

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Case No. 20-00222-UT

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

JOINT APPLICANTS.)

CERTIFICATION OF STIPULATION

PUBLIC VERSION

November 1, 2021

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I. INTRODUCTION

Ashley C. Schannauer, Hearing Examiner for this case, submits this Certification of Stipulation to the New Mexico Public Regulation Commission (Commission or NMPRC) pursuant to NMSA 1978, §8-8-14 and NMPRC Rules of Procedure §1.2.2.20.B NMAC. The Hearing Examiner recommends that the Commission adopt the following statement of the case, recommendations, discussion, and findings of fact, conclusions of law and decretal paragraphs in a final order.

The Hearing Examiner is issuing Public and Confidential versions of the Certification. The Confidential version includes a complete, unredacted discussion of the ongoing criminal proceedings in Spain involving Iberdrola, S.A. executives and an Iberdrola, S.A. subsidiary in Europe. It also includes complete copies of the Spanish court orders initiating the proceedings and the prosecutor reports recommending the proceedings. Due to restrictions on public disclosure under Spanish law, a Public version of the Certification has been created. The Public version redacts non-public information from the Certification's discussion and excludes the court orders and the underlying reports of the prosecutor.

II. STATEMENT OF THE CASE

A. Joint Application and original procedural schedule

On November 23, 2020, the Joint Applicants identified below filed a Joint Application with the Commission requesting approval of a Merger Agreement (together with related action and documents, the "Proposed Transaction"). The Joint Applicants are: Avangrid, Inc., a New York corporation; Avangrid Networks, Inc., a Maine Corporation; NM Green Holdings, Inc., a New Mexico corporation; Public Service Company of New Mexico (PNM), a New Mexico corporation; and PNM Resources, Inc. (PNMR), a New Mexico corporation.

Specifically, the Joint Applicants sought approval for (1) the merger of NM Green with and into PNMR, under NMSA 1978, §§ 62-6-12 and 62-6-13, following which PNMR will be the surviving corporation and will be a wholly owned subsidiary of Avangrid, Inc. (Merger); (2) Avangrid, Inc.'s transfer of 100% ownership in PNMR to Avangrid Networks, Inc. subsequent to the Merger; (3) PNM's 2021 General Diversification Plan (2021 GDP), which would replace any previous diversification plans and which was filed in connection with the Class II transaction contemplated by the Proposed Transaction pursuant to 17.6.450 NMAC (Rule 450), together with requested limited variances to Rule 450; and (4) such other and further approvals, consents, authorizations, and relief that may be required under the New Mexico Public Utility Act.

On December 4, 2020, the Commission, by single signature Order, appointed the undersigned as Hearing Examiner to preside over this matter, to take all action necessary and convenient thereto within the limits of the Hearing Examiner's authority, to conduct any necessary hearings, to submit a Recommended Decision containing proposed findings of fact and conclusions of law to the Commission and to take any other action in this case that is consistent with Commission procedure and statutes.

On December 17, 2020, the Hearing Examiner held a prehearing conference via videoconference. The prehearing conference was attended by representatives of Avangrid, Inc., PNM, PNMR, the Albuquerque Bernalillo County Water Utility Authority (ABCWUA), the City of Albuquerque, Bernalillo County, Coalition for Clean Affordable Energy (CCAEE), City of Farmington, Dine CARE, Enchant Energy, IBEW Local 611, Interwest Energy Alliance, Los Alamos County (Los Alamos), M-S-R Public Power Agency (M-S-R), New Energy Economy, New Mexico Affordable Reliable Energy Alliance (NM AREA), New Mexico Attorney General, Sierra Club, San Juan Citizens Alliance, Southwest Generation Operating Company, Walmart,

Western Resource Advocates (WRA), Westmoreland Mining LLC and Staff of the Commission's Utility Division (Staff).

Following the prehearing conference, the Hearing Examiner established the following procedural schedule:

The Joint Applicants were required to publish notice of the proceeding by January 15, 2021 on the public websites of Avangrid, Inc. and PNM and in the *Albuquerque Journal*, *Farmington Daily Times*, *Las Cruces Sun News*, *Santa Fe New Mexican* and the *Silver City Sun News*. PNM was also required to mail notice of the proceeding to its customers (by bill stuffer or separately) on or before January 20, 2021.

- The intervention deadline was set at February 26, 2021.
- Staff and intervenors were required to file direct testimony by April 2, 2021.
- Rebuttal testimony was required by April 21, 2021.
- A prehearing conference was scheduled for April 26, 2021.
- The evidentiary hearing was scheduled for May 4 through May 12, 2021.
- A public comment hearing was scheduled for May 3, 2021.

The following 23 parties intervened:

ABCWUA
Attorney General
Bernalillo County
CCAE
City of Albuquerque
City of Farmington, & Enchant Energy (represented by same attorney)
IBEW Local 611
Interwest Energy Alliance
Kroger
M-S-R Public Power Agency & Los Alamos (represented by same attorney)
New Energy Economy
NM AREA
Onward Energy Holdings

San Juan Citizens Alliance, Dine CARE, Nizhoni Ani, Nava Education Project
(referenced as “Community Groups”)
Sierra Club
Walmart
WRA
Westmoreland Mining¹

Staff participated without the need to file as an intervenor.

On April 2, 2021, 17 of the intervenors plus Staff filed testimony opposing and/or proposing changes to the Joint Application. The remaining six intervenors did not file testimony.

On April 21, 2021, the Joint Applicants and six intervenors filed rebuttal testimony.

Also, on April 21, 2021, the Joint Applicants and seven parties filed an Initial Stipulation. The seven parties included the Attorney General, WRA, IBEW Local 611 and the four intervenors participating as the “Community Groups” -- Dine Citizens Against Ruining Our Environment, Nava Education Project, San Juan Citizens Alliance, and To Nizhoni Ani. They also filed an Expedited Motion (i) to vacate the April 21, 2021 deadline for rebuttal testimony and the April 23, 2021 deadline for prehearing memoranda and (ii) to use the prehearing conference scheduled for April 26, 2021 as a status conference to set a procedural schedule to address the stipulation.

The Hearing Examiner denied the Expedited Motion on the same date, finding that that it was premature in view of the significant opposition to the Expedited Motion and the small number of signatories to the Initial Stipulation compared to the number of parties in the case. Instead, by separate order issued that same day, the Hearing Examiner provided for the filing of statements pursuant to subsections 1.2.2.20.B(1) and (2) NMAC regarding any opposition to the Initial Stipulation.

¹ Berrendo Energy also intervened but withdrew its intervention on May 26, 2021.

On April 23, PNM filed a Notice of Amended Stipulation. The Amended Stipulation added CCAE as a signatory and added further commitments on behalf of the Joint Applicants to resolve CCAE's interests. The Notice stated that it is anticipated that further discussions with parties will provide an opportunity to add further stipulated commitments for the Commission's consideration.

On April 25, the Hearing Examiner issued an order vacating the prehearing conference scheduled for April 26 and the rest of the procedural schedule. The Hearing Examiner found that, in view of the Joint Applicants' last-minute and apparently ongoing attempts to negotiate a settlement of the issues in the proceeding and the continued filing of iterations of a settlement document, the time scheduled for a hearing on the Joint Applicants' Application would be better spent on good-faith negotiations with all parties intended to produce a final settlement document that could potentially be supported by all parties. The order established May 7, 2021 as the deadline for the conclusion of the negotiations, so that either a final stipulation (whether uncontested or contested) could be evaluated or the case could proceed to a hearing on the merits of the Application. The order required the Joint Applicants and other parties to file by May 7, 2021 a proposed procedural schedule for the remainder of the proceeding, and it scheduled a status conference for May 11, 2021 to determine the schedule for further proceedings in this case.

On May 7, 2021, PNM filed a further amended stipulation. The May 7 Stipulation added Interwest Energy Alliance, Walmart, Inc., and Onward Energy Holdings, LLC as signatories and added provisions addressing the concerns of the new signatories.

As noted above, the May 11, 2021 status conference was originally set to discuss scheduling and other matters. But, in view of the discovery of approximately \$25 million in

penalties and cost disallowances to Avangrid, Inc.'s electric utility subsidiaries over the past 16 months, the discussion at the conference focused on the penalties and disallowances and the next procedural steps to be taken to address them. The participants also discussed the forensic audits that had been ordered in Maine and Connecticut to review whether the organizational structure of the Avangrid, Inc. group of companies was responsible for the poor service that formed the basis for the enforcement actions. The Hearing Examiner noted that none of this information had been disclosed in the Joint Applicants' filings.

A final issue discussed at the May 11 status conference entailed a notification by counsel for Los Alamos and M-S-R that they had reached an agreement to join in the May 7 stipulation in return for an additional provision that served their concerns. The agreement was reached after the May 7, 2021 deadline for the filing of a final stipulation. Los Alamos and M-S-R were notified that they would need to file a motion asking for leave to add the provision to the stipulation.

Based upon the discussion at the status conference, the Hearing Examiner issued an Order later that day in which he found that the scheduling of further proceedings should not take place until after the Joint Applicants provide further information about the enforcement measures, disallowances and forensic audits pertaining to Avangrid, Inc.'s electric utility subsidiaries. The Hearing Examiner found that the service deficiencies of the electric utility subsidiaries are relevant to the Commission's review of the potential impact Avangrid, Inc.'s influence would have on the adequacy of PNM's service if the merger is approved. The Hearing Examiner stated that the Joint Applicants' failure to disclose the information to the Commission in this proceeding was troubling and relevant to the credibility of their witnesses' testimony and the transparency by which Avangrid, Inc. and PNM would conduct their business in New

Mexico if the merger is approved. The Hearing Examiner also stated that the results of the management audits in Connecticut and Maine would help the parties and the Commission understand the impact of Avangrid, Inc.'s organizational structure on PNM's ability to provide adequate service if the proposed merger is approved.

The Order (i) required the Joint Applicants to file a response by May 18 providing information regarding the regulatory commission decisions that imposed the penalties and proposing in the response a process to incorporate the results of the management audits ordered in Connecticut and Maine into the record of this proceeding and a proposed procedural schedule for the remainder of this case, (ii) set a May 25 deadline for parties to file responses to the Joint Applicants' filing, and (iii) set a further status conference for May 28.

The Joint Applicants filed their response on May 18 to the Hearing Examiner's May 11 Order. Parties filed responses to the Joint Applicants' May 18 filing on May 25.

On May 20, Los Alamos and M-S-R filed their Motion for Joinder to the May 7 stipulation. The Motion was styled as a request to add Los Alamos and M-S-R to the May 7 stipulation, but it also appeared to be requesting that the May 7 stipulation be modified to include the additional provision discussed at the May 11 status conference that the County and M-S-R stated would address their concerns.

On May 24, the Joint Applicants filed the supplemental testimony of Robert Kump in response to the April 29 bench request issued by Commissioner Jefferson Byrd. The bench request asked the Joint Applicants to file supplemental testimony by May 24, describing the manner in which Avangrid, Inc. or any subsidiary of Avangrid, Inc. tracks customer satisfaction and complaints. The bench request also asked for related summaries, reports or analyses; monthly

changes between the time of Avangrid, Inc.'s ownership and the subsidiary's prior owners; and customer satisfaction or complaint analyses performed by prior owners.

B. Procedural schedule for the June 4 Stipulation (Second Amended Stipulation)

At the May 28 status conference, the Hearing Examiner and parties discussed a further procedural schedule. By that time, 11 of the 24 parties in the case (other than the Joint Applicants) had signed on to the May 7 version of the stipulation, and the May 20 motion filed by Los Alamos and M-S-R indicated that they would sign on, too, if the additional condition they requested were included. But there was still active opposition by at least 6 parties. The May 7 stipulation did not address the issues of these parties to their satisfaction. Some of these parties also claimed that the May 7 stipulation did not address all substantive issues raised by the original Application.

On balance, the Hearing Examiner found that it was appropriate to set a hearing schedule to consider the May 7 version of the stipulation, including the forthcoming provision sought by Los Alamos and M-S-R. The Hearing Examiner indicated that hearings would be scheduled to consider the modified version of the May 7 stipulation and that the modified stipulation, as a contested stipulation would be considered pursuant to 1.2.2.20.B(3) NMAC. Thus, the hearing would address the contested stipulation and the merits of any substantive issues not addressed by the stipulation.

The Hearing Examiner, accordingly, issued a Procedural Order for Proceedings Addressing Contested Stipulation, which set the following procedural schedule:

Testimony in support of the stipulation was to be filed by June 18. Each of the signatories was required to file testimony from at least one witness in support of the stipulation. The Order also listed specific issues to be addressed in the testimony of the Joint Applicants.

Testimony by parties that neither support nor oppose the stipulation was to be filed by June 18. Testimony in opposition to the stipulation was scheduled to be due by July 16. Rebuttal testimony was to be filed by July 29.

A prehearing conference was set for August 3. A public comment hearing was scheduled for August 9. Evidentiary hearings were scheduled to start on August 11, 2021 and continue as necessary through August 20.

The May 28 Order also required the Joint Applicants to file biweekly status reports starting on June 11, 2021 on the progress of the audits ordered by the Maine Public Utilities Commission (Maine PUC) in Docket No. 2018-00194 and the Connecticut Public Utilities Regulatory Authority (Connecticut PURA) in Docket No. 20-08-03. It required the Joint Applicants to file copies of the following when received by any Avangrid, Inc. affiliate regarding the audits ordered by the Maine and Connecticut commissions: (i) contracts, including scopes of work and project schedules, between the auditors and the respective regulatory authorities; (ii) schedules for the performance and completion of the audits; (iii) interim and draft audit reports submitted for comment to an Avangrid, Inc. affiliate; and (iv) final audit reports.

Separately, on May 28, the Hearing Examiner also issued an Order granting the Motion for Joinder to the stipulation that was filed by Los Alamos and M-S-R. The May 28 Order required the filing of a further amended stipulation signed by all parties that included the additional provision negotiated with those two parties.

On June 4, PNM filed the final official version of the stipulation, which included the provision sought by Los Alamos and M-S-R. This version was titled as the “Second Amended Stipulation” but is generally referenced in this Certification as the June 4 Stipulation. The June 4 Stipulation is the document that was addressed at the August evidentiary hearings.

C. Significant prehearing matters

1. Texas-New Mexico Power Company stipulation

On March 30, 2021, Texas-New Mexico Power Company (TNMP), NM Green Holdings, Inc. and Avangrid, Inc. (TNMP Joint Applicants) reached a settlement with the parties in the proceeding before the Public Utility Commission of Texas in which the TNMP Joint Applicants sought the approval (similar to the approval requested in this case) to merge TNMP with NM Green Holdings, Inc. and then for TNMP to be acquired by Avangrid, Inc.

The Hearing Examiner in this case issued a bench request on April 13, asking the Joint Applicants here for a copy of the Texas settlement document and asking further whether the Joint Applicants here are willing to agree to the same terms in this proceeding. In the Joint Applicants’ April 19, 2021 response, they agreed to the following:

RESPONSE:

Yes. Joint Applicants in this case will agree to, at a minimum, meet the terms of the Unanimous Stipulation and Agreement entered in Docket No. 51537 before the Public Utility Commission of Texas, except for the following non-material commitments which are specific to Texas:

- Specific provisions regarding a Texas Retail Electric Provider that do not apply in New Mexico;
- Specific provisions regarding ERCOT that do not apply in New Mexico;
- Texas New Mexico Power’s board of directors will have seven members, three of which will be independent. PNM’s five member Board will have two independent directors, resulting in a similar percentage;
- Joint Applicants are not creating a special purpose entity above PNM, which is a typical requirement in Texas proceedings, and therefore are also not offering the non-consolidation legal opinion.

The Texas stipulation and the Joint Applicants' response to the bench request were admitted into evidence as part of Commission Exhibit No. 1.

2. Motion for Joinder of Iberdrola, S.A. as a necessary party

On May 24, 2021, Bernalillo County and ABCWUA filed a Motion for Joinder of Iberdrola, S.A. as a necessary party. The Joint Motion asked that Iberdrola, S.A. be included as a party in the proceeding pursuant to Rule 1-019 NMRA and the Commission's previous cases that recognize the Commission's authority to designate holding companies as subject to Commission jurisdiction. Bernalillo County and ABCWUA said Iberdrola, S.A. would become one of several "upstream" holding companies of PNMR following the acquisition and the parent company of Avangrid, Inc.. They said Iberdrola, S.A. controls Avangrid, Inc., but it is not one of the five Joint Applicants in this case. The Joint Movants contended that Iberdrola, S.A.'s participation is needed to enable the Commission to fashion an order that provides complete relief for the claims made in the case. They also cited Iberdrola, S.A.'s attempts to avoid the jurisdiction of the courts in Maine, where Iberdrola, S.A. had not agreed to be subject to the state's jurisdiction in regard to the actions of its indirect subsidiary Central Maine Power Company.

After considering the Joint Applicants' response filed on May 27, opposing the Joint Motion, the Hearing Examiner granted the Motion for Joinder on June 8.

3. NEE Motion for Sanctions

On May 27, 2021, NEE filed a Motion for Rule to Show Cause why Joint Applicants Should Not be Held in Contempt and for Sanctions. The Motion sought sanctions for the Joint Applicants' alleged discovery violations and excessive requests for confidential treatment of discovery responses in violation of the January 14, 2021 Protective Order.

After considering the Joint Applicants' response filed on June 4, 2021, the Hearing Examiner issued an Order on June 14, which found that the Joint Applicants should show cause why the Commission should not find (a) that the Joint Applicants' response to NEE 4-55 has violated the Commission's discovery rules, the discovery requirements in the December 18, 2020 Procedural Order, and the prohibition in the January 14, 2021 Protective Order against the over-designation of discovery responses as confidential and (b) that the Joint Applicants' May 18 response violated the disclosure requirements in the Hearing Examiner's May 11 Order.

The Order required the Joint Applicants to file testimony by June 28 on the questions outlined above. The Order provided for the filing of responsive testimony, including the amount of and support for any recovery of attorney fees as a sanction, by July 16 and rebuttal testimony by July 29. The Order stated that the issue of whether to order sanctions and/or administrative penalties and the amount thereof would be litigated through examination of the above testimony at the hearings scheduled to start on August 11. The Order stated that the issue would be resolved in the recommendation to be issued by the Hearing Examiner after the hearing and the subsequent decision issued by the Commission.

On June 28, 2021, the Joint Applicants filed the supplemental testimony of Mr. Kump on these issues. No further testimony was filed.

The issues are discussed and the Hearing Examiner's recommendation are in Section VI.F.7 below.

4. Administrative notice of climate change

On June 3, 2021, the Attorney General, WRA, CCAE and the Community Groups filed a Joint Motion asking the Commission to take administrative notice of climate change, its causes and its likely consequences. The Joint Motion asked that administrative notice be taken of

the following generally recognized technical and scientific facts concerning climate change:

- a) Climate change is caused by human activity resulting in an accumulation of greenhouse gases in the atmosphere. The principal directly-emitted greenhouse gases responsible for climate change are carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆).
- b) A predominant source for greenhouse gas emissions is the combustion of fossil fuels by power plants, by vehicles, in buildings and by industry.
- c) The direct consequences of climate change have been and will be wildfires, droughts, floods, extreme weather events and rising sea levels.
- d) Unless the emission of greenhouse gases into the atmosphere is quickly and substantially curtailed, the adverse consequences for public health, welfare and safety, the economy and the environment, and for all living things, is likely to be severe, widespread and irreversible.

The Joint Movants stated that the threat of climate change, its consequences, and means to mitigate its impacts are an important issue in this docket with the Stipulation and testimony of parties addressing various aspects of climate change. Rather than requiring testimony, evidence and proof of widely accepted technical and scientific facts, judicial economy and efficiency necessitate that the Commission take administrative notice of the above identified facts.

The Joint Movants cited a number of scientific and technical resources, including what they state are the well-accepted scientific discussions contained in the *Environmental Protection Agency's Endangerment Findings*, in the *Intergovernmental Panel on Climate Change's Fifth Assessment Report* (2014), in the *Intergovernmental Panel on Climate Change's 2018 Special Report: Global Warming of 1.5° Celsius*, and in the *International Energy Agency's "Net Zero by 2050 Report."*

No party filed a response within the time allotted under the Commission's procedural rules. The Hearing Examiner granted the Joint Motion on June 21, finding that the Joint Motion

was reasonable and that it satisfied the standard for taking administrative notice under 1.2.2.35.D NMAC for this proceeding.

5. The Maine PUC audit

As discussed above, the Hearing Examiner's May 11 Order required the Joint Applicants to file biweekly status reports on the progress of the audit ordered by the Maine PUC on the reasons for the problems associated with Central Maine Power Company's implementation of a new billing system. The audit was completed on July 12, and the Joint Applicants filed a copy with this Commission on July 13. The audit was admitted into evidence, over the Joint Applicants' objections, as Exhibit CKS-2 to NEE witness Sandberg's July 16 testimony in opposition to the Stipulation.²

The results of the Maine Audit are addressed in Section VI.D.4 below.

6. Criminal investigation in Spain

On June 24, 2021, the Joint Applicants filed a three-paragraph document titled *Notice Regarding Proceedings in Other Jurisdiction* (June 24 Notice). The June 24 Notice informed the Commission of a criminal investigation in Spain involving Iberdrola, S.A., Ignacio Galán (who is both the Chairman and CEO of Iberdrola, S.A. and the Chairman of Avangrid, Inc.) and a number of current and former Iberdrola, S.A. executives. The Notice concluded by stating that "Joint Applicants will provide the Commission with any updates to this matter that involve Iberdrola."

On July 9, NEE filed an *Objection* to the June 24 Notice, a Motion to Compel answers to related discovery requests, and a request for remedy regarding the Spanish investigation. NEE's

² The Joint Applicants' objections were addressed in the Hearing Examiner's August 6, 2021 Order Addressing Prehearing Motions and Objections.

filing asked the Hearing Examiner to order the Joint Applicants to file additional information about the Spanish proceedings.

