credit be paid to customers over a**
9 **one-year period?**

10 A. Yes. PNMR shareholders will receive an immediate payout of their acquisition
11 premium upon closing; requiring customers to wait three years to realize the benefit of
12 the credit is unreasonable. And, as I noted in my Direct testimony, stretching out the
13 credit reduces its value to customers due to the time value of money. "Time Value of
14 Money (TVM) means that money received in present is of higher worth than money to
15 be received in the future as money received now can be invested and it can generate
16 cash flows to enterprise in future in the way of interest or from investment appreciation
17 in the future and from reinvestment." Time Value of Money Definition,
18 <https://www.investopedia.com/articles/03/082703.asp>, retrieved April 14, 2021,
19 attached as Exhibit CKS-61.

20 **Q. Will a one-year distribution cause material harm to PNM?**

21 A. I do not believe so. PNM billed its retail customers a total of \$1,004,991,000 in 2020,
22 or \$82,004,991,000 per month. PNMR 2020 10-K at p. A-28, Exhibit CKS-20. The monthly

1 bill credit at the low end of my recommendation — \$75 million — would represent 7.5%
2 of that average monthly retail billing. The high end of my recommendation — \$125
3 million — would represent only 12.5% of that average monthly retail billing. I show my
4 calculations on Exhibit CKS-62, attached hereto.

5 Those modest reductions in billings seem unlikely to cause PNM financial distress.

6 Further, PNM will be done with the entire crediting process much more quickly and
7 with less internal costs than the three-year, volumetric plan with true-ups that the Joint
8 Applicants proposed.

9 **Q. Are there intervenor recommendations on rate credits which the Commission**
10 **should reject?**

11 A. Yes. Witness Chriss for Walmart supports the Joint Applicants' proposal to provide
12 rate credits of only \$24.6 million, to be paid out over three years, on a volumetric basis.
13 Chriss Direct testimony at p. 5.

14 As discussed in my Direct testimony, \$24.6 million is an unreasonably small amount
15 and three years is too long.

16 Witness Chriss' support for a volumetric allocation of the credits makes sense from the
17 perspective of his employer, Walmart. With 31 stores and a distribution center taking
18 service from PNM, Walmart is a large-volume customer, so large that it has a dedicated
19 account representative from PNM. Chriss Direct testimony at p. 3; 8. Walmart would be
20 substantially benefitted by a volumetric allocation. Its preference for that method of
21 distributing the rate credits reinforces my opinion that a per-customer distribution is
22 more equitable.

1 I also note that witness Chriss admits that while the Joint Applicants asserted their \$24.6
2 million level of rate credits was “similar to levels previously proposed and approved by
3 the Commission in utility merger and acquisition proceedings”, they never provided
4 any information supporting that amount. Chriss Direct at p. 6. His analysis is correct as
5 to the lack of supporting data, but I disagree that the \$24.6 is reasonable or in fact
6 similar to the amounts set in other proceedings. Witnesses Mark Garrett, Crane,
7 Hempling, Reno, and Gorman also dispute the appropriateness of that level of rate
8 credits.

9 **Failure To Abide By Regulatory Principles, Practices, And Policies**

10 **Q. Are there matters related to NEE’s discovery?**

11 A. Yes. NEE issued its Eighth Set of Discovery to the Joint Applicants on March 25,
12 2021, with a specific request that they be answered by the morning of April 1, 2021, so
13 that I could include the materials in my Direct testimony. Those discovery requests
14 were not answered until April 5, after my Direct testimony was filed.

15 **Q. Are there issues raised in those responses which raise questions about the Joint**
16 **Applicants’ intentions in regard to abiding with regulatory principles, practices, and**
17 **policies?**

18 A. Yes. The Joint Applicants have made numerous assertions that PNM will, despite the
19 proposed acquisition, follow Commission orders:

20 Commission jurisdiction over PNM remains and will not be adversely affected in
21 any manner by the Proposed Transaction, as PNM will **continue to abide** and to
22 be bound by existing applicable **NMPRC** rules, regulations, and **orders**.

23
24 Joint Application at p. 13 (emphasis added.)

1 PNM is, and will continue to be, a public utility subject to the jurisdiction and
2 regulatory authority of the Commission.

3
4 Joint Application at p. 4.

5 PNM will continue providing regulated electric utility service to customers in
6 New Mexico subject to the jurisdiction and regulatory authority of the
7 Commission.

8
9 Joint Application at 5.

10 All applicable statutes, rules, or regulations, federal or state, have been or will be
11 complied with.

12
13 Joint Application at p. 9.

14 [T]he merger will not alter PNM's legal status as a public utility, nor affect the
15 NMPRC's authority and ability to supervise and regulate PNM's rates and
16 service under the PUA.

17
18 Tarry Direct at p. 15, lines 1-3.

19 PNM will remain a public utility providing regulated public utility electric
20 service to customers in New Mexico pursuant to its existing Certificate of Public
21 Convenience and Necessity.

22
23 JA Exhibit RND-2 at p. 5.

24 PNM will comply with all laws and Commission rules and orders governing
25 transactions with affiliated interests.

26
27 JA Exhibit RND-2 at p. 13.

28 Avangrid understands the need to ensure that each of its public utilities have
29 adequate protections for customers. The Joint Applicants are committed to
30 protecting PNM's customers from harm.

31
32 Kump Direct at p. 13.

33 While those statements would lead one to expect that Avangrid/PNM will abide by
34 decisions made by the Commission in utility cases, as well as rules and statutes, the best
35 predictor of future actions is past actions.

1 **Q. To what specific actions regarding Commission orders and policies are you**
2 **referring?**

3 A. When asked if the Joint Applicants would agree to a rate freeze, Pedro Azagra
4 Blazquez responded for the Joint Applicants, "A rate freeze is not currently being
5 contemplated as a regulatory commitment." JA Response to NEE Interrogatory 8-25,
6 attached as Exhibit CKS-63. To the contrary, on April 5, 2021, the Joint Applicants made
7 clear their intentions, "PNM has not determined when it plans to file its next general
8 rate case. PNM does not intend to file a general rate case **while this proceeding is**
9 **pending.**" JA Response to NEE Interrogatory 8-11 (emphasis added), attached as
10 Exhibit CKS-64. That response removes any argument that Avangrid/PNM has agreed
11 to a rate freeze.

12 **Q. Of what relevance are those responses?**

13 A. They demonstrate the Joint Applicants' intention to ignore Commission policy
14 regarding rate freezes set in prior decisions and summarized by the Hearing Examiner
15 in her *Amended Certification of Stipulation*, Case 19-00234-UT, approved unanimously by
16 the Commission, *Final Order Adopting Amended Certification of Stipulation*, March 11,
17 2020:

18 Also to be considered are the following conditions that the Commission in past
19 acquisition cases **has attached to its approvals** (but not all conditions in all
20 cases), to ensure that an acquisition is in the public interest:

21 ...

22 **Rate freeze:** Case No. 08-00078-UT, Certification of Stipulation at p. 26

23 ...

24 Similarly, the AG viewed some commitments, not as benefits to ratepayers, but
25 as "hold-harmless provisions," meaning that ratepayers are no worse off than
26 they would be in the absence of the transaction. Case No. 13-00231-UT,
27 Certification of Stipulation at p. 54-55 (6-30-14), adopted by Final Order (8-13-14).

1 The Commission in that case did not decide whether every commitment of the
2 Proposed Transaction was a benefit, but found that the following features and
3 commitments of the Proposed Transaction **provided sufficient benefits to**
4 **ratepayers** to satisfy the Section 62-6-13 standard:

5 1. Bill credits;

6 2. A **rate freeze**;

7
8 *Amended Certification of Stipulation*, Case No. 19-00234-UT, at p. 40; 47 (emphasis added.)

9 **Q. Are there other instances of ignoring Commission policies and decisions?**

10 A. Yes. Another key Commission policy was explained by the Hearing Examiner in

11 Case 19-00234-UT regarding independent directors: "EPE's post-closing Board of

12 Directors will have ten Directors....the remaining seven will be Independent Directors.

13 At least four of the seven Independent Directors will be Disinterested Directors..."

14 *Amended Certification of Stipulation* at p. 9.

15 Despite that clear explication of acceptable board formation under Commission policy,

16 the Joint Applicants have instead proposed that PNM's board "will include at least two

17 local leaders from New Mexico." Application at p. 11. That "commitment" does not

18 even pretend to address the need for truly independent board members or comport

19 with recent Commission directives.

20 **Q. Do you have any idea why the requirement for independent board members was**

21 **ignored?**

22 A. It was expressly addressed in the parties Agreement and Plan of Merger, in §6.5:

23 Regulatory Approvals; Reasonable Best Efforts

24 ...

25 (d) ... none of Parent, Merger Sub, the Company or any of their respective
26 Affiliates shall be required to agree or consent to or accept any terms, conditions,
27 liabilities, obligations, commitments or undertakings as a condition to any such
28 Filings or Consents (including any Required Regulatory Approvals or CFIUS
29 Approval) that, either (i) **impose any independent or disinterested director**

1 **obligations** that would negatively impact or limit Parent's control over the
2 Company or its subsidiaries in any material respect...

3
4 JA Exhibit PAB-3, at p. 56 (emphasis added.)

5
6 **Q. Does a lack of independent board members have an impact on future PNM rates?**

7 A. Very likely so. The policy of requiring truly independent board members has
8 practical effects. As the Hearing Examiner explained, "A majority of EPE directors,
9 including ... four Independent and Disinterested Directors, must approve any capital or
10 any expense budget.... The volumes and types of EPE equity and debt issuances will be
11 determined by vote of the EPE Board of Directors including majorities of ... its
12 Independent and Disinterested Directors." *Amended Certification of Stipulation*, at p. 31.
13 Those budget and financing decisions are the primary drivers of a utility's costs of
14 service, and without the oversight of directors who are not beholden to PNMR,
15 Avangrid, and/or Iberdrola, a crucial safeguard against inflated costs of service is
16 missing.

17 **Q. Are there other indicators of how PNM will act under Avangrid ownership?**

18 A. Yes. Avangrid's affiliate Pacific Wind Development LLC has not bothered to follow
19 Commission directives, by not making the compliance filings concerning construction
20 permits notices about either the La Joya Wind Farm or the Gen-Tie Facilities being
21 placed into service. Staff witness Reynolds, at p. 17, lines 7-14.

22 Similarly, Avangrid entities have dodged Commission oversight, as when Avangrid
23 Renewables delicately skirted the New Mexico statute which provides for location
24 control of generation facilities "designed for or capable of operation at a capacity of
25 three hundred thousand kilowatts or more" by arguing that its El Cabo facility had a

1 nameplate capacity of 298 MW. Reynolds Direct at p. 19, lines 1-3; p. 33, lines 1-4. That
2 sort of artful reading of Commission rules so as to evade regulatory oversight bodes
3 badly for future PNM actions under Avangrid control.
4 Finally, the Joint Applicants' unwillingness to even consider the funding of an
5 independent evaluator raises questions about their sincerity in following Commission
6 policy. Reynolds at p. 28, lines 11-17. The Commission noted in Case No. 15-00205-UT,
7 December 22, 2015, *Order*, p. 10, "Although no statutes or rules currently require the use
8 of RFPs in resource acquisition cases, the use of RFPs appears to be becoming a
9 reasonable practice to ensure compliance with the standard in OLE." (emphasis added.)
10 That certainly put the Joint Applicants on notice about the need for transparent
11 procurement processes.
12

13 **Customers must be held harmless from costs of decommissioning FCPP**

14 **Q. What regulatory policy related to the Four Corners Power Plant issue has now**
15 **become clear?**

16 A. On April 5, 2021, Joint Applicants asserted that the proposed recovery of costs from
17 the abandonment of the Four Corners Power Plant ("FCPP") is not "germane to any
18 issues before the Commission whether PNM has entered into an agreement to sell its
19 interest in the Four Corners Power Plant, and whether PNM has filed an application
20 with the Commission for the proposed abandonment of the plant." JA Response to NEE
21 Interrogatory 8-16, attached hereto as Exhibit CKS-65.

1 That statement cannot be squared with the Joint Applicants' repeated assertions that
2 they will not seek to recover any costs associated with the proposed acquisition from
3 ratepayers: "Additionally, Avangrid commits that PNM will not seek to recover from
4 rate payers any acquisition premium, transaction costs, or transition costs associated
5 with the Proposed Transaction. Kump Direct at p. 15 (emphasis added.) And again,
6 "Joint Applicants commit that PNM will not, directly or indirectly, seek to recover in
7 any future rate case filing, any acquisition premium, or transaction costs, or merger
8 transition costs resulting from the Proposed Transaction and allocated to PNM..."
9 Kump Direct at p. 18 (emphasis added.)

10 **Q. So where is the conflict?**

11 A. There cannot be any serious argument that FCPP is not a white elephant, and has
12 been so for some time. Witness Fisher, in his Direct testimony, has set out in detail how
13 the issue of removing FCPP from PNM's books was a basic term of the discussions
14 between PNMR and Avangrid from the beginning of those discussions, and I will not
15 repeat that testimony here. The most telling point, in my opinion, is that PNM has had
16 to pay to get rid of FCPP. That is like having a broken-down car in your driveway, and
17 needing to pay the junkyard to come and haul it away.