After considering the Joint Applicants' July 16 response (which included an affidavit from a Spanish attorney describing the restrictions on the public disclosure of documents in the Spanish proceedings), the Hearing Examiner issued an Order on July 19 that required the Joint Applicants to file supplemental testimony by July 27 providing additional details about the executives under investigation, the activities being investigated, copies of Iberdrola, S.A.'s internal investigations about the activities, copies of the Spanish court's orders and copies of the reports of the Public Prosecutor that initiated the proceedings -- to the extent and under conditions permitted under Spanish law.

On July 27, 2021, the Joint Applicants filed the supplemental testimony of Mr. Azagra Blazquez, Mr. Kump and Mr. Darnell. The supplemental testimony included copies of the most of the requested documents, but the documents were filed in their original Spanish language. Pursuant to the Hearing Examiner's subsequent orders of July 28 and July 30, 2021, English translations of the documents were filed on August 6, 2021. The documents consist of the following, which were admitted as Confidential Commission Exhibit 10:

- June 23, 2021 Order issued by the investigating judge, Manuel Garcia-Castellon, that provided for the criminal investigation of Ignacio Galán, Fernando Becker, Francisco Martinez Córcoles and Rafael Orbegozo.
- June 22, 2021 Public Prosecutor's report that was sent to the investigating judge, Manuel Garcia-Castellon, requesting the criminal investigation of Ignacio Sanchez Galán, Fernando Becker, Francisco Martinez Córcoles and Rafael Orbegozo.
- July 9, 2021 Order issued by the investigating judge, Manuel Garcia-Castellon, that provided for the criminal investigation of Iberdrola Renovables Energia, S.A.

-- July 6, 2021 Public Prosecutor's report that was sent to the investigating judge, Manuel Garcia-Castellon, requesting the criminal investigation of Iberdrola Renovables Energia, S.A.³

The Spanish criminal investigation and its relevance to this proceeding are discussed in Sections VI.F.2 and VI.G.1 below. As noted earlier, the above documents are included in Confidential Appendix 4 to the Confidential version of this Certification.

7. Order Disqualifying Iberdrola Attorney

On July 23, 2021, NEE filed an Application for Subpoena seeking to depose Attorney Marcus Rael and to produce documents related to NEE's claim that Mr. Rael may have violated Rule 16-107 of the New Mexico Rules of Professional Conduct relating to concurrent conflicts of interest. Rule 16-107 NMRA. In response, the Hearing Examiner issued an Order on July 26 providing for responses to the Application by July 28.

In its subpoena, NEE attempted to schedule Mr. Rael's deposition and the document production for August 6. But the subpoena for the documents acknowledged that Mr. Rael need not produce the documents in less than 14 days after service of the subpoena. The timing meant that the conflict issue would not likely be resolved before the scheduled start of the eight days of evidentiary hearings on August 11.

Accordingly, consistent with the New Mexico Supreme Court's ruling in *Living Cross Ambulance Serv., Inc. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-036, 338 P.3d 1258, the Hearing Examiner acted to resolve the alleged conflict of interest issue prior to the start of the evidentiary hearings. On July 27, the Hearing Examiner issued an *Order Requiring Positions on Alleged Conflict of Interest* asking the parties involved in the alleged conflict of interest, i.e., the Joint Applicants, the Attorney General and Bernalillo County, to file by July 30, their positions

³ The original Spanish versions of the court filings were admitted as Commission Exhibit 9.

(including affidavits describing and attesting to the facts of the alleged concurrent representations) on whether the alleged conflicts of interest exist and whether the conflicts are resolved, addressing each of subsections (3) and (4) of Rule 16-107(B). The Order also allowed other parties to file their positions on the alleged conflict of interest issue by the same date.

The Joint Applicants filed their response to NEE's Application for Subpoenas on July 28, and NEE filed a Reply on the same date. On July 30, Iberdrola, S.A./Avangrid, Inc., PNMR/PNM, the Attorney General and Bernalillo County filed their positions and affidavits on the alleged conflicts of interest, and NEE filed its Reply to the above responses.

On August 6, the Hearing Examiner issued an Order Disqualifying Iberdrola Attorney. The Hearing Examiner found that Mr. Rael's representation of Iberdrola, S.A. resulted in a concurrent conflict of interest in connection with his representation of the Attorney General and Bernalillo County in current, but unrelated, manners. The Order disqualified Marcus Rael from further representation on behalf of Iberdrola, S.A. and the Joint Applicants in connection with the issues and Stipulation in this proceeding and directed Iberdrola, S.A. to cease Mr. Rael's representation for the duration of this proceeding. The Order stated further that the Hearing Examiner and the Commission can and will consider Iberdrola, S.A.'s and the Attorney General's actions as they weigh the reasonableness of the June 4 Stipulation and the parties' supporting testimony.

The matter and its relevance to this proceeding are discussed in Section VI.F.7 below.

D. August hearings

On June 18, the Signatories to the June 4 Stipulation filed testimony in support of the Stipulation. Sierra Club filed testimony that recommended modifications to the June 4 Stipulation to ensure that the merger is in the public interest.

On July 16, five parties filed testimony opposing the June 4 Stipulation and/or recommending changes that could address their opposition.

On July 29, the Joint Applicants, WRA, IBEW Local 611 and NEE filed rebuttal testimony.

The August 3, 2021 public comment hearing included comments from 47 people. Written comments were filed by 715 people, as of the date of this Certification.

The evidentiary hearings were held from August 11 through August 19, 2021.

At the evidentiary hearings, testimony was received and admitted from the following witnesses:

Joint Applicants

Pedro Azagra Blazquez
Robert Kump
Joseph Tarry
Ronald Darnell
Todd Fridley
Ellen Lapson
Lisa Quilici
Forrest Small

ABCWUA

David Garrett
Mark Garrett

Attorney General

Andrea Crane
Scott Hempling

Bernalillo County

Maureen Reno

CCAE

Noah Long
Ona Porter

City of Albuquerque

Larry Blank

Community Groups

Allison Begaye

Carol Davis
Michael Eisenfeld
Joseph Hernandez
Jessica Keetso

IBEW Local 611
Shannon Fitzgerald

Interwest Energy Alliance
Rikki Seguin

MSR Public Power Agency & Los Alamos
David Arthur
Vince Tummarello

New Energy Economy
Christopher Sandberg

NM AREA
James Dauphinais
Michael Gorman

Onward Energy Holdings
Jeffrey Spurgeon

Sierra Club
Jeremy Fisher

Walmart
Steve Chriss

WRA
Douglas Howe
Patrick O'Connell

Staff
John Reynolds
Evan Evans
Marc Tupler

On August 20, the Hearing Examiner issued an Order on Post-Hearing Filings.⁴ The Order affirmed the Hearing Examiner's statement made at the end of the hearings on August 19

⁴ Order on Post-Hearing Filings, August 20, 2021.

that the recommendation to the Commission would be based upon the parties' positions as expressed as of the close of the evidentiary hearings and that the recommendation would not consider any changes to the parties' positions that may be negotiated after the close of the evidentiary hearings.

The Order directed the parties to file by August 30 statements of the parties' positions on the June 4 Stipulation as the Stipulation and the parties' positions are reflected in the current record. The Order required parties to include their positions on any specific sections of the regulatory commitments in the Stipulation which they disputed or to which they proposed changes. It required parties to include citations to the record where the positions were stated.

The August 19 Order also set a briefing schedule to accommodate the parties' upcoming participation in the evidentiary hearings in Case No. 21-00017-UT scheduled to start on August 31, 2021. Main briefs were required by September 21, 2021. Response briefs were required by September 28, 2021.

On August 23, the Joint Applicants and Staff (Joint Movants) filed a Verified Motion to Permit Filing of Agreed-Upon Positions or in the Alternative for Limited Reopening of Evidentiary Record (Joint Motion).⁵ The Joint Movants requested permission to file compromise positions of record that they stated were being considered by the Joint Movants during the hearing and that they said were responsive to the inquiries made by Commissioner Maestas during his questioning of Joint Applicants' Witness Robert Kump on the last day of the public hearing. The Movants requested the ability to reflect their agreed-upon positions in Movants' and other parties' position statements and briefs. In the alternative, they requested the Hearing

⁵ Verified Motion to Permit Filing of Agreed-Upon Positions or in the Alternative for Limited Reopening of Evidentiary Record, August 23, 2021.

Examiner reopen the record for the limited purpose of introducing the verified compromise positions into evidence.

On August 27, the Hearing Examiner issued an Order denying the Joint Motion, as filed.⁶ The Order noted the oppositions to the Motion filed by NEE and Bernalillo County on August 26 and found that the compromise positions that the Joint Applicants and Staff asked to be admitted into the evidentiary record constituted new evidence in the form of proposed additions and modifications to the June 4 Stipulation. The Hearing Examiner found that parties should have the opportunities to cross-examine the witnesses sponsoring the Motion and to provide responsive testimony. The admission of the new evidence without those procedures would, unless waived by the parties, violate the objecting parties' due process rights.

The August 27 Order stated that, if the Joint Applicants and Staff wish to introduce the new evidence, they should file a motion to reopen the record pursuant to 1.2.2.37.E NMAC and propose a schedule, after consultation with all parties, that provides for the filing of responsive testimony and a proposed hearing date for the cross-examination of witnesses.

The Joint Movants did not follow the August 27 Order with a further motion to reopen the evidentiary record.

Main briefs were filed on September 21, 2021. Response briefs were filed on September 28, 2021.

The Joint Applicants' Post-Hearing Brief seemingly ignored the August 27 Order and discussed the modifications they agreed to with Staff as if the modifications had been entered

⁶ Order Addressing Motion to Permit Filing of Agreed-Upon Positions or in the Alternative for Limited Reopening of Evidentiary Record. August 27, 2021.

into evidence. On November 1, the Hearing Examiner issued an Order striking the offending portions of the Joint Applicants' brief.

III. THE PROPOSED TRANSACTION

A. The Joint Applicants

1. Iberdrola, S.A.

Iberdrola, S.A., Avangrid, Inc.'s ultimate parent, is a corporation (*Sociedad Anónima*) organized under the Laws of the Kingdom of Spain. Iberdrola, S.A.'s shares are publicly traded on the Madrid Stock Exchange. Iberdrola, S.A.'s headquarters is located in Bilbao, Spain. Iberdrola, S.A. is a global utility that has over 170 years of experience in the electricity and gas business, including experience as a provider of electric transmission and distribution services. It is one of the largest energy companies in the world with a market capitalization of over \$85 billion. Iberdrola, S.A. and its subsidiaries provide regulated utility services in the United States, Spain, the United Kingdom, Brazil, and Mexico.⁷ The General Diversification Plan (attached as Appendix 3) includes an organization chart that shows Iberdrola, S.A. and its country subholding companies with key subsidiaries.⁸

2. Avangrid, Inc.

In the 2000s, Iberdrola, S.A. made the strategic decision to establish a substantial presence in the United States, as it saw significant growth opportunities here in general and, more specifically, a favorable environment for wind-power development. In 2008, Iberdrola, S.A. acquired Energy East, a public utility holding company that owned electric and gas utilities in New York, Maine, Connecticut, Massachusetts and New Hampshire. After the acquisition, Energy East was renamed Iberdrola USA. In 2015, Iberdrola USA acquired UIL Holdings

⁷ Azagra Blazquez (11/23/20), at 5.

⁸ Appendix 3, at p. 43 of 44.

Corporation, which owned utilities in Connecticut and Massachusetts. The result of the UIL transaction was a new company, Avangrid, Inc., that was 81.5% owned by Iberdrola, S.A. and was listed on the New York Stock Exchange.⁹

Avangrid, Inc. is one of the largest energy companies in the United States. It has approximately \$36 billion in assets, and currently has operations in 24 states. It has two primary lines of business. First, it invests in regulated public utilities, and currently owns eight electric and natural gas utilities in the Northeast U.S. Second, it invests in renewable energy generation, and owns and operates approximately 7.5 gigawatts of electricity generation from renewable sources in 22 states, including New Mexico.¹⁰

A chart showing Avangrid, Inc.'s corporate structure is included in the General Diversification Plan attached to this Certification as Appendix 3.¹¹

3. NM Green Holdings, Inc.

NM Green Holdings, Inc. is a New Mexico corporation that is wholly owned by Avangrid, Inc. It was incorporated for the sole purpose of merging with PNMR. Once the Merger is completed, NM Green Holdings, Inc. will no longer exist.¹²

4. Avangrid Networks, Inc.

Avangrid Networks, Inc. is the holding company for all of Avangrid, Inc.'s regulated public utility businesses. Its mission is to build and operate responsible energy infrastructure that benefits communities, improves economic development, delivers environmental sustainability for future generations, and provides high quality and reliable service to customers.

⁹ Azagra Blazquez (11/23/20), at 8.

¹⁰ Azagra Blazquez (11/23/20), at 7.

¹¹ Appendix 3, at pp. 39-42 of 44.

¹² Azagra Blazquez (11/23/20), at 9.

Currently, approximately 3.3 million customers receive electric and natural gas utility services from Avangrid Networks, Inc.'s eight utilities operating in four states:

-- New York State Electric & Gas Corp. – established in 1852, serves approximately 894,000 electric customers and 266,000 natural gas customers in more than 40% of the upstate New York area;

-- Rochester Gas and Electric Corp. – established in 1848, serves approximately 378,500 electric customers and 313,000 natural gas customers in and around Rochester, N.Y.;

-- Central Maine Power Company – established in 1899, Maine's largest electric transmission and distribution utility, serves approximately 624,000 customers in central and southern Maine;

-- The United Illuminating Company – established in 1899, serves approximately 355,000 electric customers in Connecticut;

-- Connecticut Natural Gas Corp. – established in 1848, serves approximately 177,000 customers in Connecticut;

-- The Southern Connecticut Gas Company – established in 1847, serves approximately 197,000 customers in Connecticut;

-- Maine Natural Gas Corporation – established in 1999, serves approximately 4,600 customers in central and southern Maine; and

-- The Berkshire Gas Company – established in 1853, serves more than 39,000 customers in western Massachusetts.¹³

¹³ Kump (11/23/20), at 7-8.

Out of these 3.3 million customers, approximately 2.3 million are electric utility customers and 1.0 million are natural gas utility customers.¹⁴

Avangrid Networks, Inc. is a public utility holding company, and its sole purpose is to own Avangrid, Inc.'s interest in public utilities. Thus, Avangrid, Inc. will transfer its interest in PNMR to Avangrid Networks, Inc. promptly after the Merger is consummated, and PNMR will be held like Avangrid, Inc.'s other utilities.¹⁵

5. PNM Resources, Inc.

PNM Resources, Inc. (PNMR) is a New Mexico corporation based in Albuquerque New Mexico. PNMR's common stock is publicly traded on the New York Stock Exchange. There are currently approximately 80 million shares of common stock in PNMR outstanding, with an additional 6.2 million shares to be issued in December 2020. PNMR owns two regulated utility subsidiaries providing electricity and electric utility service in New Mexico and Texas: PNM and TNMP. PNMR was approved by the Commission as the public utility holding company for PNM in Case No. 3137 in 2001. TNMP is a wholly owned subsidiary of TNP Enterprises, Inc., a Texas corporation, which is a wholly owned subsidiary of PNMR. PNMR also wholly owns PNMR Services Company, which provides shared services to PNMR and its active subsidiaries, including PNM.¹⁶

6. Public Service Company of New Mexico

Public Service Company of New Mexico (PNM) is a New Mexico corporation with its headquarters in Albuquerque, New Mexico. PNM is a wholly owned subsidiary of PNMR and is a certificated New Mexico public utility under the Public Utility Act (PUA). PNM provides

¹⁴ Kump (11/23/20), at 8.

¹⁵ Kump (11/23/20), at 8.

¹⁶ Tarry (11/23/20), at 6.

electric utility service to approximately 530,000 customers. PNMR, PNM and PNMR Services Company currently employ 1,283 New Mexicans. PNM is a vertically integrated utility with a generation portfolio and transmission and distribution system to provide electric service to its customers.¹⁷

As of December 2019, PNM serves customers in the following New Mexico communities and areas:

- Clayton: 1,517 (1,218 Residential; 299 Commercial)
- Northern (Española, Las Vegas, Santa Fe): 80,499 (69,702 Residential; 10,797 Commercial & Other)
- Central (Albuquerque, Belen, Bernalillo, East Mountain, Los Lunas, Rio Rancho): 388,129 (348,917 Residential; 39,212 Commercial & Other)
- Southern (Alamogordo, Bayard, Deming, Lordsburg, Ruidoso, Silver City, Tularosa): 62,141 (53,978 Residential; 8,163 Commercial & Other)

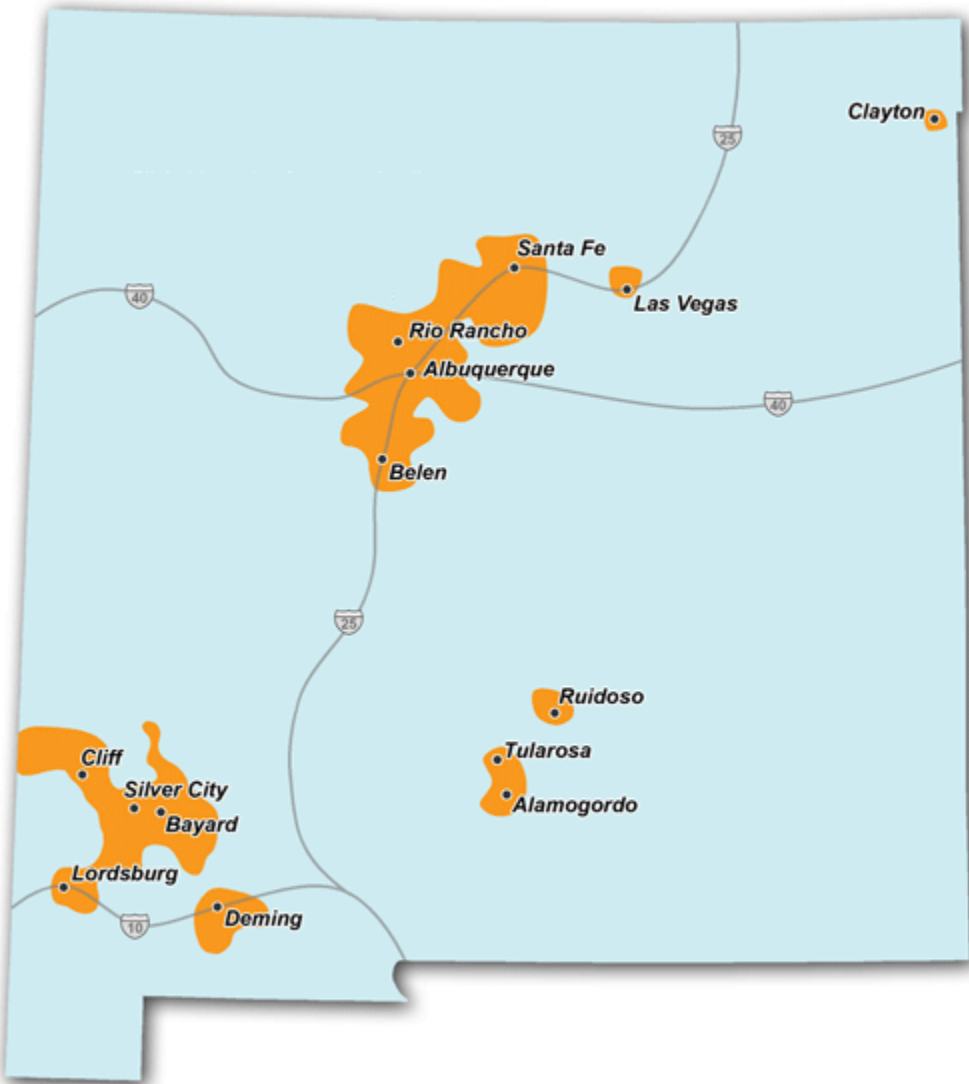
PNM also serves the Pueblo communities of Tesuque, Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, Isleta and Laguna.¹⁸

The following map¹⁹ depicts PNM's service areas around the state:

¹⁷ Tarry (11/23/20), at 3.

¹⁸ Tarry (11/23/20), at 3-4.

¹⁹ Tarry (11/23/20), at 4.



7. Avangrid Renewables, LLC

Avangrid Renewables, LLC is not part of the Proposed Transaction, but Avangrid, Inc. intends to better promote the subsidiary's renewable energy projects with the transaction. Avangrid Renewables, LLC is a leading renewable energy company in the United States. It owns and operates approximately 7.5 gigawatts of wind and solar electric generation, with a presence in 22 states. This ranks Avangrid Renewables, LLC as one of the top three largest renewable energy producers in the United States. Avangrid Renewables, LLC currently operates

65 wind farms and four solar facilities across the United States. Mr. Kump states that it is positioned to be the leader of the North American offshore wind industry.²⁰

Avangrid Renewables, LLC currently has two wind power projects in Torrance County, New Mexico. The first project is the El Cabo Wind Farm, which was completed in 2017 with 142 turbines and a generating capacity of 298 megawatts. The second project is the La Joya Wind Farm, which is currently under construction, and will ultimately have at least 111 turbines and a generating capacity of 306 megawatts.²¹

B. The Proposed Transaction

The Proposed Transaction will occur in two phases. First, pursuant to the Merger Agreement, PNMR will merge with NM Green Holdings, Inc. During this process, PNMR's common stock outstanding at the closing of the Merger will be canceled, and PNMR's common stock will no longer be listed on the New York Stock Exchange. The canceled shares will be converted to the right to receive \$50.30 per share in cash. The total payment for the canceled common stock of PNMR will be approximately \$4.318 billion. PNMR, as the surviving entity of the Merger, will become wholly owned by Avangrid, Inc. The Merger will not change the direct ownership of PNM, which will remain wholly owned by PNMR.²²

In the second phase, shortly after closing, Avangrid, Inc. will transfer 100% of its ownership interest in PNMR to Avangrid Networks, Inc. Avangrid Networks, Inc.'s ownership of PNMR will also not change the direct ownership of PNM, which will remain wholly owned by PNMR.²³

²⁰ Kump (11/23/20), at 5-6.