18 **Q. Is the removal of FCPP from PNM's books embedded in the parties' Agreement**
19 **and Plan of Merger?**

20 A. Yes, in several places. The most glaring is § 6.19, which requires:

21 ...the Company agrees that, as soon as reasonably practicable following the date
22 of this Agreement, PNM, shall (a) enter into definitive agreements providing for
23 exit from all ownership interests in the Four Corners Power Plant ... and (b) make
24 all applicable regulatory filings and take all commercially reasonable actions in

1 order to obtain required approvals from applicable Governmental Entities, all
2 with the objective of having the closing date for such exit to occur as promptly as
3 practicable but in any event no later than December 31, 2024.
4

5 Applicants' Exhibit PAB-3, Agreement and Plan of Merger at p. 68.

6 The requirement to dispose of FCPP is also embedded in §7.2G:

7 Four Corners Divestiture. Each of the Four Corners Divestiture Agreements shall
8 have been duly executed and delivered by each of the parties thereto, and shall
9 be in full force and effect as of the Closing, and PNM shall have made all
10 applicable regulatory filings to obtain required approvals from applicable
11 Governmental Entities, including for abandonment authority and securitization
12 from the NMPRC.
13

14 Agreement and Plan of Merger at p. 71.

15 And finally, in §6.5:

16 (d) ...for the purposes of determining whether a Burdensome Effect exists ... (or
17 could reasonably be expected to exist), in respect of a Specified Required
18 Regulatory Approval only those terms, conditions, liabilities, obligations,
19 commitments, or undertakings related to or arising out of rate concessions
20 (including rate reductions and rate credits) to customers required to obtain such
21 Specified Required Regulatory Approval will be taken into account.
22

23 Agreement and Plan of Merger at p. 56.

24 Taken together, those parts of the Agreement and Plan of Merger contradict the
25 position of Joint Applicants that merely filing for abandonment of FCPP is sufficient,
26 because the Agreement requires not only the application for abandonment but also
27 "abandonment authority and securitization from the NMPRC." And if the "specified
28 required regulatory approvals" have not been received, that failure is specifically
29 identified as a "burdensome effect" permitting rescission.

30 **Q. Why would removing FCPP have been so fundamentally important to Avangrid?**

1 A. I expect there were several reasons. Avangrid promotes itself as a clean energy
2 proponent, and having an elderly coal-fired plant under its ownership, even if
3 indirectly, would conflict with that public face of the company. Its ESG commitments
4 are part of its Wall Street *bona fides*. From a dollars-and-cents perspective, FCPP clearly
5 was uneconomic when PNM reinvested in that coal plant in 2013-2014, and remains so
6 today. PNM's most recent selected resource proposals for replacement power for
7 114MW of capacity at the Palo Verde Nuclear Generating Station include two Power
8 Purchase Agreements ("PPAs") for solar energy: the Atrisco Solar PPA for 300 MW of
9 solar generation at \$19.13 MWh, and the Jicarilla Solar PPA for 150 MW of solar
10 generation at \$14.89 MWh. PNM's Application for Decertification and Abandonment of
11 114 MW of Leased Capacity and Sale and Transfer of Related Assets, and for Approval
12 of New Resources Under 17.9.551, Case 21-00083, Direct Testimony of Thomas G.
13 Fallgren at p. 43; 55.

14 In contrast, David A. Schlissel testified that in 2016 FCPP costs were \$55.45/MWh; 2017
15 FCPP costs were \$54.02/MWh; 2018 FCPP costs were \$58.44/MWh; and 2019 FCPP
16 costs were \$45.23/MWh. Testimony in Docket E-01345A-19-0236, before the Arizona
17 Corporation Commission, October 2, 2020, Eisenfeld Attachment 2. Additionally, PNM
18 witness Fallgren testified in PNM's FCPP abandonment case, 21-00017-UT: "The
19 proposed sale to NTEC absolves PNM customers from obligations for future ongoing
20 costs for operating the plant (capital investments, operations and maintenance, and fuel
21 supply) as of 2025 and forward. This proposed exit saves PNM's customers money - \$30

1 million to \$300 million on a net present value basis.” 21-00017-UT, Fallgren Direct at p.
2 3.

3 The economics of maintaining and operating FCPP could not have been unknown to
4 Avangrid, which I believe explains why Avangrid/Iberdrola required PNM’s divestiture
5 from and securitization of FCPP pursuant to the Agreement and Plan of Merger.

6 **Q. What do you conclude from that?**

7 A. Given the history of negotiations with Avangrid as reported by witness Fisher, it is
8 clear that dumping FCPP was an essential term of the agreement to sell PNMR, and as
9 such the costs of doing so are intimately tied to the proposed acquisition.

10 PNM/ Avangrid clearly wants to recover all of the costs of abandoning FCPP from
11 ratepayers, despite witness Kump’s claims that transaction costs won’t adversely
12 impact ratepayers, which makes the FCPP issue fully germane to this Case. The fact that
13 the Joint Applicants have pushed the recovery of those costs off to another proceeding
14 and have not been up front about that cost recovery – such as omitting the costs from
15 their representation of Estimated Merger Transaction Costs on PNM Exhibit NMAG 2-
16 18 – does not remove the issue from Commission review and consideration in this Case.

17 **Q. But how would you prove that the FCPP abandonment costs are “associated with”**
18 **the proposed acquisition?**

19 A. That is not a burden for NEE or any party other than the Joint Applicants.
20 The Joint Applicants are the moving party in this Case. To the extent the Joint
21 Applicants want to get recovery of any costs of abandoning FCPP from ratepayers,
22 regardless of their procedural gimmicks, the burden is on them here of showing why

1 those costs are not associated with the proposed acquisition so that they should be
2 excluded from rate recovery. Section 6.19 of the Agreement and Plan of Merger requires
3 PNM to abandon FCPP. Joint Applicants' Exhibit PAB-3 at p. 68. That core requirement
4 of the parties' negotiated agreement to acquire PNMR is *prima facie* evidence that the
5 \$300 million that PNM is seeking as a result of its FCPP abandonment is a cost
6 associated with the proposed acquisition.

7 **Q. What have the Joint Applicants promised about those costs?**

8 A. Just the opposite of what they are trying to actually do. Among the conditions the
9 Joint Applicants promised to meet are, "Hold customers harmless from negative
10 impacts of transaction..." Kump Direct at p. 15.

11 **Q. Why should the Commission reject the imposition of \$300 million on ratepayers?**

12 A. The Joint Applicants have made disposing of FCPP a condition precedent of the
13 proposed acquisition. "The deal will only go ahead if the following conditions are met:
14 ... (ii) all the required regulatory approvals must be obtained from the relevant federal
15 and state authorities in the United States of America..." Iberdrola 2020 Annual
16 Financial Information, Exhibit CKS-47 at p. 54. Ratepayers should not have to shoulder
17 a cost just because the acquiring entities want to avoid having FCPP on PNMR's books
18 at closing.

19 In addition, putting these costs of the proposed acquisition runs afoul of Commission
20 precedent that costs arising from a merger transaction cannot be recovered in rates.
21 19-00234-UT, *Amended Certification of Stipulation* at p. 29.

22 **Q. What should the Commission do in this Case about FCCP abandonment costs?**

1 A. The Commission should set a requirement for approval that no FCCP abandonment
2 costs may be imposed upon ratepayers or in any manner included in PNM's rates.

3 **Q. Is there another area where future regulatory compliance will be impeded by the**
4 **proposed acquisition?**

5 A. Yes. As noted by Staff, "After the Proposed Transaction closes, PNMR will be
6 delisted from the New York Stock Exchange (NYSE)." Direct Testimony of Marc Tupler
7 at p. 7, lines 12-16.

8 **Q. Why is that an issue?**

9 A. Delisting means that PNMR will no longer file periodic financial reports with the US
10 Securities and Exchange Commission. That will remove an alternative source of data –
11 principally 10-Q and 10-K filings – which today contain detailed data about PNM.
12 Those filings are an important way for the Commission to cross-check the statements
13 PNM makes before the agency. Losing those detailed data diminishes the means of
14 understanding of PNM and PNMR that Commission and interested parties will be able
15 to develop, making proper oversight more difficult.

16 **Q. What do you now conclude from all these facts?**

17 A. I conclude that the Joint Applicants have continued to fail to demonstrate that the
18 public interest will be served by the proposed acquisition, given Avangrid's actions to
19 date, the Joint Applicants' disregard for prior Commission orders and policies, the
20 attempt to exclude consideration of the FCCP costs as part of the analysis of the
21 proposed transaction, and the likely effects on the proposed acquisition on Commission
22 oversight. Again, the proposed acquisition should be rejected.

Costs of Capital

Q. Are there any other issues raised by the responses to NEE's Eighth Set of Discovery?

A. I am concerned by the apparent inconsistency in the Joint Applicants' statements in those discovery responses and in earlier statements made in this proceeding regarding future funding of PNM.

Q. Please explain.

A. PNM has stated that it intends to maintain a capital structure of 51.83% equity and 47.84% long-term debt through 2023. JA Response to NEE Interrogatory 6-8, attached as Exhibit CKS- 23 to my Direct testimony. PNM has also said that it expects to request Commission approval to issue up to \$350 million of new senior unsecured debt to refinance \$160 million of maturing notes. JA Response to NEE Interrogatory 6-13, attached as Exhibit CKS- 27 to my Direct testimony. That response infers that there will be up to \$190 million of new debt issued, above the amount needed to retire existing debt.

In the response which started as its Confidential Exhibit NEE 1-38 but was attached as Exhibit CKS 1-60 to my Direct testimony (refiled on April 14th; backdated to April 2, 2021), PNM listed its "forecasted long term debt issuances", and identified two tranches of "new long term debt": \$142 million in December of 2021 and another \$50 million in December of 2023. Those total \$192 million, which aligns with the \$190 million of new debt derived from the statements in Exhibit CKS-27.

1 In their latest discovery responses, the Joint Applicants provided their answer to the
2 question, "Will PNM/ Avangrid agree to hold ratepayers harmless from increases in
3 cost of replacement debt?" Messrs. Blazquez and Tarry stated that, "Avangrid does not
4 anticipate that **the Proposed Transaction** will trigger the need to replace any of PNM's
5 current debt." JA Response to NEE Interrogatory 8-24 (emphasis added), attached as
6 Exhibit CKS-66. That response cleverly dodged the question, which did not ask about
7 replacement debt arising solely from the proposed transaction. PNM clearly does intend
8 to issue replacement debt, related to an existing issuance coming due, not the proposed
9 transaction. As noted in my Direct testimony, **those issuances** will increase the
10 weighted cost of PNM's long-term debt. The Joint Applicants have thus left themselves
11 an excuse for claiming those increased costs of debt as ratepayer obligations in the
12 future.

13 The new debt issuances are a separate matter but also the subject of statements which
14 cannot be reconciled. "PNM has historically had an equity ratio between 49% and 51%.
15 PNM expects the equity ratio range to remain above 50% over the next 5 years."

16 JA Exhibit RND-2 at p. 10. The Joint Applicants now assert in more detail, "It is not
17 anticipated that there will be any equity issuances at PNM..." JA Response to NEE
18 Interrogatory 8-1, part 6. In order for PNM to issue the amount of new long-term debt
19 that it identified in Confidential Exhibit NEE 1-38, and to keep PNM's current debt-
20 equity ratio, additional equity will have to be issued.

21 In order to keep PNM's capital structure at the same ratio as PNM has promised (within
22 2 decimal points), an additional \$155 million of equity must be issued. Assuming that

1 PNM earns its authorized 9.575% return on equity, that additional equity will add
2 almost \$20 million annually to PNM's costs of capital. Exhibit CKS-67, attached hereto.
3 That effect on PNM's overall costs of capital does not include the effects of the
4 additional debt noted in my Direct testimony, which will also increase PNM's overall
5 costs of capital. Yet the Joint Applicants claim, "... PNM's cost of capital will not be
6 increased as a result of the Proposed Transaction...." JA Response to NEE Interrogatory
7 8-22, attached as Exhibit CKS-68. Again, this statement attempts to avoid the true issue
8 by narrowly focusing on "the result" of the proposed acquisition and ignores the very
9 changes in costs of capital which are planned to take place post-acquisition.

10 **Q. What do you conclude from these facts?**

11 A. That PNM has not been consistent nor forthright concerning the effects of its costs of
12 capital which are to be expected post-acquisition. And the Joint Applicants have offered
13 no commitment to protecting ratepayers against those effects, while proffering
14 Avangrid's and Iberdrola's greater size and resources as benefits which apparently will
15 not be utilized to protect ratepayers.

16
17 **Underfunded Retirement Plans**

18 **Q. What is the issue that was raised in intervenor Direct testimony regarding**
19 **underfunded retirement plans?**

20 A. Witness Fitzgerald for the IBEW testified that PNM has underfunded two retirement
21 plans to the tune of over \$57 million, affecting over 3000 participants. The debts to those
22 plans will not be extinguished at closing. Fitzgerald Direct at p. 6, lines 6-19. The

1 specific underfunded balances, as admitted on April 15, 2021, are \$43.3 million in the
2 PNMR Employees' Retirement Plan, and \$14.2 million in the PNMR Non-Qualified
3 Retirement Plan for "former executives or former employees' whose benefits under
4 qualified plan [sic] were restricted by IRS limits." JA Response to IBEW Interrogatory 2-
5 2, attached hereto as Exhibit CKS-69.