²¹ Kump (11/23/20), at 6.

²² Azagra Blazquez (11/23/20), at 9-10.

²³ Azagra Blazquez (11/23/20), at 10.

IV. LEGAL STANDARDS

There are three interrelated legal standards relevant to this case: (1) the standard in administrative adjudications; (2) the standard for approval of contested stipulations; and (3) the standard for approval of a merger transaction.

A. Standards for administrative adjudications

The standard of proof in administrative adjudications is, unless expressly provided otherwise, a preponderance of the evidence.²⁴ Preponderance of the evidence means the greater weight of the evidence.²⁵ It is evidence that, when weighted against that opposed to it, has more convincing force. It has superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.²⁶

B. Standards for contested stipulations

The Commission has a policy of favoring stipulations.²⁷ The Commission's policy is based on "the strong public policy favoring the settlement of disputes to avoid costly and protracted litigation" and the recognition that "a cooperative approach may be more effective in reconciling the interests of all the parties than would the polarization which often accompanies adversarial proceedings."²⁸

²⁴ Case No. 12-00131-UT, Recommended Decision, p. 16 (Nov. 7, 2012), adopted in relevant part by Final Order (Dec. 11, 2012).

²⁵ *Campbell v. Campbell*, 1957-NMSC-001, ¶ 24, 62 N.M. 330.

²⁶ Black's Law Dictionary 1431 (11th ed. 2019).

²⁷ Case No. 2567, Final Order at 17 (1994).

²⁸ *Id.*, at 17; *see also* Case No. 2082, 110 PUR 4th 69, 84 (1990); *N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 104 N.M. 565, 568 (1986); (hereinafter *NMIEC v. NMPSC Attorney Gen. v. N.M. Pub. Serv. Comm'n*, 1991-NMSC-028, ¶ 13, 111 N.M. 636, 640 (1991) ("a cooperative approach in reconciling the interests of the parties was consistent with the public policy favoring settlement of disputes.").

In implementing its policy of promoting settlements, the Commission has adopted procedures to consider settlements negotiated by parties.²⁹ The NMPRC applies the following criteria when evaluating stipulations:

1. Is the settlement the product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a whole, benefit ratepayers and the public interest?
3. Does the settlement, as a whole, violate any important regulatory principle or practice?³⁰

The Commission's procedural process specifically covers the review and approval of contested stipulations.³¹ Under these procedures, the Commission or hearing examiner has the discretion to combine a hearing on the contested stipulation with a hearing on the merits of any substantive issues that are not addressed in the stipulation.³² The proponents of a contested stipulation have the burden of supporting the stipulation with sufficient evidence and legal authority to grant the requested approval.³³

The Commission may also recommend modifications to address deficiencies in a stipulation as an alternative to the Commission's rejection of the stipulation. The modifications are presented for the stipulating parties' acceptance.³⁴

²⁹ See Case No. 10-00197-UT, Certification of Stipulation, p. 13, adopted in relevant part by Final Order (Nov. 10, 2011); Case No. 2567, Final Order, pp. 18, 65-66 (Nov. 28, 1994).

³⁰ See Case No. 08-00273-UT, Final Order Conditionally Approving Stipulation, pp 9-10 (May 28, 2009); Case No. 10-00086-UT, Final Order Partially Approving Certification of Stipulation, p. 8, ¶13 (July 28, 2011).

³¹ 1.2.2.20(B) NMAC.

³² 1.2.2.20(B)(3) NMAC.

³³ 1.2.2.20(B)(4) NMAC.

³⁴ See, e.g., Revised Order Partially Adopting Certification of Stipulation, Case No. 16-00276-UT, January 10, 2018; Final Order, Case No. 13-00390-UT, December 16, 2015.

C. Standards for a merger transaction

Prior approval of the Proposed Transaction is required under Sections 62-6-12 and 62-6-13 of the PUA.³⁵ Section 62-6-13 states that the NMPRC shall approve proposed acquisitions and consolidations that require NMPRC approval under § 62-6-12 “unless the commission shall find that the proposed transaction is unlawful or is inconsistent with the public interest[.]”³⁶

In addressing the statutory requirements for approval of mergers in Case No. 2678, the Commission considered the standard for determining whether a merger is “inconsistent with the public interest.” The Commission approved the declaration in the Recommended Decision that “the test is whether the public interest is served by approving the merger as determined by the facts and circumstances of each case. Generally, the complexities of mergers should require a positive benefit to ratepayers if they are to be approved.”³⁷ Both quantifiable and unquantifiable benefits are to be considered.³⁸

In Case No. 04-00315-UT, which involved a purchase of all of a public utility holding company’s stock, the Commission identified the following four factors as bearing on whether a transaction satisfies the § 62-6-13 standard for approval:

1. Whether the transaction provides benefits to utility customers;
2. Whether the NMPRC’s jurisdiction will be preserved;
3. Whether the quality of service will be diminished; and

³⁵ NMSA 1978, §§ 62-6-12 and -13.

³⁶ NMSA 1978, § 62-6-13.

³⁷ Case No. 2678, Recommended Decision of the Hearing Examiner (Corrected), p. 22 (Nov. 15, 1996), adopted by Final Order Approving Recommended Decision (Jan. 28, 1997); *see also*, Case No. 3116, Recommended Decision of the Hearing Examiner, p. 12 (May 4, 2000), adopted by Final Order (May 9, 2000); Case No 04-00315-UT, Certification of Stipulation, pp. 17, 39 (May 26, 2005), adopted by Final Order Approving Certification of Stipulation (June 7, 2005); Case No. 11-00085-UT, Recommended Decision, pp. 15-16; and Case No. 13-00231-UT, Certification of Stipulation, pp. 43-44 (June 30, 2014).

³⁸ Case No 04-00315-UT, Certification of Stipulation, p. 17 (May 26, 2005), adopted by Final Order Approving Certification of Stipulation (June 7, 2005); Case No. 2678, Recommended Decision of the Hearing Examiner (Corrected), p. 22 (Nov. 15, 1996), adopted by Final Order Approving Recommended Decision (Jan. 28, 1997).

4. Whether the transaction will result in the improper subsidization of non-utility activities.³⁹

The Commission applied these four factors in Case No. 11-00085-UT and stated that two additional important considerations in a stock purchase case are:

5. Careful verification of the qualifications and financial health of the new owner; and
6. Adequate protections against harm to customers.⁴⁰

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

- Rate credits;
- Rate freezes;
- No adverse impact on utility's existing rates;
- Economic development contributions;
- Maintain current offices for period of time;
- Maintain employee wages and benefits;
- Not recover transaction costs from ratepayers;
- Hold customers harmless from negative impacts of transaction;
- Require utility to give Commission notice of its intent to pay dividends to the holding company;
- Agreement by utility to not recover acquisition adjustment from ratepayers;
- Require utility to waive any claims of preemption as a basis for challenging the Commission's disallowance of costs;

³⁹ Case No. 04-00315-UT, Certification of Stipulation, pp. 16-17 (May 26, 2005), approved by Final Order Approving Certification of Stipulation (June 7, 2005).

⁴⁰ Case No. 11-00085-UT, Recommended Decision of the Hearing Examiner, pp. 15-16 (Dec. 2, 2011), approved by Final Order (Dec. 22, 2011).

- Prohibit utility from recovering increased costs of capital that may result from transaction;
- File Cost Allocation Manual;
- Hold ratepayers harmless from increases in cost of replacement debt;
- Agreement by acquiring company to not sell for period of time;
- Agreement by acquiring company to invest certain amount in utility for period of time;
- Majority independent board of directors; and
- Delegation of authority to utility board of directors from upstream holding company.⁴¹

D. Application of the interrelated standards

Taken together these standards require that the stipulating parties demonstrate by a preponderance of the evidence that the Proposed Transaction under the terms set forth in the Stipulation is fair, just and reasonable and neither unlawful nor inconsistent with the public interest. The Commission has considered these standards and used them to approve several merger and acquisition transactions in New Mexico within the last ten years.

In Case No. 13-00231-UT, the Commission applied these standards to consider the proposed purchase by TECO Energy, Inc. (TECO) of all of the stock of New Mexico Gas Intermediate, Inc., which owned all of the stock of New Mexico Gas Company, Inc. (NMGC).⁴² The Commission approved the transaction in light of the quantifiable benefits provided, including rate credits totaling \$11 million; the unquantifiable benefits provided, such as TECO's overall track record and commitment to own NMGC for ten years; the agreement to conditions

⁴¹ See, list of conditions discussed in Amended Certification of Stipulation, Case No. 19-00234-UT, at 23-24 plus additional conditions agreed to in that case.

⁴² Case No. 13-00231-UT, Certification of Stipulation, pp. 43-45 (June 30, 2014), approved by Final Order (Aug. 14, 2014).

designed to ensure that approval did not cause a deterioration in NMGC's quality of service; and commitments to ensure no loss of NMPRC jurisdiction and to protect customers against harm.⁴³ For these reasons, the Commission found that the transaction was fair, just and reasonable and in the public interest and neither inconsistent with the public interest nor unlawful.⁴⁴

The Commission similarly applied these standards in Case No. 15-00327-UT to consider the merger of Emera US, Inc. with and into TECO, changing the holding company ownership of NMGC, and giving Emera Inc. (Emera), an energy company headquartered outside of the United States, indirect control over NMGC.⁴⁵ The Commission found the applicable standards were met because the transaction provided quantifiable benefits in the form of economic development contributions of up to \$20 million and \$2 million in extended bill credits, and unquantifiable benefits such as a board of directors with local representation, the extension of timeframes and protections of employees and functions, and the commitment to at least ten years of ownership of NMGC.⁴⁶

Most recently, the Commission again applied these standards in Case No. 19-00234-UT, approving the merger transaction that turned El Paso Electric Company (EPE) from a publicly owned company into a privately held entity owned by Sun Jupiter LLC (Sun Jupiter) and its parent IIF US.⁴⁷ As in the prior cases, the Commission relied on quantifiable benefits (*i.e.*, \$8.7

⁴³ Case No. 13-00231-UT, Certification of Stipulation, pp. 29, 79 (June 30, 2014), approved by Final Order (Aug. 14, 2014).

⁴⁴ Case No. 13-00231-UT, Certification of Stipulation, p. 80 (June 30, 2014), approved by Final Order (Aug. 14, 2014).

⁴⁵ Case No. 15-00327-UT, Certification of Stipulation, pp. 28-32 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

⁴⁶ Case No. 15-00327-UT, Certification of Stipulation, pp. 38, 52-53 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

⁴⁷ Case No. 19-00234-UT, Amended Certification of Stipulation, pp. 6, 20-24, 62-64 (Feb. 12, 2020), approved by Final Order Adopting Amended Certification of Stipulation (Mar. 11, 2020).

million in bill credits and \$1 million per year for 20 years to promote economic development) and an unquantifiable ten-year ownership commitment benefit, a general commitment to quality of service, and the presence of certain financial commitments to ensure no loss of Commission jurisdiction and protection against consumer harm.⁴⁸ The Commission also relied upon the commitment for a majority independent EPE board of directors and a delegation of authority to the EPE board to ensure the satisfaction of the commitments.

V. RECOMMENDATIONS

A. Summary

At the center of this case is the Joint Applicants' request for approval of the proposed merger and acquisition of PNMR and its subsidiary PNM by the Iberdrola, S.A./Avangrid, Inc. group of companies. The merger and acquisition represent the Proposed Transaction.

The Joint Applicants have attempted to gain the Commission's approval of the Proposed Transaction by negotiating a stipulation (i.e., a settlement agreement), in which the signatories agree to support the Proposed Transaction based upon the conditions included in the stipulation.

After negotiating early versions of a stipulation, some, but not all, of the parties filed on June 4 a stipulation titled "Second Amended Stipulation." In view of the many changes that have been proposed to the Second Amended Stipulation after its June 4 filing, the Hearing Examiner refers to the Second Amended Stipulation as the "June 4 Stipulation." The June 4 Stipulation contains the conditions under which the Signatories *on June 4* agreed to support the Proposed Transaction.

In summary, the Hearing Examiner makes three recommendations:

⁴⁸ Case No. 19-00234-UT, Amended Certification of Stipulation, pp. 27, 63 (Feb. 12, 2020), approved by Final Order Adopting Amended Certification of Stipulation (Mar. 11, 2020).

1. The number of amendments the Signatories have proposed after executing the June 4 Stipulation and the conflicts among the proposed amendments indicate that there is no longer an agreement that can be approved.

2. The potential harms of the Proposed Transaction outweigh the benefits. The changes negotiated by the Joint Applicants to satisfy the narrow interests of individual parties have not produced a result that is in the public interest.

3. In the event that the Commission disagrees with the second recommendation and weighs the potential harms and benefits differently, the Hearing Examiner discusses in this Certification modifications proposed during the hearings to improve the June 4 Stipulation and recommends that any approval should include at least those changes.

The recommendations are explained in more detail below.

B. The June 4 Stipulation cannot be approved.

A procedural schedule was set to consider the June 4 Stipulation, with parties in support of the Stipulation filing prepared testimony on June 18, parties in opposition filing prepared testimony on July 16, and parties filing rebuttal testimony on July 29. A public comment hearing was scheduled for August 9. Evidentiary hearings were scheduled for August 11 through August 20.

During the course of the schedule, however, the Joint Applicants continued to negotiate with the parties that had not signed on to the June 4 Stipulation. Numerous modifications were discussed and presented by the non-signatories in their July 16 testimony as conditions for them to support or not oppose the Proposed Transaction. Some of the modifications were agreed to by the Joint Applicants in their July 29 rebuttal testimony, and the Joint Applicants agreed to additional modifications during cross-examination at the evidentiary hearings.

The ultimate result has been a departure from the June 4 Stipulation. The Joint Applicants currently propose or are willing to accept more than 40 modifications to the June 4 Stipulation, but there is no agreement on the modifications. Some of the Signatories still support the June 4 Stipulation as currently written. Some of the Signatories support some of the changes proposed by the Joint Applicants. Some of the Signatories oppose some of the changes. The non-signatories also are in partial or total disagreement.

As a result, the original Signatories to the June 4 Stipulation no longer support the terms of that stipulation, and there is no widespread agreement on a modified set of conditions under which all or most of the parties propose approval of the Proposed Transaction.

Section VI.A of this Certification discusses the issue in more depth and recommends that the June 4 Stipulation, which was set as the focus of the hearing process, not be approved.

C. The potential harms of the Proposed Transaction outweigh its benefits.

1. Factors to be considered

As noted in Section IV above, the Commission applies six factors in its evaluation of whether utility mergers and acquisitions satisfy the public interest under NMSA 1978, §62-6-12 and -13:

1. Whether the transaction provides benefits to utility customers;
2. Whether the Commission's jurisdiction will be preserved;
3. Whether the quality of service will be diminished;
4. Whether the transaction will result in the improper subsidization of non-utility activities;
5. Careful verification of the qualifications and financial health of the new owner; and
6. Adequacy of protections against harm to customers.

The Commission weighs the benefits of a proposed transaction in its evaluation under Factor 1 against the potential harms and the adequacy of protections against the harms in its evaluations under Factors 2-6.

This Certification finds that the benefits that the Proposed Transaction provides to PNM's utility customers are outweighed by the potential harms of the Proposed Transaction to PNM's customers.

2. Benefits to PNM's utility customers

Section VI.B discusses the first factor -- whether the transaction provides benefits to utility customers. The Proposed Transaction is designed to provide the Iberdrola, S.A./Avangrid, Inc. group of companies a strategic "beachhead" to develop non-utility activities in the Southwest.⁴⁹ That is the reason they are proposing to pay PNMR shareholders \$2.3 billion more than the book value of PNMR's assets (including \$1.5 billion more than the book value of PNM's assets).⁵⁰ The Proposed Transaction will provide PNMR shareholders \$391 million more than the market value of the shares of PNMR stock.⁵¹ Three PNMR officers departing after the merger will receive approximately \$29 million in "Golden Parachute compensation."⁵²

⁴⁹ Tr. (Kump), at 526.

⁵⁰ Tr. (Kump), at 523-524; M. Garrett (4/2/21), at 20. Mr. Kump said Avangrid, Inc.'s current focus is on the Northeast, which, he said, is not a growing region. He said Avangrid, Inc. is attracted to the southwest because it is growing:

Q. . . . Where would the sales growth come from?

A. Well, there would be two components. To the extent that you have economic development and a growing economy in New Mexico and the region, obviously that would be beneficial for the Networks' businesses. But then in addition, the opportunities to further develop renewables for the region, and PPAs, whether it's individual consumers or utilities, whatever the case may be, that's where we see the growth, quite frankly, on both sides of the Avangrid business, both Networks and renewables.

Q. Are we talking about Arizona? Colorado? Nevada? California? Where are you thinking?

A. You know, it could be anywhere. The reality is that if you look at the history of the utility sector, you know, consolidation has been pretty slow. When opportunities exist, you know, we look at them. They may not make sense, but we at least consider them.

Tr. 526-528.

⁵¹ M. Garrett (4/2/21), at 23.

⁵² Pat Vincent-Collawn, PNMR President and CEO, receives a total of \$19 million. Charles Eldred, PNMR Executive Vice President, receives a total of \$6.8 million. Patrick Apodaca, PNMR Senior Vice President and General Counsel, receives a total of \$3.7 million. PNMR 2020 10-K Report with the Securities & Exchange Commission, attached to Tarry (2/26/21), as Exhibit JDT-1, p. 6 of 7.

The Proposed Transaction itself was not designed to benefit PNM customers. Mr. Azagra Blazquez states that there are no synergies (cost savings or otherwise) that are intended with the Proposed Transaction.⁵³ The primary benefit to customers of the Proposed Transaction is supposed to be PNM's link to a large, financially stable Iberdrola, S.A./Avangrid, Inc. group of companies that can provide access to financing on more reliable and less costly terms than are available through PNMR -- although evidence in this case (discussed in 3.d below) casts some doubt on this purported benefit.⁵⁴

To satisfy the legal standard that the Proposed Transaction will result in a more significant benefit to utility customers, the Joint Applicants included in their November 23, 2020 Application an independent set of rate and economic development benefits. The benefits do not result from the Proposed Transaction (i.e., the merger and acquisition). The benefits were designed and proposed to be comparable to the level of benefits deemed sufficient to gain Commission approval in other merger cases. In the months that have followed the November 23 Application, the Joint Applicants have been negotiating additional benefits and terms, incrementally, with party after party, to either gain each party's support or at least eliminate the party's opposition to the Proposed Transaction. Accordingly, much of the proceeding has focused on the incremental benefits achieved as successive parties have signed on to the most recent version of a stipulation or agreed not to oppose it.

The Joint Applicants' November 23, 2020 Application included the following initial set of benefits:

-- \$24.6 million in rate credits over three years;

⁵³ Azagra Blazquez (11/23/20), at 10.

⁵⁴ *Id.*, at 11.

- Maintenance of PNM and PNMR's charitable contributions at historical levels for a minimum of three years following the closing of the Proposed Transaction;
- Maintenance of PNM's existing low-income customer assistance programs, including PNM's contributions to the Good Neighbor Fund, for a minimum of three years;
- Contributions to economic development projects or programs in New Mexico, at shareholder expense, totaling \$2.5 million over the two-year period following closing of the Proposed Transaction; and
- Creation or bringing in of an additional 100 full-time jobs to New Mexico over the three years following the closing of the Proposed Transaction.⁵⁵

The benefits were increased incrementally in early versions of stipulations filed in April and May and, again, finally in the June 4 Stipulation. Then, further incremental benefits were negotiated in various proposals after the filing of the June 4 Stipulation. The Joint Applicants currently appear to be offering the following:

- \$67 million in rate credits over three years;
- \$10 million in residential customer arrearage relief;
- \$2 million to assist residents in remote areas obtain electric utility service;
- \$15 million for low-income energy efficiency programs;
- Agreement not to file a new general rate case before June 1, 2022;
- Maintenance of PNM and PNMR's charitable contributions at historical levels for a minimum of *five* years;
- Maintenance of PNM's existing low-income customer assistance programs, including PNM's contributions to the Good Neighbor Fund, for a minimum of *five* years;
- Contributions to economic development projects or programs in New Mexico, at shareholder expense, totaling \$15 million over the five-year period following closing of the Proposed Transaction;

⁵⁵ Joint Application (11/23/20), at 10-11.

- \$12.5 million (\$2.5 million per year) in contributions to impacted indigenous community groups in the Four Corners region over the five-year period following the closing of the Proposed Transaction;
- \$2 million over two years for local scholarship and apprenticeship programs; and
- Creation or bringing in of an additional 150 full-time jobs to New Mexico over the three years following the closing of the Proposed Transaction.

The Joint Applicants have also proposed environmental and other benefits:

- Creation of a Carbon Reduction Task Force;
- Carbon reduction compensation incentives for PNM executives;
- Creation of a Chief Environmental Officer position at PNM;
- Commitment to expand PNM's Transportation Electrification Program;
- Commitment to expand PNM's Solar Direct Program; and
- Commitment to pursue the creation of a Regional Transmission Organization.

The Joint Applicants argue that the benefits they propose in this case exceed the benefits found to have satisfied the public interest in recent merger and acquisition cases before the Commission. The Joint Applicants cite the purchase by TECO Energy, Inc. (TECO) of all of the stock of New Mexico Gas Intermediate, Inc., which owned all of the stock of New Mexico Gas Company, Inc. (NMGC) in Case No. 13-00231-UT. The benefits there included rate credits totaling \$11 million; TECO's overall track record and commitment to own NMGC for ten years; conditions designed to ensure that approval did not cause a deterioration in NMGC's quality of service; and commitments to ensure no loss of NMPRC jurisdiction and protect customers against harm.⁵⁶

⁵⁶ Joint Applicants Post-Hearing Brief, at 13-14, *citing* Case No. 13-00231-UT, Certification of Stipulation, pp. 29, 43-45, 79 (June 30, 2014), approved by Final Order (Aug. 14, 2014).