6 **Q. How does this relate to your opinion on the proposed acquisition?**

7 A. In my Direct testimony, I concluded that the asserted benefits of the proposed
8 acquisition were not sufficient to warrant Commission approval. The only
9 "commitment" regarding collective bargaining agreements which PNM announced in
10 its filing was "PNM has a collective bargaining agreement in place with IBEW Local 611
11 which expires on April 30, 2023. Before expiration, PNM will negotiate in good faith to
12 enter into a new agreement with IBEW Local 611." PNM neglected to note that it has
13 not been meeting its retirement funding obligations under that CBE, so that its
14 Employees' Retirement Plan is now significantly underfunded. In addition, since the
15 Non-Qualified Retirement Plan is not tax-qualified, it will only be funded from
16 "company assets" as benefits under that Plan come due. Exhibit CKS-69.

17 **Q. What do you conclude from the actual facts surrounding its alleged commitment**
18 **to protect workers' entitled benefits?**

19 A. It reinforces my conclusion that PNM has failed to present a true benefit in the area
20 of employment, saying it will honor its CBE while ignoring its duties under the same
21 contract.

22 **Q. How is there a potential public harm from that failure?**

1 A. Yes. As to employees and retirees, the underfunding can result in a loss of essential
2 benefits. For ratepayers, when PNM decides in the future to fully fund the plans,
3 customers may be targeted to make up the shortfall. Fitzgerald Direct at p. 7, lines 1-6.

4 **Q. Do you now believe there are additional forms of corrective action the**
5 **Commission should require?**

6 A. Yes. The Commission should require, if it were to approve the proposed acquisition,
7 that (1) PNMR's Employees' Retirement Plan be fully funded prior to closing, solely at
8 Joint Applicants' expense, and (2) PNMR place \$14.2 million into a holding account for
9 future contributions to its Non-Qualified Retirement Plan so that future ratepayers are
10 not burdened with the expense for those former executives and highly-compensated
11 employees, again at Joint Applicants' expense.

12 Transmission Facilities Issues

13 **Q. Have issues arisen related to transmission facilities?**

14 A. Yes. Witness Dauphinais for NM AREA recommended that the Commission require
15 the Joint Applicants to commit to completing a long-term transmission plan for PNM's
16 system within a year of approval of the proposed acquisition. Dauphinais Direct at p. 8.

17 **Q. On what issues was that recommendation focused?**

18 A. Witness Dauphinais' recommendation focuses on finding ways to meet upcoming
19 transmission needs in a cost-effective manner, including decisions as to whether PNM
20 should build transmission on its own, build transmission in combination with other
21 utilities, or pursue transmission with merchant developers; cost-effectiveness should be

1 considered in identifying the group of transmission projects that would fully meet the
2 needs for reliability and renewable generation integration. Dauphinais Direct at p. 8-9.

3 **Q. Are there other important factors related to transmission development?**

4 A. Yes. I believe it is important to have a long-term transmission plan started now so
5 that there can be alternatives developed and the Commission and PNM ratepayers are
6 not boxed in to yes-or-no decisions on just PNM's preferred self-build plans, when a
7 critical need for transmission capacity arises.

8 The Commission has recognized PNM's obligation to reasonably identify and evaluate all
9 of its feasible resource alternatives for the Commission to consider; a utility carries the
10 burden in a resource acquisition case to show that the resource it proposes is the most
11 cost-effective among feasible alternatives. As the Commission explained 26 years ago, "It
12 would not be in the public interest for the Commission to grant a CCN for a proposed
13 project which might meet needs but is the worst among a range of alternatives. Such
14 determinations cannot be made in a vacuum." *In the Matter of the Application of PNM for*
15 *Approval to Construct, Own, Operate and Maintain the Ojo Line Extension*, NMPRC Case No.
16 2382, 166 P.U.R. 4th 318 (1995), *Final Order Approving Recommended Decision*, adopting
17 *Recommended Decision Of The Hearing Examiner*, at p. 49. "PNM has not properly shown
18 that OLE is the best alternative even among those alternatives that PNM considered.
19 Thus, even assuming a need on the transmission system for the sake of argument, the
20 Commission remains unconvinced that the public convenience and necessity require or
21 will require the OLE Project as the proper response to such a need." *Id.* at 102.

1 The “most cost effective” test in utility cases has been adopted in subsequent
2 Commission orders:

- 3 • Case No. 15-00205-UT. In its December 22, 2015 *Order Partially Granting PNM*
4 *Motion To Vacate And Addressing Joint Motion To Dismiss*, at p. 12, the
5 Commission said, “... PNM carries the burden of proof to show that its
6 proposed resource is the most cost effective choice among feasible alternatives to
7 serve PNM’s resource needs.”
- 8 • Case No. 15-00312-UT. The Commission gave its unanimous approval in its
9 April 11, 2018 *Final Order* to the March 19, 2018, *Recommended Decision*, at p. 104,
10 where the Hearing Examiner found that, “The failure to evaluate alternatives
11 prevents the Commission from determining that PNM’s plan is the most cost
12 effective option of feasible alternatives.”
- 13 • Case No. 16-00105-UT. In its May 24, 2017, *Order Granting PNM’s Motion To*
14 *Withdraw Application*, at ¶ 10, the Commission told the parties, “[T]he
15 Commission reiterates that PNM bears the burden of demonstrating that its
16 proposed resource choice is the most cost effective resource among feasible
17 alternatives.”
- 18 • Case No. 18-00261-UT. The Commission’s March 27, 2019, *Final Order*
19 unanimously adopted the March 18, 2019 *Recommended Decision*, at p. 5-6,
20 “Utilities also need to show that the proposed project is the most cost effective
21 alternative to satisfy utilities’ needs.

22 **Q. Are there affiliate transaction issues tied into transmission decisions?**

1 A. Yes. Avangrid Renewables “is pursuing the continued development of a large
2 pipeline of wind energy projects in various regions across the United States.” Avangrid
3 Renewables already has 298 MW of installed wind generation in New Mexico and over
4 1200 MW in Texas. Avangrid 2020 10-K at p. 10; 19, Exhibit CKS-46.

5 **Q. What is your concern?**

6 A. This is an illustration of the potential for PNM to favor affiliates in the Avangrid
7 family. To the extent Avangrid Renewables has generation facilities which need
8 transmission, there is an obvious corporate imperative to design, construct, or purchase
9 facilities which are best suited to those affiliates’ needs, regardless of what would be
10 most cost-effective or beneficial to the system at large. I believe it is a reasonable
11 assumption that Avangrid is not paying the significant acquisition premium for PNMR
12 just to serve PNM’s body of New Mexico customers, but rather sees its investment as a
13 way to develop pathways for the Renewables affiliates to sell to the south and west.

14 **Q. Why do you make that assumption?**

15 A. In significant part because of Iberdrola’s existing and planned future business
16 activity in Mexico. Iberdrola has said it is interested in collaborating and investing in
17 Mexico, pushing its existing US\$7 billion of investments made in Mexico over the past
18 20 years, by investing another US\$3 billion in the construction of five plants. Green
19 generation will be a key component to its expansion in Mexico, as automobile
20 producers demand sustainable energy to meet their own commitments. “Iberdrola’s
21 Future Investments in Mexico,” P. Duran,

1 <https://mexicobusiness.news/energy/news/iberdrolas-future-investments-mexico>,
2 retrieved April 16, 2021, attached as Exhibit CKS-70.