Second, they cite Case No. 15-00327-UT, in which Emera US, Inc. merged with and into TECO, changing the holding company ownership of NMGC, and giving Emera Inc. (Emera) indirect control over NMGC. The transaction there included \$2 million in extended bill credits; economic development contributions of up to \$20 million; a board of directors with local representation; the extension of timeframes and protections of employees and functions, and the commitment to at least ten years of ownership of NMGC.⁵⁷

Third, the Joint Applicants cite the recent merger transaction that turned El Paso Electric Company (EPE) from a publicly owned company into a privately held entity owned by Sun Jupiter LLC (Sun Jupiter) and its parent IIF US in Case No. 19-00234-UT. The commitments there included \$8.7 million in bill credits; \$1 million per year for 20 years to promote economic development; a ten-year ownership commitment; and a general commitment to quality of service.⁵⁸

However, as is discussed in Section VI.G.1 below, the EPE stipulation also included a requirement for a majority of independent members of the EPE board of directors. The Joint Applicants oppose a similar requirement in this case.

3. Potential harms

The remainder of the factors to be considered by the Commission (factors 2-6) address the potential harms resulting from the Proposed Transaction.

⁵⁷ Joint Applicants Post-Hearing Brief, at 14-15, *citing* Case No. 15-00327-UT, Certification of Stipulation, pp. 28-32, 38, 52-53 (June 8, 2016), approved by Order Adopting Certification of Stipulation (June 22, 2016).

⁵⁸ Joint Applicants Post-Hearing Brief, at 15, *citing* Case No. 19-00234-UT, Amended Certification of Stipulation, pp. 6, 20-24, 27, 62-64 (Feb. 12, 2020), approved by Final Order Adopting Amended Certification of Stipulation (Mar. 11, 2020).

a. Preservation of Commission's jurisdiction

Section VI.C discusses the second factor -- whether the Commission's jurisdiction will be preserved. This concern underlying this factor appears to be resolved. PNM will continue to be subject to the Commission's jurisdiction. Iberdrola, S.A., however, initially resisted the Commission's jurisdiction. Bernalillo County and ABCWUA filed a Joint Motion on May 24 asking that Iberdrola, S.A. be joined as a party, and the Hearing Examiner's June 8 Order required Iberdrola, S.A. to do so. Mr. Azagra Blazquez, Chief Development Officer and a Member of the Executive Committee of Iberdrola, S.A., said in his July 29 rebuttal testimony that Iberdrola, S.A. commits that it will be subject to the Commission's jurisdiction for as long as it owns PNM.⁵⁹

b. Diminishment of service quality

Section VI.D discusses the third factor -- whether the quality of service will be diminished. If PNM's service under Iberdrola, S.A./Avangrid, Inc.'s ownership is anything like the service provided by the Iberdrola, S.A./Avangrid, Inc. utilities in the Northeast, the quality of PNM's service is likely to be diminished. Maine Governor Janet Mills described Central Maine Power Company's (CMP) service as "abysmal." J.D. Power's nationwide 2020 Electric Utility Customer Satisfaction Studies ranked CMP last -- 128th among the 128 investor-owned electric utilities surveyed for residential customer satisfaction. NYSEG ranked 17th of the 18 large electric utilities surveyed in the East region. United Illuminating Company ranked 11th among the 12 midsize electric utilities surveyed in the East region. Only RG&E performed well. It ranked first among the 12 midsize electric utilities surveyed in the East region.

⁵⁹ Azagra Blazquez (7/29/21), at 7.

The Avangrid, Inc. electric and natural gas utilities have been assessed more than \$65 million in penalties and disallowances since 2016. The amounts assessed against the electric utilities over the past five years totaled \$63.1 million.

Avangrid, Inc. Electric Utilities	Penalties & Negative Revenue Adjustments (2016-2020)
New York State Electric and Gas Company (NY)	\$32,817,000
Central Maine Power Company (ME)	\$15,579,582
Rochester Gas & Electric Company (NY)	\$10,530,000
United Illuminating Company (CT)	\$ 3,379,755
NERC violations (Central Maine Power, New York State Electric and Gas Company, and Rochester Gas & Electric Company)	\$810,000
Total	\$63,116,337

Avangrid Networks, Inc.'s four natural gas utilities were assessed \$2.5 million in mostly pipeline safety penalties over the same five year period.

Avangrid, Inc. Natural Gas Utilities	Penalties (2016-2020)
Connecticut Natural Gas Corporation (CT)	\$1,710,000
Southern Connecticut Gas Company (CT)	\$425,000
Berkshire Gas Company (MA)	\$285,000
Maine Natural Gas Company (ME)	\$90,500
Total	\$2,510,500

CMP's record of consistently poor service led to 2021 legislation (vetoed by Maine's Governor despite her negative assessment of CMP's service) to authorize the replacement of CMP with a publicly owned utility. It also led to a management audit commissioned by the Maine Public Utilities Commission (Maine PUC) to study the extent to which CMP's problems stem from the Iberdrola, S.A./Avangrid, Inc. organizational structure. These issues are discussed in Section VI.D below.

This record and its potential duplication in New Mexico is concerning, as well as the Joint Applicants' resistance to Staff's proposed reliability standards. The Joint Applicants'

assertions about the resources and expertise of the Iberdrola, S.A./Avangrid, Inc. group of companies do not match well against their record in the Northeast.

c. Subsidization of non-utility activities

Section VI.E discusses the fourth factor -- whether the transaction will result in the improper subsidization of non-utility activities. The Section discusses the Cost Allocation Manual (CAM) required by prior Commission orders to prevent the subsidization that could potentially result from PNM payments to Iberdrola, S.A./Avangrid, Inc. affiliates when the affiliates provide services to PNM. The Hearing Examiner asked the Joint Applicants to provide a copy of PNM's CAM as it will need to be adjusted to include PNM in Avangrid, Inc.'s organizational structure. PNMR witness Joseph Tarry stated that, following the closing of the Proposed Transaction and for some time after that, there will be no changes in how costs are allocated to PNM. He stated that the services to be provided by Iberdrola, S.A./Avangrid, Inc. affiliates and the charges for the services will be determined during the integration process following the acquisition. Nevertheless, Avangrid, Inc.'s aggressive non-utility growth strategy presents a special risk that decisions made in the integration process could result in PNM ratepayers subsidizing the activities of Avangrid Renewables, LLC and Avangrid, Inc.'s other non-utility subsidiaries through preferential inter-affiliate agreements.

d. Qualifications and financial health of Avangrid, Inc. and Iberdrola, S.A.

Section VI.F discusses the fifth factor -- careful verification of the qualifications and financial health of the new owner.

Financial health. Iberdrola, S.A. and Avangrid, Inc. are large companies. Iberdrola, S.A. has over \$143 billion in assets. Its market capitalization is over \$85 billion, and it had a net profit in 2019 in excess of \$3.8 billion. Iberdrola, S.A. is a global utility that has over 170 years

of experience in the electricity and gas business, including experience as a provider of electric transmission and distribution services. Iberdrola, S.A. and its subsidiaries provide regulated utility services in the United States, Spain, the United Kingdom, Brazil, and Mexico.

Avangrid, Inc. has over \$36 billion in assets and \$700 million in 2019 net income. Its shares are publicly traded on the New York Stock Exchange. Avangrid, Inc. owns eight regulated electric and natural gas utilities through its Avangrid Networks, Inc. subsidiary, serving more than 3.3 million customers in New York and New England. Its Avangrid Renewables, LLC subsidiary is the third largest wind and solar power operator in the United States with approximately 7.5 gigawatts of wind and solar generation.⁶⁰ Mr. Kump said, at the time of his November 2020 direct testimony, that Avangrid, Inc. had better credit ratings than PNM and PNMR, and access to substantially greater capital financing at lower costs than PNM and PNMR.⁶¹

However, Avangrid, Inc.’s aggressive expansion into additional non-utility projects has raised concerns among credit rating agencies. The concerns about the higher risks of those projects are discussed in Section VI.F, along with the related downgrade of Avangrid, Inc.’s credit rating by Moody’s Research on July 21 of this year.

A management audit ordered by the Maine PUC to address the service problems of CMP discussed the risk that CMP will be provided inadequate resources and problem response from its parent holding companies as the result of its increasingly small part of a “vast Iberdrola family.” It cited Iberdrola, S.A.’s aggressive strategy of acquisitions, including its proposed acquisition of PNMR, its non-utility growth strategy in the United States (including the expansion of Avangrid

⁶⁰ Kump (11/23/20), at 4-6.

⁶¹ Kump (11/23/20), at 19.

Renewables, LLC), and Iberdrola, S.A.'s international growth strategy. Since the start of the Covid-19 pandemic, Iberdrola, S.A. has announced the PNMR acquisition plus acquisitions in France, Australia, Sweden, Japan, Scotland and Brazil. The auditors noted that Central Maine Power Company comprises about 20% of U.S. operations but just 2% of Iberdrola, S.A.'s customers worldwide.⁶² The risks cited in the Maine Audit are a concern for PNM and its customers as well.

Criminal investigation in Spain. Additional concerns about the qualifications of Iberdrola, S.A. and Avangrid, Inc. include a Spanish investigative court's criminal investigation of the Chairman and other top executives of Iberdrola, S.A. and an Iberdrola, S.A. subsidiary in Europe for bribery, violation of privacy and falsification of commercial documents. The investigation was initiated on June 23. It involves the alleged illegal hiring of a security company directly or indirectly owned by a police official to interfere with Iberdrola, S.A.'s opponents.

The criminal investigation is relevant as it may reflect the culture of the Iberdrola, S.A./Avangrid, Inc. group of companies. PNM needs to maintain its culture of respect for state and federal law.

The criminal investigation is also relevant because the Avangrid, Inc. board of directors would approve the appointment and removal of the PNM board of directors, and Iberdrola, S.A. executives hold six of the 14 director seats on Avangrid, Inc.'s board. The Chairman and CEO of Iberdrola, S.A., who is under investigation in the Spanish criminal proceedings, is also the Chairman of Avangrid, Inc., and, in that position, he holds the ultimate approval authority for the appointment and removal of the boards of directors of Avangrid, Inc.'s electric utility

⁶² Maine Audit, at 5-9.

subsidiaries. Iberdrola, S.A. and Avangrid, Inc. also exert influence over the activities of Avangrid, Inc.'s utilities by, at times, mandating cost-cutting measures to satisfy Avangrid, Inc.'s financial goals at the expense of service quality.

In addition, the Commission's ability to effectively regulate a utility depends upon the Commission's access to documentary records prepared and maintained by the utility. The potential that a utility's records might be altered or in any way falsified is of the utmost concern.

The Court orders initiating the investigations and specifying the officials, the Iberdrola, S.A. subsidiary and the potential crimes being investigated have been provided to the Commission as confidential documents under Spanish law. They are attached as Appendix 4 to the Confidential version of this Certification, with viewing restricted to the Hearing Examiner, the Commissioners and their assistants and technical advisors, and the Office of General Counsel. (See Section VI.F.2 below.)

Although not rising to the level of criminality, the activities of a Political Action Committee in Maine funded by CMP raises similar concerns. The PAC, Clean Energy Matters, hired private investigators and consultants to research and allegedly interfere with Maine residents attempting to organize a citizens' initiative opposing a transmission line proposed by CMP.

Technical qualifications. On the level of technical qualifications, the Maine PUC started an investigation this year into CMP's implementation of interconnection practices for developers trying to install rooftop and community solar projects. The Commission is investigating complaints that CMP has increased the costs to be charged renewable energy developers to connect their projects to CMP's system months after entering agreements with the developers on the proper amounts.

Compliance issues in the current case. Section VI.F.6 discusses Avangrid, Inc.'s initial failure to disclose in this case the service problems of its Northeast utilities. That failure led to the cancellation of the hearings originally scheduled for May 4-12 and the rescheduling of the hearings to August. The additional time was needed for Avangrid, Inc. to provide the necessary information and to give the parties and the Hearing Examiner sufficient time to review it. The additional time was also needed to consider the results of the Maine PUC's audit (completed in July) of CMP's service problems.

Section VI.F.7 discusses compliance issues involving Avangrid, Inc. and Iberdrola, S.A. *in the current case:*

- Incomplete discovery responses and failure to supplement discovery responses in violation of the Commission's discovery rules and the Hearing Examiner's December 18, 2020 Procedural Order;
- Overbroad confidentiality requests in violation of the Hearing Examiner's January 14, 2021 Protective Order;
- Incomplete responses to the Hearing Examiner's May 11, 2021 Order requiring the disclosure of enforcement measures and penalties against Avangrid, Inc.'s Northeast utilities;
- Use of non-record evidence in the Joint Applicants' Post-Hearing Brief in violation of the Hearing Examiner's August 27, 2021 Order; and
- Employment of an attorney subsequently disqualified for a concurrent conflict of interest in violation of Rule 16-107 of the New Mexico Rules of Professional Conduct.

The first two violations constitute the basis for the sanctions against Avangrid, Inc. that the Hearing Examiner recommends in Section VI.F.7.a of this Certification.

Avangrid Renewables, LLC compliance issues in New Mexico. Compliance issues involving Avangrid Renewables, LLC's current renewable energy projects in New Mexico are also discussed in Section VI.F.5:

- Description of El Cabo wind farm project as a 298 MW project, avoiding the Commission location control review for projects sized at 300 MW or greater; and
- Failure to provide documentation required for the La Joya wind farm project under the Commission order approving the project's location.

The violation and skirting of Commission rules and orders in the course of this proceeding indicate that a significant effort would be required to enforce the terms of any conditions attached to any approval of the Proposed Transaction.

e. Adequacy of protections against harm

Section VI.G discusses the final factor -- the adequacy of protections against harm to customers. The Proposed transaction will require protections that are adequate to prevent the diminishment of service, the potential slowing of the development of New Mexico's renewable energy resources and higher prices for PNM's customers. The Joint Applicants have not proposed adequate protections to address the issues.

Insistence of Iberdrola, S.A. and Avangrid, Inc. control of the PNM Board of Directors and the potential diminishment of service. A primary cause of the service problems affecting customers of Avangrid, Inc.'s Northeast utilities appears to have been Avangrid, Inc.'s insistence that the utilities cut resources to meet Avangrid, Inc.'s financial goals. Protections are needed to shield the PNM board of directors and management from the earnings priorities of the upstream holding companies of Avangrid, Inc. and Iberdrola, S.A. The promises of Iberdrola, S.A. and Avangrid Inc. that PNM will operate under local control post-merger are contradicted by their insistence that Iberdrola, S.A. and Avangrid, Inc. be in control of the PNM board of directors and management.

Iberdrola, S.A. influence is also exerted through the agreements Iberdrola, S.A. enters into with companies within the “Iberdrola Group,” such as Avangrid, Inc. and potentially PNM. Mr. Azagra Blazquez, for example, is participating in these proceedings pursuant to an Agreement for the Provision of Development Services between Iberdrola, S.A. and Avangrid, Inc. Avangrid, Inc. is paying Iberdrola, S.A. for those services.⁶³

These issues are discussed in Sections VI.D and VI.G.1.

Resistance to standards for reliable service. Tough but reasonable service quality and customer service standards are needed to prevent the problems experienced by customers of Avangrid, Inc.’s Northeast utilities from being repeated in New Mexico. The Joint Applicants have resisted the establishment of meaningful measures to maintain or improve the reliability of PNM’s service to its New Mexico utility customers. This issue is discussed in Section VI.G.2.

Non-compliant behavior of Iberdrola, S.A., Avangrid Renewables, LLC and Avangrid, Inc. in other jurisdictions, in New Mexico and in this proceeding. Even assuming the adoption of protections that appear sufficient, including protections to ensure service quality and reliability, the Commission will need to devote considerable enforcement resources to ensure that Avangrid, Inc. and PNM comply with those protections. Avangrid, Inc. has not been forthcoming regarding the penalties and disallowances that have been assessed against its Northeast public utilities, and it has violated and skirted Commission rules and orders in this proceeding. The Hearing Examiner is recommending sanctions against Avangrid, Inc. for its discovery violations in this case. Avangrid Renewables, LLC has also skirted and failed to

⁶³ Azagra Blazquez (6/18/21), at JA Exhibit PAB-3 (Stipulation). The Agreement provides for Avangrid, Inc. to make a payment to Iberdrola, S.A. for the services in an amount not to exceed 7 million euros. Mr. Azagra Blazquez is also simultaneously (i) the Chief Development Officer and Member of the Executive Committee of Iberdrola, S.A. and (ii) a Member of Avangrid, Inc.’s Board of Directors. Azagra Blazquez (11/23/20), at 1.

comply with Commission rules and orders in regard to its current renewable energy projects in New Mexico. This issue is discussed in Section VI.F.

Avangrid, Inc.’s non-utility activities. Avangrid, Inc.’s interest in accelerating the renewable energy business of Avangrid Renewables, LLC in the Southwest may not be consistent with the provision of reliable utility service by PNM. Avangrid, Inc. states that it wants to use its acquisition of PNM as a “beachhead” for Avangrid Renewables, LLC’s projects in New Mexico and the Southwest. The resource needs of Avangrid Renewables, LLC may take priority over PNM’s need for resources to provide reliable utility service to its customers. Avangrid Renewables, LLC’s renewable energy development business is also riskier than the normal business of providing utility service and has recently contributed to a downgrade of Avangrid, Inc.’s credit ratings. This issue is discussed in Sections VI.F.1 and VI.G.3.

Slowing of the development of New Mexico’s renewable energy resources and higher prices for consumers. Avangrid, Inc.’s interest in growing its renewable energy business in the Southwest also presents the risk that the Proposed Transaction might result in an overall slowing of the development of New Mexico’s renewable energy resources. Avangrid Renewables, LLC is already developing and operating projects in New Mexico without its ownership of a New Mexico utility. Other renewable energy companies are also developing projects in the state. Avangrid, Inc.’s ownership of both PNM (the utility buyer of renewable energy) and Avangrid Renewables, LLC (the non-utility renewable energy developer and seller of renewable energy) can give Avangrid Renewables, LLC a preference in PNM’s resource procurements, drive out competing renewable energy developers and lead to higher prices for New Mexico consumers. This risk is discussed in the testimony of Attorney General witness

Scott Hempling and City of Albuquerque witness Dr. Larry Blank of New Mexico State University in Section VI.G.3.⁶⁴

There is no agreement among the parties (in the foregone June 4 stipulation or otherwise) on the protective measures to address these harms and no agreement on their adequacy.

4. Balancing of potential harms versus the benefits

The Joint Applicants argue that the Proposed Transaction should be approved because the benefits they propose in the June 4 Stipulation and in later negotiations are larger than the benefits found acceptable in prior merger and acquisition cases. Those previous cases, however, lacked a showing of the potential harms present here. This case has a clear showing of potential harms that can negatively affect the basic need for reliable utility service. Because of the facts here, the Hearing Examiner finds that the potential harms outweigh the promised benefits. The benefits are not meaningful if PNM's customers do not have reliable service.

Moreover, the benefits the Joint Applicants cite may not be as significant as they are portrayed. The parties disagree on how the rate credits should be allocated to PNM's various customer classes. But, under the approach most favorable to residential customers, the \$67 million rate credit would provide a credit of \$126 per customer spread over three years. That amount is not an adequate trade-off for the reliability and customer service problems PNM customers might experience if the problems that Avangrid, Inc.'s utility customers in the Northeast have experienced are repeated here.

Further, the \$67 million in rate credits may be a significant cost to the Joint Applicants, but the amounts to be received by each customer are relatively small. PNM customers are not

⁶⁴ The City of Albuquerque has not, however, taken an official position with respect to the June 4 Stipulation or the Proposed Transaction.

going to experience a significant benefit in their lives with a savings of \$42 per year (or \$3.50 per month) in their PNM bills (if the \$67 million is allocated to customers on terms most favorable to them on a per customer basis). Attorney General witness Andrea Crane said “[e]ven if we did \$67 million on a per customer basis, you know, there's still a relatively small impact on people's lives, and that's how ultimately, at the end of the day, I think the rate credits have to be evaluated.”⁶⁵ The per kWh allocation of the \$65 million credit (i.e., the credit amount proposed in the June 4 Stipulation) would save residential customers even less -- \$1.64 per month and \$19.68 per year over three years.⁶⁶

Three- to five-year commitments for economic development benefits are likewise insufficient when compared to PNM customers’ longer-term interests in reliable service. The environmental commitments pursue worthy goals, but they lack enforceable near-term results that are sufficient to outweigh PNM customers’ immediate interests in reliable service at just and reasonable rates.⁶⁷ The near-term benefits that *are* enforceable, such as the \$15 million in funding for low-income energy efficiency programs, are not large enough in their scope and dollar amounts to outweigh the potentially wider harm of unreliable service.

Other promised benefits are not sufficiently defined to be enforceable. The vagueness of the promise to create or bring 150 jobs, for example, will likely lead to difficult-to-enforce disputes about who will receive credit for the jobs that have been created. Will the jobs consist of employees of the Iberdrola, S.A./Avangrid, Inc. group of companies? Or will the Joint

⁶⁵ Tr. 1020-1021.

⁶⁶ Darnell (7/29/21), at Exhibit RND-1, Tr. 837-842.

⁶⁷ Regulatory Commitment 43, for example, which provides for the creation of a Carbon Reduction Task Force, is intended to reduce carbon emissions sooner than required under the Renewable Energy Act, but it lacks an enforceable result, and its success will depend upon the seriousness of PNM’s efforts, as well as the efforts of the other Task Force participants over an extended period of time. Regulatory Commitment 42, Regional Transmission Organization, requires the Joint Applicants to “use all reasonable efforts to find or participate in the development of a viable RTO that it can join by January 1, 2030, or as soon thereafter as possible.”