3 **Q. What then are you recommending?**

4 A. A clarification: the independent evaluator which I recommended in my Direct
5 testimony (p. 39-41), and which was emphasized in the testimony of Larry Blank for
6 the City of Albuquerque, should be employed not just for acquisition of generation but
7 for all decisions under implementation of the long-term transmission plan.

8
9 **Utility shut-off moratorium**

10 **Q. Have you recently formed an opinion about utility shutoffs?**

11 A. Yes. The Commission has issued an emergency temporary rule prohibiting the
12 discontinuation of residential customer utility service during the time period that the
13 Governor's Executive Orders 2020-004 through 2020-0010 related to the COVID-19
14 pandemic are in effect. *In the Matter of the Adoption of an Immediate Emergency Rule*
15 *Prohibiting the Discontinuation of Residential Customer Public Utility Service During the*
16 *Time Period of the Governor's Executive Orders 2020-004 Through 2020.0010*, Case No. 20-
17 00069-UT. That rule was issued in March of 2020.

18 By October of last year, payments on those bills for which disconnection was barred
19 were piling up. More than 35,000 PNM residential customers were facing past-due bills,
20 PNM spokeswoman Shannon Jackson said at the time. "With utility bills mounting,
21 PNM lends a helping hand", <https://www.abqjournal.com/1505420/with-utility-bills->

1 *mounting-pnm-offers-a-hand.html*, retrieved April 18, 2021, attached hereto as Exhibit
2 CKS-71.

3 On June 24, 2020, the Commission authorized the creation of a regulatory asset to defer
4 PNM's incremental costs related to COVID-19, including increases to bad debt expense
5 and the creation of a regulatory liability for all offsetting cost savings resulting from
6 COVID-19. "The NMPRC Order allows the Company to request recovery in future
7 ratemaking proceedings and imposes additional reporting requirements related to
8 COVID-19 on changes to customer usage, increased costs and savings recorded to
9 regulatory assets and liabilities and impacts to delinquent accounts." PNMR Q3 2020
10 10-Q Report at p. 87 (attached hereto as Exhibit CKS-72).

11 **Q. What is your current concern?**

12 A. As PNMR reported on March 1, 2021:

13 On February 3, 2021 the NMPRC issued an order finding that the temporary
14 mandatory moratorium on disconnections of residential utility customers shall
15 be in effect from the date of the order for 100 days (May 14th). At the end of the
16 moratorium, a 90 day transition period will begin, which continues the
17 temporary moratorium on disconnections to provide the utilities additional time
18 to assist residential customers with arrearages to enter into installment
19 agreements. The transition period may be a mandatory continuation of the
20 temporary moratorium on disconnections if the Governor of New Mexico's
21 executive order remains in effect or may be a consensual continuation of the
22 moratorium on disconnections if the Governor of New Mexico's executive order
23 terminates or expires prior to the end of the transition period. All regulated
24 public utilities may begin disconnections at the end of the transition period.

25
26 PNMR 2020 10-K, Exhibit CKS-20 at p. B-106.
27

28 I am concerned that there will be a wave of disconnections starting next month, and that
29 PNM will have accumulated a significant regulatory asset due to the moratorium on
30 shut-offs which it will seek to recover in future rates.

1 **Q. Why is that an issue here?**

2 A. The transfer of debts from ratepayers on-line in 2020 to those taking service from

3 PNM in 2021 and beyond is an improper intergenerational shifting of costs.

4 “Intergenerational Equity is a foundational principle of utility regulation that theorizes

5 that the period for cost recovery of an investment should correspond to the time it is

6 actually in use.” “Thoughts on Intergenerational Equity in Utility Ratemaking,” B.

7 Davis, <https://ceadvisors.com/thoughts-intergenerational-equity-utility-ratemaking/>,

8 retrieved April 18, 2021, attached hereto as Exhibit CKS-73. Unlike large investments

9 where spreading costs over the many years the asset will be in service and beneficial to

10 numerous ratepayers is sound policy, the unique regulatory asset created as a response

11 to the COVID-19 pandemic represents the recovery of costs from a limited set of

12 customers in a defined and limited period of time. Recovery of those costs from the

13 general body of ratepayers or over a period of time beyond the pandemic would be

14 improper cost-shifting.

15 **Q. What are you proposing?**

16 A. This is another issue of which Avangrid and Iberdrola would have been well aware

17 as negotiations progressed, and for which they should have been prepared. I

18 recommend that Avangrid/Iberdrola should wipe out all accumulated arrearages

19 under the utility shut-off moratorium pursuant to the COVID-19 emergency order at

20 stockholder expense, and waive all reconnection fees.

21 **Q. Is that consistent with state utility policy?**

1 A. I believe it is.

2 Section 62-3-1(B) of the NMPUA declares the policy of the state to be that:
3 the public interest, the interest of consumers and the interest of investors require
4 the regulation and supervision of ... public utilities to the end that reasonable and
5 proper services shall be available at fair, just and reasonable rates, and to the end
6 that capital and investment may be encouraged and attracted so as to provide for
7 the construction, development and extension, without unnecessary duplication
8 and economic waste, of proper plants and facilities for the rendition of service to
9 the general public and to industry.

10
11 *State ex rel. Sandel v. New Mexico Public Utility Commission*, 1999-NMSC-019, ¶18, 127

12 N.M. 272, 980 P.2d 55 (emphasis added.) The Public Utility Act requires that public
13 utility rates be just and reasonable. NMSA 1978, § 62-8-1. "To set a just and reasonable
14 rate, the Commission must balance the investor's interest against the ratepayer's
15 interest." *Behles v. New Mexico Public Service Commission*, 114 N.M. 154, 161, 836 P.2d 73
16 (1992) (emphasis added.) And the New Mexico Supreme Court has concluded, "Neither
17 [interest] is paramount ... we cannot focus solely on investor interests." *Mountain States*
18 *Tel. & Tel. Co. v. New Mexico State Corporation Commission*, 99 N.M. 1, 7-8, 653 P.2d 501
19 (1982); 15-00261-UT, *Corrected Recommended Decision*, August 15, 2016, p. 15.

20 **Q. What would be the effect of your recommendation if adopted?**

21 A. PNM customers who are not able to catch up on their deferred bills would not face
22 disconnection of service and the attendant harms to health and life, and other PNM
23 ratepayers would not bear the financial burden of a public policy decision made by the
24 state. The interests of ratepayers and owners would be appropriately balanced.

Legacy Issues must be addressed

Q. What do you mean by “legacy issues”?

A. In my Direct testimony, I recommended that the Commission reject the proposed acquisition unless the costs of abandonment and securitization related to the Four Corners Power Plant are barred from recovery from ratepayers. CKS Direct, p. 37, lines 6-9. And I expanded on that issue above. While that removal of costs remains an essential requirement for approval of the proposed acquisition, there is an additional issue underlying FCCP that should be addressed by the Commission.

Q. What is that?

A. Avangrid must be a responsible owner of PNM to redress the long-brewing negative effects of FCCP, if PNM becomes part of Avangrid’s US utility holdings.

Q. Please explain.

A. The issue is best summarized in testimony presented on behalf of the San Juan Citizens Alliance, Diné Citizens Against Ruining Our Environment, Nava Education Project, and To’ Nizhóní Aní (“San Juan”):

As such, there are many immediate needs for just transition assistance for communities in the region. PNM and other utility owners have benefited immensely after decades of using natural resources in the Four Corners, and communities have had to jointly bear the brunt of pollution from the SJGS and FCCP. Four Corners and Navajo communities near these two coal facilities are owed a pathway and assistance to help them through this time of economic transition. I encourage the Commission to approve a shareholder-funded Just Transition fund established specifically for community organizations to use directly in the community in rebuilding and strengthening their economy and creating jobs.

1 Direct Testimony of Adella Begaye, at p. line 21 through p. 8, line 7. As explained by
2 San Juan Citizens Alliance, FCCP represents a long-standing burden on the adjacent
3 Navajo communities, with effects of their health and lives. In context, FCCP represents
4 one form of environmental racism. “10 egregious examples of environmental racism in
5 the US”, [https://www.insider.com/environmental-racism-examples-united-states-](https://www.insider.com/environmental-racism-examples-united-states-2020-8)
6 2020-8, retrieved April 12, 2021, attached as Exhibit CKS-74.

7 “From predominantly black neighborhoods in Detroit to Navajo communities in the
8 southwest to Louisiana’s Cancer Alley, industrial pollution has been concentrated in
9 low-income communities for decades - communities that the federal government has
10 tacitly written off as so-called ‘sacrifice zones.’ But it’s not just about poverty, it’s also
11 about race.” “Fighting For Justice As We Combat The Climate Crisis”, quoting from
12 Senator Elizabeth Warren’s presidential campaign,
13 [https://elizabethwarren.com/plans/environmental-justice?source=soc-WB-ew-tw-](https://elizabethwarren.com/plans/environmental-justice?source=soc-WB-ew-tw-rollout-20191009)
14 rollout-20191009, retrieved on April 12, 2021, attached as Exhibit CKS-75.

15 **Q. Is there anything Avangrid should be required to do about the damaging effects**
16 **of FCCP on the surrounding Navajo communities?**

17 A. In keeping with its professed support of environmentalism, in addition to removing
18 the burden of FCCP from ratepayers, Avangrid should implement the Just Transition
19 fund recommended by San Juan Citizens Alliance, Diné Citizens Against Ruining Our
20 Environment, and other impacted community organizations, as appropriate reparations
21 for the harm FCCP has caused to the impacted Navajo communities.

22 **Q. What should the Commission do about this issue?**

1 A. If it decides to approve the proposed acquisition, the Commission should require the
2 creation and funding of the shareholder-funded Just Transition fund in recognition of
3 Avangrid's assumption of PNM's history of environmental racism embodied in FCCP
4 and its much-proclaimed commitment to a green economy.

5 **Q Are there other decommissioning issues, specific to the San Juan Generating**
6 **Station, which the Commission should address?**

7 A. Yes. Witness Tummarello recommended that the Commission require PNM to
8 commence the demolition of the San Juan Generating Station as soon as practicable after
9 cessation of generation operations, in order to create a public benefit from the proposed
10 transaction. Failing to do so will increase risks to PNM, its ratepayers, and the other
11 past and present owners of the SJGS facility. Direct Testimony of Vince Tummarello at
12 pp. 7 & 14. Tummarello specifically explained how the potential deterioration of plant
13 structures will increase costs, decrease salvage value and increase ultimate demolition
14 costs; increase environmental remediation costs; environmental contamination could
15 increase; costs known today are more accurate; the site, if it were not fully remediated
16 could be subject to further federal and state regulatory standards that will increase
17 costs; and creates a security issue. Tummarello, at p. 7.

18 Witness Arthur clarified that the motivation behind the recommendation that plant
19 decommissioning and mine reclamation begin upon plant closure is a concern that
20 owners – specifically Los Alamos County and M-S-R Public Power Agency – could be
21 stuck with increased costs from a deferred demolition and remediation. He

1 recommended that reasonable costs of final decommissioning be established now.

2 Direct Testimony of David Arthur at p. 7, line 19 – 8, line 8.

3 **Q. Do you agree with the position of those witnesses?**

4 A. In part, but they do not fully address the problem. The pecuniary interests of Los
5 Alamos County and M-S-R Public Power Agency asserted by those witnesses are not
6 the key issue, I believe. There is actually the potential for a larger negative impact.

7 **Q. Please explain.**

8 A. Those two parties are both public bodies, and inflated environmental and clean-up
9 costs which are passed on to them will ultimately become costs that need to be
10 recovered from the general public (in the case of Los Alamos County) and from those
11 served by the M-S-R Public Power Agency. That fact will turn what appears to be a
12 private interest of those part owners of SJGS into a public interest in the future.

13 **Q. With what do you agree?**

14 A. I believe witness Arthur is correct when he explains that PNM ratepayers deserve to
15 be protected against future rate increases occasioned by greater decommissioning
16 expenses for SJGS. Arthur Direct at p. 12. In addition, I believe that the portion of the
17 public which would be harmed by imposition of greater costs on Los Alamos County
18 and M-S-R Public Power Agency should be similarly protected.

19 **Q. How?**

20 A. The Commission should condition approval of the proposed acquisition on PNM
21 committing to a timely decommissioning plan for SJGS to be implemented in 2022, in
22 order to protect PNM's future ratepayers and the public represented by Los Alamos

County and M-S-R Public Power Agency from increases in decommissioning due to delay.

CCAЕ is wrong about decoupling

Q. What is the issue about “decoupling”?

A. NEE supports several of the conclusions of the Coalition for Clean Affordable Energy (“CCAЕ”), which I will discuss below. However, CCAЕ makes a misguided recommendation regarding the so-called “decoupling” of PNM’s sales and revenues, requiring a commitment that, upon conclusion of the current decoupling docket, Joint Applicants will include a decoupling proposal **consistent with the requirements of the EUEA** in its next rate case. Direct Testimony of Noah Long at p. 11, lines 1-3 (footnotes omitted, emphasis added.)