Applicants engage in a difficult-to-resolve argument that their activities have directly or indirectly created the jobs in third-party companies?

The Proposed Transaction is also not needed for Avangrid Renewables, LLC to continue to develop renewable energy projects and to sell the output to New Mexico and out-of-state customers. Avangrid Renewables, LLC is already in operation here.

Moreover, eliminating opposition by negotiating concessions tailored to the individual interests of the various parties does not necessarily produce a result that defines what is in the public interest. Individual parties' compromises for half of what they originally sought or concessions on positions originally intended to serve the public interest in exchange for a negotiated benefit tailored to the party's particular interest do not necessarily produce a result that is in the public interest.

D. Potential conditions in the event the Commission finds the benefits outweigh the potential harms

The normal course when a stipulation is rejected is to proceed with a hearing on the original Application. The Joint Applicants should have that option. Another option might be to recommend that the parties engage in additional negotiations to develop a further stipulation to address the Hearing Examiner's reservations about the stipulation pursuant to Subsection (a) of 1.2.2.20(B)(5) NMAC. However, substantial delays would result from recommending either of the options. Both options would require the filing of additional testimony and the scheduling of hearings for parties to cross-examine the witnesses who prepared the testimony.

It is also possible that the Commission might weigh the potential harms and benefits of the Proposed Transaction differently from the Hearing Examiner. For that reason, Sections VI.A-G of the Certification discuss whether the Proposed Transaction can be approved under any combination of conditions -- the conditions in the June 4 Stipulation; the post-June 4

modifications proposed by the Joint Applicants, the other Signatories and the non-signatories; and any further modifications. If the Commission decides that the Proposed Transaction can be approved in some form (i.e., that with appropriate conditions, the benefits can be weighed as exceeding the potential harms), the Hearing Examiner recommends that the Commission should, at a minimum, adopt the modifications discussed in Sections VI.B through G below for the Signatories' consideration, in addition to any other changes the Commission finds to be reasonable.

VI. DISCUSSION

A. The Signatories' proposed amendments to the June 4 Stipulation

1. Early versions

On April 21, 2021, PNM filed a stipulation titled "Initial Stipulation" that included as Signatories the Joint Applicants, the Attorney General, WRA, IBEW Local 611, and four community groups that have been participating together in the case (i.e., Dine Citizens Against Ruining Our Environment, Nava Education Project, San Juan Citizens Alliance, and To Nizhoni Ani). On April 23, 2021, PNM filed an "Amended Stipulation" that added CCAE to the list of signatories.

On April 25, with the approach of the scheduled hearings on May 4 through May 12, the Hearing Examiner vacated the hearing dates and ordered the Joint Applicants to meet with all parties to discuss and negotiate in good faith a potential stipulation. The Hearing Examiner set a deadline of May 7, 2021 for the filing of a stipulation (whether uncontested or contested) and

scheduled a status conference for May 11, 2021 to set a schedule for further proceedings in the case.⁶⁸

On May 7, 2021, PNM filed a further stipulation, simply titled “Stipulation,” which added three parties -- Interwest Energy Alliance, Walmart, Inc., and Onward Energy Holdings, LLC.

2. June 4 Stipulation (Second Amended Stipulation)

The May 11 status conference was delayed while the Joint Applicants provided information about previously undisclosed penalties and disallowances assessed against Avangrid, Inc.’s electric utilities in the Northeast.⁶⁹ On May 28, however, the Hearing Examiner set a procedural schedule to consider the May 7 stipulation, which, at that time, was anticipated to be revised one more time to include an additional provision negotiated with the County of Los Alamos and M-S-R Public Power Agency after the May 7 deadline.⁷⁰

On June 4, PNM filed the “Second Amended Stipulation.” The June 4 Stipulation included the additional paragraph 56 on San Juan Decommissioning that had been negotiated with the County of Los Alamos and M-S-R Public Power Agency. To distinguish the Second Amended Stipulation from the previous stipulations and the variety of modifications the Joint Applicants have reached agreement on with some of the parties, this Certification will refer to

⁶⁸ Order Vacating Prehearing Conference and Procedural Schedule and Providing for Settlement Discussions, April 25, 2021.

⁶⁹ See, Order Regarding Avangrid Service Quality Issues and Management Audits and Suspension of the Filing Date for Statements in Opposition to the May 7, 2021 Stipulation, May 11, 2021.

⁷⁰ Procedural Order for Proceedings Addressing Contested Stipulation, May 28, 2021, at 6-7. The Hearing Examiner stated that the Stipulation would be considered pursuant to 1.2.2.20(B)(3) NMAC, which provides for combining the hearing on the merits of a stipulation with a hearing on any substantive issues the parties claim are not addressed by the stipulation. *Id.*, at 6.

the Second Amended Stipulation as the “June 4 Stipulation.” Where the distinction is obvious, the Hearing Examiner may simply refer to the “Stipulation.”

The current procedural schedule, accordingly, was established to consider the June 4 Stipulation. Testimony in support of the June 4 Stipulation was due on June 18. Testimony in opposition to the June 4 Stipulation was set for July 16. Rebuttal testimony was set for July 29. A public comment hearing on the June 4 Stipulation was set for August 9, and evidentiary hearings on the June 4 Stipulation were set for August 11-20. The case proceeded with the Signatories filing testimony supporting the June 4 Stipulation on June 18.

In sum, the June 4 Stipulation is the stipulation that is at issue here.

3. Post-June 4 Stipulation amendments

The Joint Applicants did not stop negotiating after filing the June 4 Stipulation. In July 16 testimony scheduled for opposition to the June 4 Stipulation, NM AREA, which had previously indicated its opposition to the Stipulation, included proposed modifications that they believed the Joint Applicants had agreed to accept. ABCWUA and Bernalillo County filed testimony proposing modifications, which they believed could resolve their own objections. On July 29, the Joint Applicants filed rebuttal testimony in which they stated their agreements and disagreements with the modifications proposed on July 16.

Negotiations continued after July 29. During his cross-examination by counsel for ABCWUA, Mr. Azagra Blazquez agreed to further modifications that had been negotiated with ABCWUA immediately before the start of the hearings.⁷¹

The Signatories other than the Joint Applicants did not indicate their approval or disapproval of the modifications discussed after June 4, and a further version of the June 4

⁷¹ Tr. 64.

Stipulation incorporating any or all of the modifications has not been filed in the evidentiary record.

Further, even after the close of the evidentiary record on August 19, the Joint Applicants continued to negotiate additional modifications to the June 4 Stipulation. The Joint Applicants' August 23 motion to admit into the evidentiary record additional modifications negotiated with Staff without a genuine reopening of the record was denied, and the Joint Applicants chose not to seek the reopening required to properly admit the additional modifications into evidence.⁷²

Based upon the Hearing Examiner's May 28 procedural order, the stipulation at issue here is the June 4 Stipulation. However, the parties' post-hearing filings indicate that most of the Signatories do not currently support it in its June 4 form. The Joint Applicants' July 29 rebuttal testimony and their oral testimony during the evidentiary hearings agree with some, but not all, of the modifications proposed in the non-signatories' July 16 testimony. And the Signatories' witnesses at the evidentiary hearings did not have a chance to express their positions.

Indeed, the parties filed their Statements of Position on August 30 in which they provide lists that identify their positions on the terms of the June 4 Stipulation, the modifications they propose, and the modifications proposed by others to which they agree and disagree. Some of the Signatories disagree with the post-June 4 modifications agreed to between the Joint Applicants and the non-signatories. There is no further consensus and no further agreement to be considered.

The following table illustrates the differing positions of the Signatories to the June 4 Stipulation:

⁷² Order Addressing Motion to Permit Filing of Agreed-Upon Positions or in the Alternative for Limited Reopening of Evidentiary Record, August 27, 2021.

Stipulation Signatories	Position on June 4 Stipulation	Modifications to Stipulation supported & opposed
Joint Applicants	Propose amendments	<p>Proposes or is willing to accept more than 40 amendments to RC 1, 2, 15, 17, 21, 28, 30, 32, 34, 36, 38, 42, 43, 44, 46, 49, 51, 52 & additional miscellaneous provisions;</p> <p>Opposes portions of the many amendments proposed by NM AREA and Bernalillo County, including all of the amendments proposed by Bernalillo County to RC 17 (independent board chair), RC 35 (enforceable standards for competitive RFPs), & RC 36 (ROE reductions for reliability and customer service violations)</p>
Attorney General	Supports as filed on June 4, 2021 plus amendments	<p>Proposes allocation of rate credit on a per customer basis;</p> <p>Opposes allocation of rate credit based on customer kWh usage and on methodology in last rate case</p>
WRA	Supports the Stipulation	<p>Modifications to the Stipulation should be subject to Signatories' approval;</p> <p>Opposes modifications to RC 42 Regional Transmission Organization, RC 43 Carbon Reduction Task Force, RC 44 Compensation and Carbon Reduction Targets, & RC 49 Chief Environmental Officer</p>
IBEW Local 611	Proposes amendments	<p>Proposes modifications proposed by others to (i) RC 2 new full-time jobs, (ii) RC 2 penalties if jobs not created, (iii) RC 2 increased economic development funds, (iv) RC 21 certain jobs not to be moved out of state, (v) RC 36 maintenance of full-time employees and contract workers, & (vi) RC 36 no diminution in current levels of customer service or system reliability</p>

Community Groups (Dine Citizens Against Ruining Our Environment, Nava Education Project, San Juan Citizens Alliance, and To Nizhoni Ani)	Support the Stipulation plus amendments	Agrees with Joint Applicants’ proposed modifications, including Staff’s participation in meetings to discuss community interests regarding operations in the Four Corners Region; Opposes Staff’s participation in the administration of the \$12.5 million allocated for the benefit of impacted indigenous community groups in the Four Corners Region under RC 2
CCAE	“[S]trongly supports the Stipulation in its entirety” but also recommends amendments	Proposes amendments (i) to RC 1 to increase rate credits and funds for customer arrearages & (ii) to RC 36 for “all increased reliability and safety commitments;” Opposes any modifications to (i) RC 42 Regional Transmission Organization, (ii) RC 43 Carbon Reduction Task Force, (iii) RC 44 Compensation and Carbon Reduction Targets, & RC 49 Chief Environmental Officer
Interwest Energy Alliance	Supports the Stipulation plus amendments	Recommends the amendments proposed by the Joint Applicants
Walmart, Inc.	Supports the Stipulation	
Onward Energy Holdings, LLC.	Supports the Stipulation	
Los Alamos County and M-S-R Public Power Agency	Supports the Stipulation	

The following table illustrates the differing positions of the non-signatories to the June 4 Stipulation:

Non-Signatories	Position on June 4 Stipulation	Changes to Stipulation supported & opposed
ABCWUA	Will not oppose, subject to proposed amendments	Proposes (i) amendments to RC 1 Rate Benefits & RC 2 Economic Development, (ii) new Scholarship & Apprentice Funds, (iii) amendment to RC 52 FCPP, & (iv) amendments

		proposed by Bernalillo County, NM AREA and Staff on Board Structure, Reliability Issues & “Other Remaining Items”
Bernalillo County	Will not oppose, subject to proposed amendments	Proposes (i) amendments to RC 1 & 2 proposed by ABCWUA, (ii) amendment to RC 15 Commission jurisdiction, (iii) amendments to RC 17 consistent with NM AREA proposals but with one additional change; amendments to RC 36 Reliability and Safety as proposed in Staff’s testimony, (iv) additional job creation amendments, (v) amendments to RC 52 FCPP, & (vi) concerns/amendments to RC 34 Independent Evaluator, RC 42 Regional Transmission Organization, & RC 43 Carbon Reduction Task Force
NM AREA	Stipulation will satisfy the required public interest standard if it includes proposed amendments	Proposes amendments to RC 1, 2, 6, 8, 10, 15, 17, 21, 28, 30, 32, 34, 36, 38, 43, 44, 46, 51, & 57
Sierra Club	Proposes amendments	(i) Modify Clause 6.19 of the Merger Agreement so that PNM’s exit from Four Corners cannot preclude PNM from voting to close, or reduce output from, Four Corners; (ii) Add commitment that Joint Applicants will not take any actions concerning Four Corners that result in either a net increase in greenhouse gases, or that prevent a net decrease in greenhouse gases; (iii) Add requirement that Avangrid, Inc. modify its corporate climate commitment to address Scope 3 emissions, including emissions from resources contracted by Avangrid, Inc.; (iv) Add commitment that Joint Applicants take all reasonable steps to avoid emissions leakage; and (iv) Modify RC 44 so that PNM executives are not incentivized to

		reduce PNM's greenhouse gas emissions through actions that fail to result in a net decrease in greenhouse gas emissions to the atmosphere.
Staff	Opposes	Need resolution of issues relating to (i) RC 2 Economic Development, (ii) RC 17 Management, (iii) RC 36 Reliability and Safety, (iv), (v) and (vi) RC 34 Independent Evaluator (Avangrid, Inc. participation & La Joya Wind Farm divestiture, and Commission approval of El Cabo wind farm)
NEE	Opposes	Stipulation and proposed amendments do not satisfy standards to approve the Proposed Transaction; Issues include (i) control of PNM by Iberdrola, S.A./Avangrid, Inc., (ii) costs of Four Corners divestiture, (iii) San Juan decommissioning, (iv) inadequate rate credits, (v) inadequate forgiveness of arrearages, (vi) inadequacy of rate freeze, (vii) inadequacy of economic development funds, (viii) excessive gains for PNMR stockholders and PNM management; (ix) Avangrid, Inc.'s history of unreliable service, poor customer service & regulatory non-compliance, & (x) anti-competitive potential for PNM & Avangrid, Inc. affiliate transactions
City of Albuquerque	No position	
City of Farmington/Enchant Energy	No position	
Kroger	No position	
Westmoreland Mining	No position	

The further modifications proposed after the filing of the June 4 Stipulation have produced confusion about what the Joint Applicants, the other Signatories and original opponents are asking the Commission to approve. The Joint Applicants argue in their Post-Hearing Brief that only NEE continues to oppose the Proposed Transaction without regard to

regulatory conditions. They state that the Commission should approve the Proposed Transaction with the regulatory commitments contained in the June 4 Stipulation, along with the additional regulatory conditions which the Joint Applicants negotiated with the parties.⁷³

But, while many of the Signatories and non-signatories agree that the Proposed Transaction can be approved subject to certain conditions (i.e., the conditions in the June 4 Stipulation and the modifications to the Stipulation to which *they* agree), the parties as a group have not reached an overall agreement on the conditions pursuant to which the Proposed Transaction should be approved. Only a few parties appear to recommend approval of the June 4 Stipulation in the form it was filed. Even the Joint Applicants recommend modifications. The parties allegedly in agreement only agree to support the Proposed Transaction if it is approved on terms they support, and the parties are not in agreement on what those terms are.

As an example, Sierra Club did not file testimony in opposition to the June 4 Stipulation. Its witness Dr. Jeremy Fisher states that Sierra Club does not support the Stipulation because it calls for the Commission to approve the merger between PNM and Avangrid, Inc. without any mitigation of the adverse impacts of merger commitment 6.19 and the resulting PNM-NTEC agreement on the opportunities for early closure of Four Corners. The Stipulation also includes other deficiencies discussed in his testimony, which he states the Commission should order to be addressed as a condition of granting approval to the merger. He said the Commission should require the Stipulation to be amended to ensure the public interest is adequately protected.⁷⁴

⁷³ Joint Applicants Post-Hearing Brief, at 3-4.

⁷⁴ Fisher (6/18/21), at 36. Dr. Fisher said Sierra Club did not file a Statement of Opposition to the Stipulation, because it includes provisions and commitments that further other environmental and equity interests, making it a better basis for any Commission approval of the merger than Joint Applicants' originally-filed plan. Sierra Club desired that the Commission hold a hearing on the Stipulation, rather than disregard the Stipulation and consider the merger on the merits of the originally filed plan. *Id.*

4. Recommendation

Rule 1.2.2.20.B(5) NMAC states that, in cases involving contested stipulations, the Hearing Examiner may take either of the following approaches:

(a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or

(b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.⁷⁵

For these reasons, the Hearing Examiner emphasizes that the stipulation to be addressed in this Certification is still the June 4 Stipulation, i.e., the Second Amended Stipulation. And the Hearing Examiner takes the approach under subsection (b) of 1.2.2.20.B(5) NMAC.

The Hearing Examiner certifies the June 4 Stipulation for the Commission's review with a negative recommendation. The recommendation is negative based upon the fact that the Signatories no longer support it. Instead, the Joint Applicants and others propose numerous modifications that are supported by some, opposed by some or not supported or opposed by others. No further document with modifications accepted and executed by all of the Signatories has been submitted for the Commission's review and approval.

The normal course when a stipulation is rejected is to go back and conduct hearings on the original Application. The Joint Applicants should have that opportunity.

⁷⁵ 1.2.2.20.B(5) NMAC.

However, also pursuant to 1.2.2.20(B)(5) NMAC, the Hearing Examiner suggests in the following sections a further method to proceed with the evidentiary record that has been developed in this case. The Hearing Examiner discusses whether the Proposed Transaction can be approved with a set of conditions based, in part, upon the conditions in the June 4 Stipulation.

B. Whether the transaction provides benefits to utility customers

1. Rate benefits

a. Regulatory Commitment 1 -- Rate credits

The Joint Applicants proposed in the June 4 Stipulation to provide \$50 million in rate credits to PNM's customers over a three-year period following the closing of the Proposed Transaction. The proposal compares to the \$24.6 million in rate credits proposed in the original Application.

Through further negotiations after the June 4 filing of the Stipulation, the Joint Applicants have agreed to increase the rate credits to \$67 million over three years, contingent upon the ABCWUA agreeing not oppose the Proposed Transaction.⁷⁶

The \$67 million is less than the \$126 million proposed as a minimum by ABCWUA witness Mark Garrett and the \$75 million to \$125 million proposed by NEE witness Christopher Sandberg. Mr. Garrett's \$126 million rate credit and the upper range of Mr. Sandberg's credit were based on one-half of the gain PNMR stockholders received with respect to the sale of the PNM assets.⁷⁷ Mr. Sandberg also recommended that the credit be paid out in a single year, instead of over three years, to make a meaningful impact on customer bills.⁷⁸

⁷⁶ Tr. 64-74.

⁷⁷ M. Garrett (4/2/21), at 36-37; Sandberg (4/2/21), at 58.

⁷⁸ Sandberg (4/2/21), at 58.

NM AREA witness Michael Gorman testified that, based upon the size of the credit agreed to in the recent EPE merger case, the rate credits should be at least three times the \$24 million initially offered by the Joint Applicants.⁷⁹

A further issue, however, not addressed in the Stipulation is the manner in which the rate credits will be allocated to PNM's customer classes. On this issue, even the Signatories disagree. The Joint Applicants proposed in their June 18 testimony in support of the Stipulation that the credits be allocated on a per kWh basis.⁸⁰ But, in their July 29 rebuttal testimony, in late agreement with NM AREA and Bernalillo County, they agreed that the rate credits be distributed on the same basis that revenues were allocated in PNM's last rate case.⁸¹

Mr. Darnell calculated that the per kWh distribution would provide residential customers approximately \$26 million of the \$65 million rate credit, with an average residential customer using 600 kWh per month being credited \$1.64 per month and \$59.04 over three years.⁸²

Estimated bill impacts were not provided for the allocation method used in PNM's last rate case. The revenue allocation in the last rate case, Case No. 16-00276-UT, was done roughly on a pro rata basis, with certain discounts for large users. The pro rata allocation assigned approximately 50% of the total revenues and the revenue increase to the residential customer class.⁸³ So, presumably, residential customers might receive approximately \$33 million to \$34 million of the \$67 million rate credit.

⁷⁹ Gorman (4/2/21), at 16-17.

⁸⁰ Darnell (6/18/21), at 14.

⁸¹ Darnell (7/29/21), at 7; Gorman (7/16/21), at 13-14; Reno (7/16/21), at 4.

⁸² Darnell (7/29/21), at Exhibit RND-1, Tr. 837-842.

⁸³ See Revised Stipulation, Exhibit 2, at 1-2, adopted in Revised Order Partially Adopting Certification of Stipulation, Case No. 16-00276-UT, January 11, 2018, at para. 77.

Mr. Sandberg states that it is unclear what the effect of the idea of using a cost methodology from a rate case where the data are now six years old would be on PNM's classes of customers and individual customers. He said "[t]hat sort of vague and unquantifiable approach should be rejected in favor of a simple, per-customer calculation."⁸⁴

The Attorney General and NEE recommend that the credits be allocated on a per customer basis. Attorney General witness Andrea Crane testified that the residential customer class would receive only 38% of the rate credit in a volumetric per kWh distribution while residential customers comprise close to 90% of PNM's total customer base.⁸⁵ She said it doesn't matter how high the rate credit is if the majority of PNM customers will not proportionately benefit.⁸⁶

And while \$67 million may be a significant cost to the Joint Applicants, PNM customers are not going to experience a significant benefit in their lives with even the savings achieved with a per customer allocation of the credits. PNM witness Lisa Quilici testified that a \$65 million credit would produce a \$123 credit per customer (i.e., \$65 million / 530,000 customers) over three years -- a savings of \$42 per year (or \$3.50 per month) in their PNM bills.⁸⁷ Attorney General witness Andrea Crane said "[e]ven if we did \$67 million on a per customer basis, you know, there's still a relatively small impact on people's lives, and that's how ultimately, at the end of the day, I think the rate credits have to be evaluated."⁸⁸

⁸⁴ Sandberg (7/29/21), at 9-10.

⁸⁵ Crane (6/18/21), at 11.

⁸⁶ Crane (6/18/21), at 11-12.

⁸⁷ Quilici (7/29/21), at 7.

⁸⁸ Tr. 1020-1021.