Q. Why is CCAЕ in error in that recommendation?

A. CCAЕ demands the Commission use the “requirements of the EUEA”, found in NMSA 1978, § 62-17-5(F)(2). As I explained in my Direct testimony filed in Case 20-00211-UT, the operant provision of the EUEA (§ 62-17-5 F(2) - (4)), which states that the Commission is not to reduce a utility's return on equity based on approval of a disincentive removal mechanism, is inconsistent with a clear constitutional obligation to include all the risks faced by a utility in considering what a reasonable rate of return is from time to time.

Q. Can you briefly state your view on that issue?

1 A. The New Mexico legislature cannot overturn a constitutional requirement once that
2 requirement has been established by the United States Supreme Court. A utility “has no
3 constitutional right to profits such as are realized or anticipated in highly profitable
4 enterprises or speculative ventures... the question whether a rate yields [a reasonable]
5 return as not to be confiscatory depends upon circumstances, locality and risk.”

6 *Bluefield Water Works & Improvement Company. v. Public Service Commission of West*
7 *Virginia*, 262 U.S. 679, 693 (1923) (emphasis added.) That directive from the US Supreme
8 Court requires that regulatory bodies – including the Commission – always include the
9 element of risk in their setting of rates of return. The section of the EUEA advanced by
10 CCAE attempts to overturn that constitutional requirement.

11 **Q. Can the Commission properly follow CCAE’s recommendation?**

12 A. No. CCAE’s recommendation would have the Commission abdicate a clear
13 constitutional obligation to include all the risks faced by a utility in considering what a
14 reasonable rate of return is from time to time, using other enterprises of corresponding
15 risks.

16 That recommendation should be rejected.

17 **Q. Are there portions of CCAE’s Direct testimony that should not be rejected?**

18 A. Yes. Given the imbalance between the benefits of the proposed transaction between
19 shareholder/investors and ratepayers, I support CCAE's proposal to have PNM
20 increase its spending on low-income energy efficiency and commit to \$15 million per
21 year for at least 3 years, as a shareholder expense, through a comprehensive low-income
22 energy efficiency and weatherization program designed to improve the health, safety

1 and comfort of the home; reduce the energy burden of low-income customers; reduce
2 greenhouse gas emissions; and preserve housing stock. Long Direct at p. 11.

3 **Q. Are there any other issues raised by CCAE that need addressing?**

4 A. Yes. CCAE recommended that PNM be required to develop a “beneficial
5 electrification plan.” Long Direct at p. 13. That concept needs to be made more specific.

6 **Q. How so?**

7 A. Given the actions by Avangrid here in New Mexico which I noted above, and the
8 Avangrid/Iberdrola work in 2016 which financed an effort to get rid of rooftop solar
9 and community solar in Maine (outlined in my Exhibit CKS-35), I am concerned about
10 potential impacts on the distributed energy resources (“DER”) industry in New Mexico.

11 The DER industry currently provides direct employment for more than 2,000 New
12 Mexican families, has 1,196.86 MW total solar installed (285.69 MW just in 2020), and
13 has invested \$2,256 million in New Mexico, including \$327.99 million in 2020. There are
14 15 manufacturers, 40 installers/developers that combine to bring in these local
15 revenues. “Solar Jobs Census,” [https://www.thesolarfoundation.org/solar-jobs-](https://www.thesolarfoundation.org/solar-jobs-census/factsheet-2019-nm/)
16 [census/factsheet-2019-nm/](https://www.thesolarfoundation.org/solar-jobs-census/factsheet-2019-nm/), retrieved April 19, 2021, attached as Exhibit CKS-76; “State
17 Solar Spotlight”, [https://www.seia.org/sites/default/files/2021-](https://www.seia.org/sites/default/files/2021-03/New%20Mexico.pdf)
18 [03/New%20Mexico.pdf](https://www.seia.org/sites/default/files/2021-03/New%20Mexico.pdf), retrieved April 19, 2021, attached as Exhibit CKS-77.

19 The DER industry is presently able to grow, with a primary component being current
20 New Mexico law and regulation that requires utilities to provide customers with net-
21 metering: customers with roof-top solar panels are able to reduce their cost of utility-
22 purchased electricity by the amount of electricity generated at their premises. Those

1 incentives, “make it so that adding solar makes financial sense...” “Read up on door-to-
2 door solar sales reps,” E. Marks, [https://www.abqjournal.com/2380957/read-up-on-](https://www.abqjournal.com/2380957/read-up-on-door-to-door-solar-sales-rep.html)
3 [door-to-door-solar-sales-rep.html](https://www.abqjournal.com/2380957/read-up-on-door-to-door-solar-sales-rep.html), retrieved April 19, 2021, attached as Exhibit CKS-78.

4 **Q. What is your recommendation on this issue?**

5 A. Just as with CCAE’s concerns that PNM should not use an out-of-state implementor
6 to manage its energy efficiency programs, thereby sending ratepayer money out-of-
7 state, I believe that the proposed acquisition also needs to include safeguards for the
8 New Mexico DER industry, including roof-top and community solar providers. The
9 current benefits of providing low-cost, clean, solar power directly to consumers,
10 avoiding the costs of building a similar amount of large-scale facilities far from
11 customer load, and thereby reducing transmission requirements, should be continued.

12 **Q. How so?**

13 A. The Commission should take affirmative steps to prevent Iberdrola and/or
14 Avangrid from reducing these benefits, as they attempted to do in Maine, and require
15 the protection and expansion of customer net-metering rates and benefits. That should
16 include a requirement that PNM not propose changes to net metering which would
17 increase costs to solar power purchasers, including by means of increased customer
18 charges or minimum bills, or by shifting fixed- or variable-cost allocations to the retail
19 rates paid by solar power equipment users.

1 Conclusion

2 **Q. Having had the opportunity to review Joint Applicants' most recent discovery**
3 **responses and to react to the Direct testimony filed by Staff and the other**
4 **intervenors, what is your current position on the proposed acquisition?**

5 A. The Joint Applicants have failed their burden to demonstrate that the proposed
6 acquisition would be in the public interest. The key problem with the proposed
7 acquisition is that the risks and detriments of the Joint Applicants' plans outweigh the
8 benefits which the public might receive from the transaction.

9 The public interest always requires a balancing of owner and ratepayer interests, and it
10 is necessary for the Commission to do that balancing in this proceeding. When, as is the
11 case here, that balance is tilted so heavily in the favor of owners, the public interest is
12 not present.

13 The proposed acquisition should be rejected by the Commission.

14 **Q. Does that conclude your testimony?**

15 A. Yes.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CASE NO. 20-00222-UT

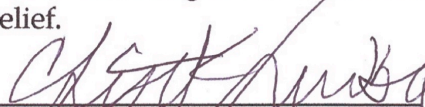
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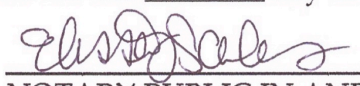
COUNTY OF SANDOVAL

ss

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


Christopher K. Sandberg

SUBSCRIBED TO AND AFFIRMED before me this 20th day of April, 2021.


NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission expires:

March 29, 2025