WRA also opposes the rate credit allocation methodology approved in PNM's last general rate case.⁸⁹

Mr. Darnell states that PNM opposes the per customer approach because it “would be contrary to how the Commission has typically allocated merger rate credits for other utilities and would exacerbate the existing rate subsidization imposed on the 10% of PNM customers who are not residential customers.”⁹⁰

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that the rate credits be allocated on a per customer basis. As Ms. Crane states, the rate credits need to have a meaningful impact on customers' bills, and the per customer allocations are the best way to achieve that. The other allocation methods may do little more than provide a minimal offset against a large future rate increase.

b. Regulatory Commitment 1 -- Residential customer arrearages

Regulatory Commitment 1 in the June 4 Stipulation provides for PNM to forgive \$6 million for residential customer arrearages within 90 days from closing of the Proposed Transaction. During the hearings, Mr. Azagra Blazquez agreed to increase the forgiveness of arrearages to \$10 million -- in exchange for ABCWUA's agreement to not oppose the Stipulation.⁹¹

Mr. Darnell testified that the latest estimate of PNM's total residential customer arrearages was \$21,413,518 through June 2021 as reported in PNM's June 2021 Delinquency Report in Case No. 20-00069-UT which was filed on July 9, 2021.⁹² He said, as of August

⁸⁹ WRA Statement of Position, at 2.

⁹⁰ Darnell (7/29/21), at 7; Darnell (4/21/21), at 25.

⁹¹ Tr. 74.

⁹² Darnell (7/29/21), at 8-9.

11, 33,445 residential customers and 728 other customers had arrearages.⁹³ Mr. Tarry testified that, starting on August 16, approximately 500 customers could be disconnected each day -- although he said PNM is encouraging customers to call in and make payment arrangements, so PNM can work with them to avoid disconnecting their service.⁹⁴

Mr. Tarry testified at the hearing that the Joint Applicants have not determined how the arrearage forgiveness would be implemented. He said they would coordinate that effort with the Signatories to the Stipulation after the merger closing.⁹⁵ He said they will work through the logistics to make sure that the forgiveness funds go to those residential customers that have been impacted by Covid-19.⁹⁶

Mr. Darnell, however, testified that the Joint Applicants have not tried to distinguish between arrearages resulting from the Covid-19 pandemic and other arrearages. He said it would be “rather difficult.”⁹⁷ He and Mr. Tarry said there is a lot of money available to help customers between PNM’s commitment and federal sources, and it may be sufficient to eliminate the arrearages.⁹⁸

NEE asks that the Joint Applicants eliminate the arrearages entirely. Mr. Sandberg said the “[a]cquiring entity is flush with money and people in one of the poorest states are suffering.”⁹⁹

⁹³ Tr. 863.

⁹⁴ Tr. 727-730.

⁹⁵ Tr. 650.

⁹⁶ Tr. 728-730.

⁹⁷ Tr. 747.

⁹⁸ Tr. 846.

⁹⁹ Sandberg (7/16/21), at 37.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved and that the plan for apportioning the arrearage relief be filed with the Commission for its approval.

c. Deferred rate case filing (Stay-out requirement)

The June 4 Stipulation does not say anything about a rate freeze or a date before which PNM would be allowed to file its next general rate case (i.e., a Stay-out provision).

Mr. Sandberg states that rate freezes have been elements in stipulations in prior merger cases and that deferral of the filing of a general rate case is a Commission requirement for approval of a merger.¹⁰⁰ The County proposes that PNM not file a general rate case before June 2022 using a future test year that would allow for a transition period under the merger and recovery from the impacts of the Covid-19 pandemic.¹⁰¹

Mr. Darnell testified in his April 21 rebuttal that the deferral of a rate case is not required for approval of the proposed merger.¹⁰² But, to further narrow the issues in the case, he said, in his July 29 rebuttal testimony, that the Joint Applicants will agree that PNM will not file a new general rate case before June 1, 2022, to allow for a transition period under the merger terms and recovery from Covid-19 impacts on consumers.¹⁰³

A rate freeze was not included in the 2019 Sun Jupiter-EPE merger case, but it was included in the 2008 sale of PNM natural gas assets to the newly formed New Mexico Gas Company, the 2013 TECO-New Mexico Gas Company and 2015 Emera-New Mexico Gas Company merger cases. In Case 08-00078-UT, New Mexico Gas Company agreed to a three-

¹⁰⁰ Sandberg (7/16/21), at 44-45.

¹⁰¹ Reno (7/16/21), at 4.

¹⁰² Darnell (4/21/21), at 25-27.

¹⁰³ Darnell (7/29/21), at 8.

year rate freeze from the closing date through December 31, 2011.¹⁰⁴ In Case 13-00231-UT, TECO Energy agreed to a rate freeze for more than three years -- from the August 13, 2014 date of the Final Order to December 31, 2017.¹⁰⁵ In Case 15-00327-UT, Emera agreed to extend the prior rate freeze from the June 22, 2016 date of the Final Order to the same December 31, 2017 date agreed to in the TECO Energy case.¹⁰⁶

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that the Stay-Out be extended for at least an additional six months to December 1, 2022. The six month Stay-Out until June 1, 2022 is too small, compared to the Stay-Out provisions agreed to in the 2008 and 2013 New Mexico Gas Company cases.

2. Other customer benefits

a. Regulatory Commitment 1 -- Connections for customers in remote areas

Regulatory Commitment 1 in the June 4 Stipulation provides for PNM to provide \$2 million in funds for assisting in providing electricity to new customers in remote areas as described in the Regulatory Commitment 11 “Electrification for All” Program. In Regulatory Commitment 8, the Joint Applicants promise to work with Staff and the Attorney General to propose a low-income “Electrification for All” program to improve the access that low-income New Mexicans have to electricity, particularly in remote areas. Joint Applicants commit to report on the results of the program annually to the Signatories for three years from closing of the Proposed Transaction to evaluate its success and to entertain modifications to improve

¹⁰⁴ Final Order Partially Approving Certification of Stipulation, Case No. 08-00078-UT, December 11, 2008, at para. 25.

¹⁰⁵ Certification of Stipulation, Case No. 13-00231-UT, June 30, 2014, at 28, adopted in Final Order, August 13, 2014.

¹⁰⁶ Certification of Stipulation, Case No. 15-00327-UT, June 8, 2016, at 16, adopted in Order Adopting Certification of Stipulation, Case No. 15-00327-UT, June 22, 2016.

effectiveness. The low-income electrification fund will remain open for three years from such closing or until fully deployed, whichever occurs first; in the event that the low-income electrification fund is not fully deployed at the end of the three-year period, Joint Applicants will work with the Attorney General and other Signatories to determine how to deploy any residual funding. The \$2 million will not be passed through in rates to customers and will count toward the rate benefits described above. The Commitment also requires the Joint Applicants, as needed, to commit to work toward electrification during this three-year period for up to \$2 million of electrification.

No further modifications have been proposed for this Commitment.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

b. Regulatory Commitments 1 and 8 -- Low-income energy efficiency

Regulatory Commitment 1 in the June 4 Stipulation requires PNM to provide \$15 million for low-income energy efficiency as described in Regulatory Commitment 8. Regulatory Commitment 8 requires the Joint Applicants to commit \$15 million in total over a five-year period in shareholder expense to increase cost-effective low-income energy efficiency and weatherization (\$5 million in first year, and \$2.5 million in each of the next four years), with any remaining unspent amounts to be applied in the sixth year.

The Joint Applicants also commit in Regulatory Commitment 8 to evaluate PNM's current low-income energy efficiency program. Within six months following closing of the Proposed Transaction, Joint Applicants will work with the Attorney General and other stakeholders that are signatories to this Stipulation to propose improvements to the program, to result in their passing the Utility Cost Test, which PNM will then incorporate in its next Energy

Efficiency program filing with the Commission. Joint Applicants will have PNM commit to propose increased spending on all cost-effective low-income energy efficiency and weatherization programs up to the statutory limit on energy efficiency spending, so long as such spending does not cause the overall energy efficiency plan to fail the Utility Cost Test.

No party proposed modifications to these commitments.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

c. Regulatory Commitments 5 and 7 -- Charitable Contributions & Low-Income Customer Assistance Programs

Regulatory Commitments 5 and 7 in the June 4 Stipulation provide that PNM and PNMR's charitable contributions in New Mexico will be maintained at historical levels identified in the Joint Applicants' direct testimony for a minimum of five years following closing of the Proposed Transaction, with a similar expectation for the PNM Resources Foundation's separate charitable activities. They also commit that PNM will maintain its existing low-income customer assistance programs, including the Good Neighbor Fund, for a minimum of five years following the closing of the Proposed Transaction.

Mr. Tarry said the combined level of community support provided by PNM and the PNM Resources Foundation¹⁰⁷ in the form of annual corporate giving has averaged \$3.8 million for the period 2017 through 2019. Of this amount, PNM and PNMR have contributed an average of

¹⁰⁷ Mr. Tarry states that the PNM Resources Foundation is a separate New Mexico non-profit corporation that was founded in 1983 and has a goal of improving the quality of life in the communities served by the subsidiaries of PNMR. It supports non-profit organizations in New Mexico and has generally focused on education, environmental awareness, economic vitality and employee engagement. The PNM Resources Foundation is governed by a board of trustees comprised of PNMR employees and retirees. It is entirely funded by PNMR shareholders. Tarry (11/13/20), at 7.

\$2.3 million per year, and the PNMR Foundation has contributed an average of \$1.5 million per year.¹⁰⁸ He said none of these contributions was funded through customer rates.¹⁰⁹

Mr. Gorman criticized this amount as low compared to the Emera acquisition of New Mexico Gas Company. He said Emera agreed to a \$1.2 million increase to the utility's charitable giving over three years.¹¹⁰

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

3. Economic development benefits

a. Regulatory Commitment 2 -- Promise to create 150 full-time jobs

Regulatory Commitment 2 in the June 4 Stipulation provides that the Joint Applicants will create or bring an additional 150 full-time jobs in total to New Mexico over the three-year period following the closing of the Proposed Transaction. The commitment also states that PNM would not include costs of any of those jobs in rates without Commission review and approval. The Commitment states that the 150 new jobs will remain for no less than five years thereafter.

The Joint Applicants commit to file an annual compliance report showing the number of full-time jobs created or brought to New Mexico, identifying the employer, salary, description of benefits and whether the job is performed remotely or in an office location. No more than 20 of these jobs will be at PNM. Joint Applicants will target 20 of these jobs to be electric service business unit craftsmen at PNM, and will prioritize hiring personnel that have been or will be displaced as a result of San Juan Generating Station closure for those positions.

¹⁰⁸ Tarry (11/23/20), at 7-8.

¹⁰⁹ Tarry (11/23/20), at 6-7.

¹¹⁰ Gorman 4/2/21, at 44.

NM AREA recommends that language be added to this paragraph that provides a specific dollar amount that the Joint Applicants will pay if the promised economic development jobs do not materialize. Mr. Gorman said the language would provide some assurance to the Commission that this commitment will be met.¹¹¹

Bernalillo County recommends the following changes:

-- The Joint Applicants shall create 150 full-time jobs in New Mexico over three years following the closing of the Proposed Transaction, with at least 130 of the full-time jobs being created by the Joint Applicants (other than PNM).

-- The Joint Applicants shall file an annual compliance report with the Commission providing the following information for each new full-time job: job title, annual salary, location (city or county), date of hire, and any period of time during which the job was vacant.

-- PNM will create at least 20 new full-time jobs for electric service craftsmen.

-- The Joint Applicants (other than PNM) shall create at least 100 new full-time jobs within the Albuquerque-Bernalillo County metropolitan area.

-- If the Joint Applicants fail to create 150 new full-time jobs in New Mexico within three years after the closing of the Proposed Transaction, they shall pay \$80,000 per job shortfall to the PNM Good Neighbor Fund. A job shortfall shall exist if the job was not created or if it has remained vacant for more than 6 months.¹¹²

Signatory IBEW Local 611 likewise agrees that the Stipulation should be changed to require at least 20 of the new full-time jobs be created for electric service craftsmen.¹¹³

¹¹¹ Gorman (7/16/21), at 14.

¹¹² Reno (7/16/21), at 6.

¹¹³ Fitzgerald (7/29/21), at 8; Statement of Position, at 2.

In their July 29 rebuttal testimony, the Joint Applicants agreed to the above changes, except for the requirement that at least 20 (20 or more) new full-time jobs be created for electric service craftsmen.¹¹⁴ They agree only that the Joint Applicants “will target up to 20 [zero to 19] of the 150 total jobs to be electric service business unit craftsmen at PNM and that PNM will prioritize hiring personnel that have been or will be displaced as a result of San Juan Generating Station closure for those positions.”¹¹⁵

Mr. Garrett and Mr. Sandberg both question the types of jobs that would be created and the extent to which the vagueness of the commitment would render it enforceable.¹¹⁶ In response to Mr. Garrett’s April 2 testimony, Mr. Kump said Avangrid, Inc. cannot identify at this time the jobs that will be created or brought to New Mexico. He said “[i]dentifying the additional jobs with specificity will require that Avangrid work with PNM to match new positions with the skills, experience, and qualifications of the work force in New Mexico. Our goal in adding these jobs is to help build long-term economic growth and enhance service to PNM customers.”¹¹⁷ He said “[b]ased upon historical experience, we estimate the wages for these new jobs to average at least \$88,000 per year, and perhaps more over time.”¹¹⁸ In his testimony supporting the Stipulation, he added that the jobs will not be transitory. He said Avangrid, Inc. believes in New Mexico’s potential to grow economically and that Avangrid, Inc. will support the development of renewable energy in New Mexico. He said Avangrid, Inc. will not rely on construction jobs related to building wind and solar energy projects to satisfy the 150 jobs commitment.¹¹⁹

¹¹⁴ Azagra Blazquez (7/29/21), at 4-6; Tarry (7/29/21), at 2-3; Darnell (7/29/21), at 16-17.

¹¹⁵ Darnell (7/29/21), at 17.

¹¹⁶ M. Garrett (4/2/21), at 15; Sandberg (7/16/21), at 51-54.

¹¹⁷ Kump (4/21/21), at 5.

¹¹⁸ Id., at 6.

¹¹⁹ Kump (6/18/21), at 3.

WRA takes issue with requiring that 100 of the 150 new jobs be located in the Albuquerque-Bernalillo County metropolitan area.¹²⁰

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that the Commission include the amendments accepted by the Joint Applicants plus an amendment that requires that *at least 20* of the full-time jobs be electric service craftsmen.

In addition, the Hearing Examiner recommends that the Regulatory Commitment be amended to clarify that the job commitment pertains to jobs created or brought to New Mexico as employees of Avangrid, Inc. and its affiliated interests and that the wages average at least \$88,000 per year.

b. Regulatory Commitment 2 -- Contributions to economic development projects or programs

Regulatory Commitment 2 in the June 4 Stipulation requires the Joint Applicants to make contributions to economic development projects or programs in New Mexico, at shareholder expense, totaling \$7.5 million over the three years following the closing of the Proposed Transaction. The Joint Applicants commit that these economic development funds will not be used for fossil fuel use or related projects. The contributions will be disbursed through an independent fund to which shareholders will contribute \$2.5 million per year for a period of 3 years. The fund will be administered independent of the Joint Applicants.

NM AREA and Bernalillo County recommend that the economic development dollars be increased from \$7.5 million over three years to \$15 million over five years.¹²¹ Bernalillo County

¹²⁰ WRA Statement of Position, at 2.

¹²¹ Gorman (7/16/21), at 14; Reno (7/16/21), at 6-7. Mr. Gorman said that, in the Emera acquisition, which was substantially smaller than the one proposed in this case, the parent company agreed to \$20 million in economic

(Cont'd on next page)

recommends that the funding may not be used for fossil fuel use or related projects, that the funds be dispersed through a competitive grant program, and that the grants be disbursed only to nonprofits proposing economic development projects or conducting economic development programs in areas served by PNM.¹²²

ABCWUA witness Mark Garrett said that, when using a rate base comparison, PNM would have to contribute \$108 million in economic development payments to match the equivalent level of benefits provided in the EPE transaction.¹²³

In their July 29 rebuttal testimony, the Joint Applicants agreed to the NM AREA and Bernalillo County recommendations, with one exception.¹²⁴ Mr. Darnell said the economic development grant funds should be available to a wider area -- to the entire area where PNM maintains utility facilities.¹²⁵

WRA supports the increases to economic development commitments.¹²⁶

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that the recommendations proposed by NM AREA and Bernalillo County be approved.

development commitments: (1) to construct a natural gas export pipeline to Mexico at an estimated cost of \$5 million; (2) create a matching fund of \$10 million for gas infrastructure expansion projects; and (3) contribute an additional \$5 million for other economic development projects throughout the State. And, in the EPE case, the Joint Applicants committed to dedicate \$100 million over 20 years to promote economic development with \$20 million of that amount earmarked for the utility's New Mexico service territory. Gorman 4/2/21, at 44, citing Certification of Stipulation, Case No. 15-00237-UT, at 36 and Case No. 19-00234-UT, Certification of Stipulation, page 25, ¶ C.1.

¹²² Reno Stip., at 6-7.

¹²³ \$20 million x 5.4 = \$108 million.

¹²⁴ Azagra Blazquez (7/29/21), at 5; Tarry (7/29/21), at 3; Darnell (7/29/21), at 14.

¹²⁵ Darnell (7/29/21), at 14.

¹²⁶ WRA Statement of Position, at 2.

c. Regulatory Commitment 2 -- Funds for impacted indigenous community groups

Regulatory Commitment 2 in the June 4 Stipulation requires the Joint Applicants, within 90 days of closing of the Proposed Transaction, to allocate at shareholder expense \$2.5 million each year for five years following closing, for a total of \$12.5 million, for the benefit of impacted indigenous community groups in the Four Corners region, as designated by intervening Community Groups. This amount is not related in any way to, and will not impact, the amounts required to be transferred to the energy transition funds pursuant to NMSA 1978, Section 62-18-16(J) in relation to the abandonment of any coal-fired generation facility in New Mexico. The Joint Applicants commit to engage in periodic meetings, at least twice annually, with impacted community stakeholders in the Four Corners region and the Office of the Attorney General to discuss community interests regarding Joint Applicants' operations and renewable energy and storage development in the Four Corners region.

NM AREA recommends that Staff be added to the parties effectuating this commitment, and PNM agrees.¹²⁷ The Community Groups do not oppose the participation of Staff in Joint Applicants' commitment to engage in periodic meetings, at least twice annually, with impacted community stakeholders in the Four Corners region and the Attorney General to discuss community interests regarding Joint Applicants' operations and renewable energy storage and development in the Four Corners Region. But they do not support Staff participation in the administration of the \$12.5 million allocated for the benefit of impacted indigenous community groups in the Four Corners region, as designated by intervening Community Groups.¹²⁸

¹²⁷ Gorman (7/29/21), at 15; Darnell (7/29/21), at 19.

¹²⁸ Community Groups Statement of Position, at 2.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that Staff be added to the process to the extent proposed by NM AREA.

d. Regulatory Commitment 2 -- Employment opportunities for San Juan Generating Station displaced workers

Regulatory Commitment 2 in the June 4 Stipulation requires the Joint Applicants to work with PNM to ensure that the “energy transition displaced worker assistance fund” established under the Energy Transition Act and run by NM Workforce Solutions provides the maximum possible employment opportunities for displaced workers. The Joint Applicants commit to provide progress reports on the effectiveness of the program each six months following execution of the Stipulation to the Attorney General and other Signatories to the Stipulation until three years following closing of the Proposed Transaction.

No party has recommended amendments to this provision. But if the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends as an additional requirement that the progress reports be filed with the Commission.

e. Regulatory Commitment 2 -- Access to PNM-owned streetlighting poles

Regulatory Commitment 2 in the June 4 Stipulation requires PNM to provide local government entities access to PNM-owned wooden streetlighting poles within 1/2 mile of public schools and government-owned or authorized low-income facilities to enable the installation by the governmental entity of equipment to provide wireless internet access to students and residents of such facilities. Access will be provided pursuant to written agreements identifying the streetlighting poles eligible for attachments and on PNM’s standard pole attachment or other applicable terms and conditions, except that annual pole rental fees will not be charged for a

period of 3 years from November 1, 2021. All standard charges under PNM's streetlighting rates and tariffs, and for make-ready and other PNM services associated with such access will apply.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

f. Scholarship and apprenticeship funds

On the first day of the evidentiary hearings, counsel for ABCWUA elicited commitments from Mr. Azagra Blazquez that, in return for ABCWUA agreeing not to oppose the Stipulation, the Joint Applicants would make a \$1 million contribution to create a supplemental scholarship program dedicated to science, technology, engineering and math education in the Albuquerque/Bernalillo County metropolitan area and a \$1 million contribution to create or enhance apprenticeships in local high schools and colleges.¹²⁹

With respect to the scholarship program, Mr. Azagra Blazquez stated that Joint Applicants would be willing to contribute the \$1 million over a two-year period following the closing of this transaction.¹³⁰ This contribution would be in addition to any existing contributions committed to by the Joint Applicants and would not be recoverable in rates.¹³¹

With respect to the \$1 million to create or enhance apprenticeships for technical and professional positions for students in local high schools and colleges, Joint Applicants would be willing to use commercially reasonable efforts to ensure that such programs are made available

¹²⁹ Tr. 71.

¹³⁰ *Id.*

¹³¹ Tr. 72.

to high schools in an equitable manner.¹³² The contribution would be in addition to any existing contributions committed to by the Joint Applicants and would not be recoverable in rates.¹³³

No other party expressed an opinion on this change.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this additional commitment be approved.

g. Regulatory Commitment 3 -- Albuquerque Streetlighting

Regulatory Commitment 3 in the June 4 Stipulation requires the Joint Applicants to work with the City of Albuquerque to provide park streetlighting. Joint Applicants agree that if there is any failure with respect to that streetlighting, if PNM does not fix it within 24 hours, the City of Albuquerque can contract to fix the streetlighting and submit an invoice to PNM for the repairs.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

h. Regulatory Commitment 4 -- Albuquerque Airport Substation.

Regulatory Commitment 4 in the June 4 Stipulation requires the Joint Applicants to work with the City of Albuquerque to complete by July 1, 2022 the construction of a PNM-owned substation that will be a part of PNM's distribution system serving the southeast area of Albuquerque, including the Albuquerque International Sunport, as well as existing privately owned residences, businesses, and projected private development in this quadrant consistent with Joint Applicants' general obligations to prevent major interruptions of service as set out in 17.9.560 NMAC (2020).

¹³² Tr. 73.

¹³³ *Id.*

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

i. Regulatory Commitment 6 -- Minority- and Woman-Owned Business Procurement Program

Regulatory Commitment 6 in the June 4 Stipulation requires the Joint Applicants to work closely with the Attorney General to arrive at and initiate an effective Minority- and Woman-Owned Business Procurement Program within six months following closing of the Proposed Transaction. The goal of this program will be to increase the contract opportunities for minority- and woman-owned businesses in New Mexico in conjunction with PNM contracts to procure goods and services. The program will have three components: (i) Early Outreach (to maximize participation of minority- and woman-owned businesses in requests for proposals (RFPs)); (ii) RFP Weighting (to strongly consider the benefits of contracting with a minority- or woman-owned New Mexico business, along with price, experience, capability, timing and other factors); and (iii) Annual Review (to evaluate the success of the program) for a minimum of five years following closing of the Proposed Transaction. Each year for at least five years following such closing, the Joint Applicants commit to provide data from its Annual Review to the Attorney General and to other stakeholders that are Signatories to this Stipulation and will modify the program as needed based upon input from and discussions with the Attorney General and other stakeholders that are Signatories to this Stipulation.

NM AREA recommends that Staff be added to the parties effectuating this commitment.¹³⁴ The Joint Applicants do not appear to have a position on this change.

¹³⁴ Gorman (7/29/21), at 15.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved with the inclusion of NM AREA's proposal. The commitment should also include a requirement that the plans be filed with the Commission.

j. Regulatory Commitment 9 -- Local Energy Efficiency Procurement

Regulatory Commitment 9 of the June 4 Stipulation requires the Joint Applicants to work closely with stakeholders to have local New Mexico businesses manage PNM's energy efficiency programs. The Joint Applicants commit that within six months following closing of the Proposed Transaction, PNM will include in its RFPs for managing its energy efficiency programs weighting that considers the benefits of contracting with local New Mexican businesses, as well as price, experience, capability, and other relevant factors to maximize the participation of local businesses in the provision of these services.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

k. Regulatory Commitment 21 -- Terminations and Reductions of Wages or Benefits

In Regulatory Commitment 21 of the June 4 Stipulation, the Joint Applicants commit that there will be no involuntary terminations except for cause or performance (other than those associated with the planned closure of the San Juan Generating Station) and no reductions of wages or benefits to union or non-union employees for a minimum of three years following the closing of the Proposed Transaction.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

l. Regulatory Commitment 22 -- Collective Bargaining Agreement and Pension.

Regulatory Commitment 22 of the June 4 Stipulation requires the Joint Applicants to honor PNM's current collective bargaining agreement and will use good faith in any future collective bargaining agreement negotiation. Within six (6) months following closing of the Proposed Transaction, PNM will study the status of the pension fund for union employees to evaluate whether the pension fund is fully funded, and will work with the union to ensure that the pension fund remains fully funded.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

m. Regulatory Commitment 47 -- Renewable Resources Development

Regulatory Commitment 47 of the June 4 Stipulation provides as follows:

47. Renewable Resources Development. Avangrid commits to have one or more affiliates (other than PNM) work with the Navajo Nation toward the development of one or more renewable energy and/or energy storage projects on Navajo Nation land of no less than 200 MW within 2 years of the closing of the Proposed Transaction. Nothing in this section is intended to modify or interfere with any existing PNM request for proposal. Nothing in this section is intended to establish a preference by PNM for the selection of any such projects in any existing or future PNM competitive RFP process that requests resources to replace any existing PNM resources relied on by PNM to provide retail service to its New Mexico customers or to otherwise meet PNM's retail service needs or any preference by the Commission to approve any such projects if proposed in response to a competitive PNM RFP process.

No party objected to this provision. If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

**4. Financial benefits and improved PNM credit ratings, including
Regulatory Commitment 20 -- Extinguishment of Debt**

The Joint Applicants state that a general benefit of the Proposed Transaction will be the improvement of PNM's credit metrics, and ultimately, PNM's credit rating. In turn, customers will both save money due to PNM's lower cost of borrowing and benefit from PNM's greater access to needed capital for utility investments and operations. The Joint Applicants acknowledge that the amount of savings is not currently quantifiable with precision, but their financial expert, Ellen Lapson, CFA, estimates that PNM's customers may save an estimated \$21.5 million over ten years from a one-notch improvement in PNM's credit rating.¹³⁵

In more specific terms, Regulatory Commitment 20 of the June 4 Stipulation, Extinguishment of Debt, requires Avangrid, Inc. to extinguish all debt at PNMR, reducing it to zero within 90 days following the closing of the Proposed Transaction and maintaining it at zero going forward for as long as Avangrid, Inc. has an indirect ownership interest in PNMR unless authorized in advance by the Commission. Ms. Lapson states that the extinguishment of PNMR debt will improve PNMR's credit metrics and help improve PNM's financial flexibility, resilience and access to debt capital.¹³⁶

Other parties' witnesses, including the Attorney General's witnesses, questioned the financial benefit PNM would receive from the merger. Attorney General witness Scott Hempling said, in his April 2 testimony, that if Iberdrola, S.A./Avangrid, Inc. buys PNMR, PNM's sole source of equity will be Iberdrola, S.A. and Avangrid, Inc. PNM will be but one of hundreds of Iberdrola, S.A./Avangrid, Inc.'s businesses. Iberdrola, S.A./Avangrid, Inc.'s ability and willingness to inject equity into the New Mexico utilities will depend on two things: the financial health of Iberdrola, S.A./Avangrid, Inc., and the priority Iberdrola, S.A. and Avangrid,

¹³⁵ Joint Applicants Post-Hearing Brief, at 38.

¹³⁶ *Id.*, at 39.

Inc. place on New Mexico relative to its many other ventures. He said the financial health of Iberdrola, S.A. and Avangrid, Inc., in turn, will depend on the success or failure of those other business ventures.¹³⁷

Mr. Hempling said the transaction is not truly “extinguishing” the economic effects of PNMR’s debt, because the funds to do so will come either from new Iberdrola, S.A./Avangrid, Inc. debt, from Iberdrola, S.A./Avangrid, Inc.’s current funds or from new holding company equity. He said “the burden doesn’t disappear; it just moves to somewhere else in the corporate family -- thus reducing the family’s ability to support PNM.”¹³⁸

Attorney General witness Andrea Crane questioned the Joint Applicants’ and Ms. Lapson’s opinions. In her April 2, 2021 testimony, prior to the Stipulation, Ms. Crane said any benefit must be weighed against the addition of three new holding companies upstream of PNM, the fact that Avangrid, Inc. has significant business risk, and the risk associated with having an ultimate parent company that is a foreign multi-national conglomerate.

Ms. Crane said there is no guarantee that eliminating debt at PNMR will actually improve PNM’s credit rating or result in lower financing costs. She said the determination of a utility’s credit rating is a very complex exercise and credit ratings are generally impacted by many factors, the most important of which are probably general economic conditions and the overall level of interest rates. She also said it is possible that any benefit of removing debt at PNMR will be more than offset by PNM’s ownership by an international company with unregulated ventures. PNM will be unable to completely isolate itself from the risk associated with Avangrid, Inc. and Iberdrola, S.A..¹³⁹

¹³⁷ Hempling (4/2/21), at 42-43.

¹³⁸ Hempling (4/2/21), 61-62.

¹³⁹ Crane (4/2/21), at 19-20.

Ms. Crane agreed that the financial community believes that the structure and financial terms of the Proposed Transaction will be positive for PNMR and its subsidiaries. But she said the response from the ratings agencies regarding Avangrid, Inc.'s position post-merger is more tepid. She cited S&P's affirmation of Avangrid, Inc.'s and its subsidiaries' ratings on October 21, 2020, the day after the merger announcement, noting that the acquisition of PNMR would benefit Avangrid, Inc. by increasing its scale and the percentage of regulated operations (viewed by S&P as having the lowest business risk) on a consolidated basis. But she said S&P also made note of the significantly higher business risk it ascribed to Avangrid, Inc.'s unregulated business in renewable energy generation. S&P found that Avangrid, Inc.'s unregulated business exposes Avangrid, Inc. to "counterparty credit, volumetric, commodity, and additional operational risks," and it assessed Avangrid, Inc.'s overall financial risk profile as "significant." S&P also underscored the execution risks on the Iberdrola, S.A. groups' large offshore wind projects and noted that with the groups' "growth appetite and financial policy, we see rating upside as unlikely in the coming years."¹⁴⁰

In addition, Ms. Crane said that seven months prior to the merger announcement, on March 19, 2020, Moody's Research affirmed its ratings on Avangrid, Inc. but revised its outlook for Avangrid, Inc. from stable to negative due to the "potential that key financial ratios will remain depressed for several years, as the company relies more heavily on debt to finance its growth plans."¹⁴¹

Significantly, consistent with Ms. Crane's analysis, on July 21, several days before the start of the evidentiary hearings, Moody's downgraded Avangrid, Inc.'s credit rating and the

¹⁴⁰ *Id.*, at 21.

¹⁴¹ *Id.*

credit ratings of Avangrid, Inc.'s New York utilities. The downgrade was based, in large part, on the risk of Avangrid, Inc.'s non-utility businesses.¹⁴² (see Section VI.F.1.c below).

The Hearing Examiner finds that the Commission should be skeptical about the extent to which the Iberdrola, S.A./Avangrid, Inc. group will benefit PNM financially. There are pluses and minuses. Nevertheless, if the Commission decides to approve the Proposed Transaction in some form, it should also approve Regulatory Commitment 20.

5. Environmental benefits

a. Regulatory Commitment 43 -- Carbon Reduction Task Force

Regulatory Commitment 43 in the June 4 Stipulation provides for the creation of a Carbon Reduction Task Force:

43. Carbon Reduction Task Force. In recognition of the importance of meeting PNM's carbon reduction goals, the Joint Applicants will create a task force within one month following closing of the Proposed Transaction to include stakeholder representatives of environmental interests, clean energy industry representatives, consumer interests and state agencies (NMED, EMNRD, NM AG, NMPRC) ("PNM Carbon Reduction Task Force") to ensure that PNM will not only meet but exceed its zero carbon goals by achieving net zero emissions by or before 2040, and if feasible and otherwise in the public interest, 2035. PNM shall seek opportunities and apply for all available and feasible federal and private funding and grants to leverage outside funding sources to achieve carbon reduction goals, and report to the Carbon Reduction Task Force at each meeting. PNM shall have a dedicated full-time employee who will identify and with the assistance and support of PNM, apply for third party funding opportunities. Within 6 months following the creation of the PNM Carbon Reduction Task Force, and each six-month period thereafter until 2040 (or earlier depending upon when zero carbon goals are achieved), the Joint Applicants will cause PNM to present a workable step-by-step plan to exceed its carbon reduction goals ("Plan") to the PNM Carbon Reduction Task Force. The PNM Carbon Reduction Task Force will provide comments and suggestions to PNM with respect to its Plan and Joint Applicants will cause PNM to address each and every comment and suggestion and use all reasonable efforts to improve its Plan. In addition, PNM will work with stakeholders to craft reasonable and appropriate New Mexico legislation in 2022 that would create a market-based credit program to achieve

¹⁴² Moody's, "Rating Action: Moody's Downgrades Avangrid to Baa2; NYSEG and RGE to Baa1," July 20, 2021, attached to Lapson (7/29/21), as JA Exhibit EL-1.

reasonable and consistent progress in reducing emissions to meet the ETA's 2045 decarbonization requirements. The signatories reserve all positions on all such legislation. PNM will also report to the stakeholders the reduction in emissions resulting from the seasonal operations agreement by the joint owners of the Four Corners Power Plant for so long as PNM remains a joint owner.

NM AREA has two issues with this Commitment. First, Mr. Gorman states that NM AREA supports PNM in creating a task force to aid in its planning process regarding carbon reduction. He states that, if this is the intent of the commitment, any plan formulated by PNM and the task force should either be of part of the IRP planning processes and be open to all interested stakeholders, or be brought before the Commission for review and approval. If the task force is operating within PNM's planning process, and all recommendations of the task force would be brought before the Commission for review and approval, the Paragraph needs to be revised to make that clear. NM AREA opposes this Commitment if it is intended to create a Task Force that would make recommendations that PNM would adopt outside the jurisdiction of the Commission and without the input of other interested stakeholders.¹⁴³

Second, NM AREA takes issue with including legislative agendas in a stipulation. As a policy, NM AREA does not support future, undrafted, unseen legislation. NM AREA proposes the following language to be added to this section to ensure that this section is not read as endorsement by the Commission or other Signatories of future legislation:

The signatories reserve all positions on all such legislation, and acknowledge that this paragraph does not constitute regulatory endorsement of stakeholder actions and that any party may take an independent position including opposition to any legislation that might be proposed.¹⁴⁴

Ms. Reno states that the Commitment 43 (and Commitments 44 and 49) have worthy aspirational goals and address the interests of a particular Signatory to the Stipulation, but, if

¹⁴³ Gorman (7/16/21), at 39-40.

¹⁴⁴ Gorman (7/16/21), at 40.

approved as presented, they could possibly bind Bernalillo County to either certain legislative initiatives and/or additional ratepayer expenses.¹⁴⁵

In response to these concerns, Mr. Darnell states that the Joint Applicants agree that is not the intent that the Carbon Reduction Task Force would operate outside of the jurisdiction of the Commission or without the input of other stakeholders. He states that no such intent can fairly be read into the language of this provision and thus no change to this Commitment is required.

Mr. Darnell also states that the paragraph is not intended to foreclose any party from taking whatever position it chooses with respect to proposed legislation on a market-based program to achieve carbon emission reductions. Thus, he presumably agrees to NM AREA's proposed amendment.¹⁴⁶

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this Commitment and NM AREA's proposed amendment be approved -- with one addition and with one caveat. The Hearing Examiner recommends that the PNM Plan, the Task Force's comments and suggestions and PNM's response referenced in the Regulatory Commitment shall also be filed with the Commission. The PNM reports on emissions reductions resulting from the seasonal operations agreement by the FCPP owners should also be filed with the Commission. The caveat is the Hearing Examiner's concern about the inclusion in a stipulation (and presumably the adoption of a Commission final order approving the stipulation) of language providing for PNM to work with stakeholders to craft New Mexico legislation in 2022 that would create a market-based credit program to reduce

¹⁴⁵ Reno (7/16/21), at 19.

¹⁴⁶ Darnell (7/29/21), at 24.

emissions to meet the ETA's 2045 decarbonization requirements. The issue of whether to encourage in this Commitment the drafting of legislation to create a market-based credit program to reduce emissions to meet the ETA's 2045 decarbonization requirements is a policy issue that the Hearing Examiner finds should be left for the Commission to decide.

b. Regulatory Commitment 44 -- Compensation and Carbon Reduction Targets

Regulatory Commitment 44 in the June 4 Stipulation states as follows:

44. Compensation and Carbon Reduction Targets. The Joint Applicants agree that the carbon reduction goals set forth above are of preeminent importance. Accordingly the incentive compensation for all relevant PNM executives will include goals related to the achievement of PNM's 2040 carbon reduction targets (or earlier depending upon when zero carbon goals are achieved), including the PNM President, and senior executive officers (including Chief Financial Officer and Chief Operating Officer to the extent applicable) responsible for operations, planning, and procurement for power generation, and environmental compliance, as well as other executives that PNM's Board of Directors determine will have a reasonable and achievable impact on carbon reduction. All parties reserve all rights with respect to the prudence of any additional expenditures in conjunction with this provision.

NM AREA objects to the characterization of carbon reduction goals as being of "preeminent importance." Mr. Gorman states that the goals are important, but they do not supersede PNM's duty to provide reliable electric service at just and reasonable rates. He says elevating this factor over reliable and affordable service is contrary to the Public Utility Act and is not in the public interest. NM AREA, accordingly, is opposed to PNM providing incentive compensation related to achieving carbon reduction goals in isolation of all other utility duties, including providing reliable and affordable service. NM AREA does agree, however, to include carbon reduction as one of many items executive incentive compensation may be based on. Additionally, NM AREA believes it would be appropriate to condition incentive compensation on achieving any reliability and power quality standards as forth in the Commission's Final

Order in this case. Lastly, Mr. Gorman says that the commitment should make clear that all executive incentive compensation is borne by shareholders and will not be included in the PNM's cost of service.¹⁴⁷

Ms. Reno objects to the provision, stating that the additional compensation would be for incentives to achieve goals that are already statutorily mandated and have been in place for several years. She also states that the provision was not part of the Joint Application or a condition for the merger.¹⁴⁸

Mr. Darnell states that incentive compensation for relevant PNM executives will include goals related to the achievement of PNM's 2040 carbon reduction targets. He says the regulatory commitment does not require any increase in executive compensation; it only provides that achievement of the stated goals will be an element of incentive compensation. There will also be no impact to rates, since executive incentive compensation is not typically included in rates.¹⁴⁹

Sierra Club recommends that the commitment be modified to state that “[i]n decarbonizing its system, PNM must maximize its efforts to avoid emission leakage and ensure net reductions in GHG emissions to the atmosphere, by, for example, avoiding merely selling or transferring its interests in carbon-emitting resources as a means of reducing PNM's own emissions (unless the sale or transfer would result in a net decrease of GHG emissions into the atmosphere).”¹⁵⁰

The Joint Applicants argue there is no legal basis to require Sierra Club's modification. They state that Sierra Club's witness admitted on cross-examination that utility compliance with

¹⁴⁷ Gorman (7/16/21), at 40-41.

¹⁴⁸ Reno (7/16/21), at 19.

¹⁴⁹ Darnell (7/29/21), at 25.

¹⁵⁰ Sierra Club Initial Post-Hearing Brief, at 1.

the Energy Transition Act does not prohibit emissions leakage.¹⁵¹ They state that issues of environmental compliance are outside the authority of the Commission and are the province of agencies such as the EPA and the NMED.¹⁵²

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved with the following changes. The statement regarding the preeminence of carbon reduction goals should be deleted insofar as the stated preeminence is not supported by the Public Utility Act or the Renewable Energy Act.¹⁵³ The statement should be replaced with the prefatory language in Regulatory Commitment 42. The Commitment should make clear that the executive incentive compensation will be borne by shareholders and will not be included in the PNM's cost of service. The Sierra Club's

¹⁵¹ Tr. Vol. V (Fisher) at 1255:19-1256:22.

¹⁵² PNM Response Brief, at 45.

¹⁵³ Section 62-3-1(B) of the Public Utility Act states as follows:

B. It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.

NMSA 1978, §62-3-1(B).

Section 62-16-2(B) of the Renewable Energy Act states as follows:

B. The purposes of the Renewable Energy Act are to:

- (1) prescribe the amounts of renewable energy resources that public utilities shall include in their electric energy supply portfolios for sales to retail customers in New Mexico by prescribed dates;
- (2) allow public utilities to recover costs through the rate-making process incurred for procuring or generating renewable energy used to comply with the prescribed amount; and
- (3) protect public utilities and their ratepayers from renewable energy costs that are above a reasonable cost threshold.

NMSA 1978, §62-16-2(B).

modification should also be adopted but only to the extent that it forms a goal for the incentive compensation awards for senior PNM executives.

c. Regulatory Commitment 45 -- Contract Impacts on Emissions

Regulatory Commitment 45 of the June 4 Stipulation requires, for the five calendar years following closing of the Proposed Transaction, that PNM will file a report with the Commission identifying any material emissions impact resulting from any new contracts signed by PNM during each such calendar year. Each such report will be filed as part of PNM's Rule 17.3.510 Annual Report.

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

d. Regulatory Commitment 46 -- Transportation Electrification

Regulatory Commitment 46 of the June 4 Stipulation provides as follows:

46. Transportation Electrification. Joint Applicants commit that PNM will triple its proposed transportation electrification plan budget that would be included in its next transportation electrification plan that will be filed with the Commission, subject to Commission review and approval. The dedicated PNM employee responsible for seeking third-party funding referenced in Section 43 above will also be responsible for seeking grants and funds for transportation electrification to assist PNM in the build-out of transportation electrification, including low-income offerings, which will reduce amounts that PNM may seek to reflect in rates. All parties to this stipulation reserve the right to challenge the increase of this proposed transportation electrification plan budget in PNM's transportation electrification plan filing.

NM AREA recommends that that the commitment be amended to include an annual individual customer rate cap that is consistent with the rate cap in PNM's pending transportation electrification case, Docket No. 20-0237-UT. Mr. Gorman states that this is a reasonable and necessary customer protection with the proposed tripling of the budget for these programs.¹⁵⁴

¹⁵⁴ Gorman (7/16/21), at 41-42.

Mr. Darnell explains that the commitment includes a proposed increase from the current funding proposals for TEP investments and customer rate rebates (subject to Commission approval) to \$25 million to expand TEP investments and infrastructure. He states that NM AREA proposes that a customer rate cap of \$10,000.00 or as otherwise set by the Commission be imposed consistent with the rate cap in PNM's pending transportation electrification case in Docket No. 20-00237-UT. The Joint Applicants agree that it is reasonable to clarify that Regulatory Commitment 46 will be subject to any individual rate cap for TEP programs set by the Commission.¹⁵⁵

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved with the modification recommended by NM AREA.

e. Regulatory Commitment 48 -- PNM Environmental Studies

Regulatory Commitment 48 in the June 4 Stipulation provides as follows:

48. PNM Environmental Studies. Within one year following closing of the Proposed Transaction, PNM will submit to the Commission and stakeholders the following studies regarding: (a) the infrastructure requirements resulting from projected electric vehicle demands; (b) efforts needed to decarbonize commercial buildings in its service territory by 2040; and (c) efforts needed to reach 1.5% annual incremental energy efficiency savings in its service territory. PNM will not request rate recovery from ratepayers for the cost of the studies.

No party objected to this provision. If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

f. Regulatory Commitment 49 -- Chief Environmental Officer

Regulatory Commitment 49 of the June 4 Stipulation provides as follows:

49. Chief Environmental Officer. By no later than December 1, 2022, PNM will name a Chief Environmental Officer with significant environmental and

¹⁵⁵ Darnell (7/29/21), at 12.

climate change experience responsible for meeting PNM's carbon reduction goals. The Chief Environmental Officer will report directly to the PNM President and will present (no less than once each year) to the PNM Board of Directors on PNM's carbon reduction plans and progress. All parties reserve all rights with respect to the prudence of any executive compensation with respect to this new position.

Bernalillo County again expresses concern that this could lead to higher rates.¹⁵⁶

Mr. Darnell states that the commitment provides that all parties reserve their rights with respect to the prudence of any executive compensation for this position, so the County is free to take whatever position it wishes with respect to including the associated costs in rates.¹⁵⁷

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved.

g. Regulatory Commitment 51 -- Solar Direct Program

Regulatory Commitment 51 of the June 4 Stipulation provides as follows:

51. Solar Direct Program. The Joint Applicants commit that, within six months following the closing of the Proposed Transaction, they will work with stakeholders, including large users and governmental customers to develop a second renewable energy resource and participation tranche for the Solar Direct program to be filed within one year of closing.

NM AREA recommends that the scope of this Paragraph be expanded to include all Voluntary Renewable Programs. In addition, NM AREA recommends the following additional language for this Paragraph:

The Joint Applicants also commit to expand voluntary renewable energy programs and green tariffs, subject to Commission approval, as a means of promoting economic development.¹⁵⁸

¹⁵⁶ Reno (7/16/21), at 19.

¹⁵⁷ Darnell (7/29/21), at 25-26.

¹⁵⁸ Gorman (7/16/21), at 42.

Mr. Darnell states that the Joint Applicants agree that PNM will *reasonably* expand all of its voluntary renewable energy programs, subject to Commission approval in applicable renewable energy proceedings.¹⁵⁹

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved with the modification proposed by NM AREA.

h. Regulatory Commitment 56 -- San Juan Decommissioning

Regulatory Commitment 56 of the June 4 Stipulation provides as follows:

56. San Juan Decommissioning

PNM will use its good faith efforts to work with the San Juan Generating Station (“SJGS”) owners and former SJGS owners who have an obligation to participate in decommissioning the SJGS to identify and present feasible options for commercially reasonable actions, available under the terms of the SJGS contracts and consistent with the established decommissioning agreement, that would allow decommissioning options, including decommissioning, demolition and site restoration of the SJGS site to standards applicable to ongoing economic development, commercial and industrial uses of the SJGS plant site, at a cost comparable to the lowest reasonable cost alternative identified in the owners’ most recent decommissioning study that applies a whole-life cost analysis.

This is a vague commitment that is likely unenforceable in any meaningful way. But, the parties are satisfied with it and if the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that the provision be approved.

6. Additional benefits

a. Regulatory Commitment 42 -- Regional Transmission Organization

Regulatory Commitment 42 of the June 4 Stipulation states that the Joint Applicants shall use all reasonable efforts to find or participate in the development of a viable RTO that it can

¹⁵⁹ Darnell (7/29/21), at 13.

join by January 1, 2030, or as soon thereafter as possible, subject to Commission review and approval:

42. Regional Transmission Organization. In recognition of the potential benefits to New Mexico and PNM's customers of PNM joining a Regional Transmission Organization or Independent System Operator ("RTO"), including the implementation of open and competitive electric generation markets, elimination of barriers to market entry and preclusion of control of bottleneck electric transmission facilities in the provision of retail and wholesale electric service, Joint Applicants shall use all reasonable efforts to find or participate in the development of a viable RTO that it can join by January 1, 2030, or as soon thereafter as possible, subject to Commission review and approval. As soon as possible following the completion of the merger, but not later than January 1, 2022, PNM will organize and convene an RTO stakeholder initiative, to include representatives of interested organizations, to develop and initiate the process by which PNM will explore and participate in the development of an RTO. PNM will communicate the progress of its exploration and development activities on a regular basis to the members of the stakeholder initiative and the Utility Division Staff. PNM will also participate in and report on any other organized efforts to form an RTO that it could potentially join. PNM will work with stakeholders, including the NM AG, to determine if joining the RTO is in the best interests of customers and the State. The Commission shall make the final determination as to whether joining an RTO is in the public interest, including the interests of customers and the State. Participation in the Western EIM, EDAM, or other similar market would not constitute participation in an RTO.

Mr. Gorman states that NM AREA supports PNM looking into joining an RTO, subject to Commission approval. But he said NM AREA is concerned that the commitment will be used in future litigation to require PNM to join an RTO at all costs, even if it is not beneficial to customers in the long term. NM AREA suggests that the last sentence of this paragraph be deleted and that a sentence stating that all parties reserve their rights to support or oppose PNM joining an RTO in the future be added. He also recommends that the Commission Staff, all interested stakeholders, and the Attorney General must be included in any RTO stakeholder initiative.¹⁶⁰

¹⁶⁰ Gorman (7/16/21), at 38-39.

Mr. Darnell states that the Joint Applicants intend that all interested stakeholders, including the Commission Staff and the Attorney General, will be invited to participate in any RTO stakeholder process, but do not believe this can be a mandate on others to participate. He also says that the last sentence in Regulatory Commitment No. 42 is factually accurate, and there is no need to delete the sentence. But Mr. Darnell states that the Joint Applicants agree that any party may support or oppose PNM jointing an RTO, and that not participating in the process does not foreclose any party's position on the issue in the future.¹⁶¹

Ms. Reno recommends that the Commission, or a neutral organization under its supervision, lead the development of the RTO. She states that this commitment, as written, would put PNM in control over the development of a new market that would exclude other regulated utilities. PNM would be free to develop market rules and protocols that could be advantageous to PNM and its affiliates.¹⁶²

Mr. Darnell states that the Joint Applicants want the Commission and its Utility Division Staff to participate in discussions and activities relating to the development of an RTO, but such development has never been led by one state regulator as opposed to all relevant stakeholders. If one state regulator runs the development of the RTO, it may not be developed with the breadth and scope that may be required to make it successful.¹⁶³

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that this provision be approved. The Hearing Examiner recommends that NMPRC Utility Division Staff and the Attorney General should be included in

¹⁶¹ Kump (7/29/21), at 11-12; Fridley (7/29/21), at 33-34.

¹⁶² Reno (7/16/21), at 18.

¹⁶³ Kump (7/29/21), at 12-13.

the RTO stakeholder initiative. The Hearing Examiner also recommends that the following sentence be added to the end of the commitment: “Any party may support or oppose PNM joining an RTO, and their failure to participate in the RTO planning process will not foreclose any party’s position on the issue in the future.”

b. Regulatory Commitment 50 -- Transmission Plan

Regulatory Commitment 50 of the June 4 Stipulation provides for a Transmission Plan to ensure reliability for the system’s future transmission needs. It requires PNM, within one year following closing of the Proposed Transaction, to develop and complete a 20-year long-term transmission plan for PNM’s transmission system, which PNM will subsequently update and include in all future Integrated Resource Plans (IRPs) filed with the Commission. Based on the most recently available forecasted future system conditions, the plan will identify the expected transmission needs of PNM to support the Most Cost Effective Portfolio(s) of its IRP and the year in which PNM projects the transmission need might be most cost-effectively met. It will also identify each reasonable alternative available to PNM to meet transmission needs including transmission projects that reasonably could be pursued by PNM itself, and publicly identifiable transmission projects known to PNM that could be pursued with other electric utilities in the region or merchant project developers. The plan is required to include the following: (a) PNM’s publicly disclosable existing transmission capabilities, and projected future needs during the planning period, for facilities of 115 kilovolts and above, including associated substations and terminal facilities; (b) a description of all new transmission lines and related facilities that are reasonably projected to be placed into service during the action plan period; (c) a description of each transmission line’s length and location, estimated in-service date, injection capacity,

estimated costs, terminal points, and voltage and MW rating; and (d) a report on coordination with other utilities within and outside of New Mexico regarding transmission planning.

Regulatory Commitment 50 was relatively non-controversial. NM AREA recommends a slight change to the language to more clearly spell out how the transmission plan will be handled in subsequent IRP dockets. The proposed language reads as follows:

In each IRP, PNM shall update the Transmission Plan. PNM shall also include, and separately identify the results of any feasible scenario modeling requested by the Carbon Reduction Task Force with each updated Transmission Plan.¹⁶⁴

The Joint Applicants did not respond to NM AREA's proposal in their rebuttal testimonies.

Nevertheless, if the Commission finds that the Proposed Transaction should be approved in some form, the Hearing Examiner finds that NM AREA's recommended addition is reasonable and should be adopted.

c. Regulatory Commitment 10 -- Diversity of PNM Management Team

Regulatory Commitment 10 of the June 4 Stipulation requires the Joint Applicants, within six months following closing of the Proposed Transaction, to implement a new program for PNM in consultation with the Attorney General and the other Signatories to the Stipulation to increase diversity on the PNM management team (Executives, Vice-Presidents, and Directors). Among other considerations such as qualifications, capabilities, and credentials, the Joint Applicants commit that diversity (gender, race, ethnicity, etc.) will be a key priority for management hiring efforts at PNM. Joint Applicants commit to report annually on the progress and success of this program for five years. During the five-year reporting period, in any given

¹⁶⁴ Gorman (7/16/21), at 42.

year in which management diversity is reduced by more than 10% from the prior year, the Joint Applicants commit to contribute \$250,000 to designated scholarship(s).

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends that the provision be approved.

d. Regulatory Commitments 14 and 17 -- Avangrid, Inc. Controlling Ownership Interest & Albuquerque headquarters commitment

Regulatory Commitment 14 of the June 4 Stipulation requires Avangrid, Inc. to maintain an indirect controlling ownership interest in PNM for not less than ten years following the closing of the Proposed Transaction. One of the requirements in Regulatory Commitment 17 is that PNM's headquarters will remain in Albuquerque, New Mexico for so long as Avangrid, Inc. owns PNM.

C. Whether the Commission's jurisdiction will be preserved

Regulatory Commitment 15 of the June 4 Stipulation "Commission Jurisdiction" raised questions for many about the Commission's jurisdiction over Iberdrola, S.A., the ultimate owner of the Avangrid, Inc. group of companies involved in the Proposed Transaction:

15. **Commission Jurisdiction.** The Commission jurisdiction over PNM remains and will not be adversely affected in any manner by the Proposed Transaction, as PNM will continue to abide and to be bound by existing applicable NMPRC rules, regulations, and orders. Additionally, Avangrid agrees, and Iberdrola authorizes Avangrid to represent that Iberdrola agrees, to submit to New Mexico jurisdiction with respect to the enforceability of these regulatory commitments and the services each may provide in New Mexico and to PNM.

On May 24, 2021, Bernalillo County and ABCWUA filed a Motion for Joinder of Iberdrola, S.A. as a necessary party. The Joint Motion asked that Iberdrola, S.A. be included as a party in the proceeding pursuant to Rule 1-019 NMRA and the Commission's previous cases that recognize the Commission's authority to designate holding companies as subject to Commission jurisdiction. Bernalillo County and ABCWUA said Iberdrola, S.A. would become one of several

“upstream” holding companies of PNMR following the acquisition and the parent company of Avangrid, Inc.. The Joint Movants contended that Iberdrola, S.A.’s participation is needed to enable the Commission to fashion an order that provides complete relief for the claims made in the case. They also cited Iberdrola, S.A.’s attempts to avoid the jurisdiction of the courts in Maine, where Iberdrola, S.A. had not agreed to be subject to the state’s jurisdiction in regard to the actions of its indirect subsidiary Central Maine Power Company.

After considering the Joint Applicants’ response filed on May 27, 2021 opposing the Joint Motion, the Hearing Examiner granted the Motion for Joinder on June 8, 2021.

The issue now is how to amend the Stipulation to reflect the joinder of Iberdrola, S.A.

NM AREA witness Michael Gorman testified that language should be added to Regulatory Commitment 15 to make the Stipulation consistent with the findings and conclusions in the Hearing Examiner’s June 8 Order Granting Joint Motion for Joinder of Iberdrola, S.A. for Just Adjudication and to ensure that the Commission has the jurisdiction it needs in future cases to protect customers. He states that the language is appropriate given that Iberdrola, S.A. will have 81.5% ownership of PNM though Avangrid, Inc.:

Iberdrola agrees that it is subject to the ongoing jurisdiction of the Commission in all subsequent regulatory matters related to actions that directly involve PNM for as long as Iberdrola, any affiliated interest, subsidiary, or other holding company owns PNM. The Commission's jurisdiction includes, but is not limited to, the Commission's ability to subpoena, and require the attendance of any employee or agent of Iberdrola or its affiliated interests, at any proceeding before the Commission.¹⁶⁵

Bernalillo County witness, Maureen Reno, recommends similar language:

Iberdrola shall be subject to the full jurisdiction of the Commission for the entire duration of its ownership of PNM, to include direct or indirect ownership by subsidiaries, affiliates, and holding companies. The Commission’s jurisdiction includes, but is not limited to, the authority to subpoena and compel the

¹⁶⁵ Gorman (7/16/21), at 16-17.

attendance and testimony of the directors, officers, employees, and agents of Iberdrola and any subsidiaries, affiliates, and holding companies.¹⁶⁶

Mr. Gorman recommends that Iberdrola, S.A. also be added to the footnote on page one of the Stipulation to ensure that any reference in the Stipulation to the Joint Applicants also includes Iberdrola, S.A..

Public Service Company of New Mexico (“PNM”), PNM Resources, Inc. (“PNMR”), NM Green Holdings, Inc., Avangrid Networks, Inc. (“Networks”), Avangrid, Inc. (“Avangrid”), and Iberdrola, SA, are collectively referred to as Joint Applicants.¹⁶⁷

Mr. Azagra Blazquez, whose November 23, 2020 testimony identified him as the Chief Development Officer and member of the Executive Committee of Iberdrola, S.A, testified in his July 29 rebuttal testimony that “Iberdrola hereby commits that it will be subject to the Commission’s jurisdiction for as long as it owns PNM.”¹⁶⁸

The Hearing Examiner agrees generally with the proposed modifications. But the language proposed by the parties omits the agreement originally included in the June 4 Stipulation to submit to New Mexico jurisdiction generally (as opposed to submitting only to the Commission’s jurisdiction) with respect to the enforceability of the regulatory commitments and the services each may provide in New Mexico and to PNM. That broader commitment should be retained in the final language.

Furthermore, the discussion about jurisdiction with respect to Iberdrola, S.A. highlights the advisability of providing for jurisdiction over the other Joint Applicants with respect to the enforceability of the regulatory commitments and the services each may provide in New Mexico

¹⁶⁶ Reno (7/16/21), at 7-8.

¹⁶⁷ Id., at 17.

¹⁶⁸ Azagra Blazquez (7/16/21), at 7.

and to PNM. The Hearing Examiner, accordingly, has added language to Regulatory Commitment 15 to accomplish this purpose.

In addition, the Hearing Examiner finds that to legally bind Iberdrola, S.A. to the commitments in the Stipulation, Iberdrola, S.A. needs to join the Stipulation as a signatory. A properly authorized commitment to the promises in the Stipulation was an underlying reason for the Hearing Examiner's June 8 finding that Iberdrola, S.A. should be joined as a party. The Hearing Examiner, accordingly, adds Iberdrola, S.A. to the list of the Joint Applicants on the signature page that are being bound by an authorized signature.

D. Whether quality of service will be diminished

1. Avangrid Networks, Inc.'s utilities' customer dissatisfaction, penalties and disallowances for poor service quality and customer service

Avangrid Networks, Inc. owns four electrical utilities in the Northeast -- Central Maine Power Company (CMP), New York State Electric and Gas Company (NYSEG) , Rochester Gas & Electric Company (RG&E) and United Illuminating Company. J.D. Power's nationwide 2020 Electric Utility Customer Satisfaction Studies ranked Central Maine Power last -- 128 among the 128 investor-owned electric utilities surveyed for residential customer satisfaction.¹⁶⁹ NYSEG ranked 17th of the 18 large electric utilities surveyed in the East region. United Illuminating Company ranked 11th among the 12 midsize electric utilities surveyed in the East region. Only RG&E performed well. It ranked first among the 12 midsize electric utilities surveyed in the East region.

As noted earlier, the three electric utilities were assessed penalties and disallowances of approximately \$25 million between January 2020 and May 11, 2021 related to quality of service

¹⁶⁹ Rochester Gas & Electric Company ranked 1st among the 12 midsize electric utilities surveyed in the East region, but the United Illuminating Company ranked 11th in that group. New York State Electric and Gas Company ranked 17th of the 18 large electric utilities surveyed in the East region. *See* Evans (4/2/21), at 19.

issues. Moreover, the amounts assessed against the electric utilities over the past five years totaled \$63.1 million.

Avangrid, Inc. Electric Utilities	Penalties & Negative Revenue Adjustments (2016-2020)¹⁷⁰
New York State Electric and Gas Company (NY)	\$32,817,000
Central Maine Power Company (ME)	\$15,579,582
Rochester Gas & Electric Company (NY)	\$10,530,000
United Illuminating Company (CT)	\$ 3,379,755
NERC violations (Central Maine Power, New York State Electric and Gas Company, and Rochester Gas & Electric Company)	\$810,000
Total	\$63,116,337

The amounts above include negative revenue adjustments of \$3.5 million, \$7.0 million and \$7.0 million for NYSEG for missing service reliability metrics for 2018, 2019 and 2020 and penalties of \$1.1 million, \$9.0 million and \$2 million in 2017, 2019 and 2020 for violations of its emergency response plan during storms in those years. RG&E was penalized \$2.8 million and \$1.5 million for violations of its emergency response plan during the 2017 and 2019 storms.¹⁷¹

The 2019 penalties for NYSEG were largely the result of NYSEG maintaining inadequate personnel. The New York Public Service Commission found that NYSEG had less than the required number of personnel to assess storm damage and perform required functions to assist life support equipment (LSE) customers.¹⁷² The LSE violations included failures to contact

¹⁷⁰ Commission Exh. 6, Joint Applicants' Response to Order Regarding Avangrid Service Quality Issues and Management Audits, May 18, 2021, at JA Exhibits May 11 Order 1A, 1B & 1C; Kump (6/18/21), at 37-38.

¹⁷¹ Id., at JA Exhibit May 11 Order 1B.

¹⁷² 16 NYCRR § 105.4(b) (9) defines Life Support Equipment Customers as those customers who require electrically operated machinery to sustain basic life functions. This includes: (designated) electrically operated medical equipment, prescribed by a qualified physician, to be used on a continuous basis, or as circumstances require, as specified by the physician to avoid the loss of life or serious medical complications requiring immediate hospitalization.

The following is the list of Life Support Equipment:
 -- Aspirator/Suction Machine

(Cont'd on next page)

all LSE customers within 24 hours, failure to perform site visit follow ups, failure to perform multiple attempts to reach affected LSE customers not contacted during the first round of calls, failure to identify 190 LSE customers impacted by Winter Storm Riley, and failing to contact LSE customers in advance of Winter Storm Quinn.¹⁷³

NYSEG also disseminated inaccurate estimated times of restoration and issued untimely press releases. The Commission described the importance of Estimated Times of Restoration (ETRs), the impacts of inaccurate ETRs and the loss of trust experienced by customers and municipalities in NYSEG's ETRs:

An Estimated Time of Restoration (or ETR) is the approximate date and time an electric utility expects service will be restored after a power outage. Customers depend on ETRs to make health and safety decisions, including determining the need for alternative accommodations, ensuring adequate resources and supplies are available during extended outages, and addressing any medical needs. Further, municipalities rely on ETRs to plan properly for the care and safety of their constituents and protection of property. To be useful and informative, the ETRs must be timely, accurate, and made widely accessible. An inaccurate ETR does not benefit the customers or municipalities and, taken to the extreme, can lead to personal injury or even death. Therefore, an ETR must be accurate to satisfy the intent of a utility [Emergency Response Plan].

The [Department of Public Service] Report found that for the Winter Storms Riley and Quinn, the accuracy of the ETRs provided by Con Edison and NYSEG were unsatisfactory. Further, NYSEG continued to provide an inaccurate ETR for the May Thunderstorm event. Both customers and governmental entities expressed frustration and confusion over inaccurate and frequently changing ETRs, and many reported they lost trust in the ETRs provided by Con Edison and NYSEG. This result is not acceptable -- customer and municipal decisions are

-- Feeding Tube
-- Home Dialysis Machine
-- Oxygen Concentrator (24-hour Oxygen)
-- Ventricular Assist Device (VAD, LVAD, RVAD, BIVAD)
-- Ventilator
-- Additional devices that may qualify as life-support equipment as certified by a medical professional stating that any unplanned failure of this equipment due to an electrical outage would result in a predictable and immediate threat to the patient.

¹⁷³ Order Adopting Terms of Joint Proposal, Case Nos. 19-E-0105 and 19-E-0106, February 6, 2020, at fn 7.
<http://documents.dps.ny.gov/search/Home/ViewDoc/Find?id=%7B36961302-9A33-4314-9136-BDF742830DB7%7D&ext=pdf> and

predicated on accurate ETRs. An uneducated decision resulting from bad or stale utility information can have detrimental results.¹⁷⁴

RG&E's violations included issuing untimely press releases and failing to make multiple attempts to reach affected LSE customers not contacted during the first round of calls.¹⁷⁵

The New York Commission described the 2019 penalties as the largest ever in New York State for a utility failing to follow procedures related to an emergency response.¹⁷⁶

Central Maine Power Company's negative revenue adjustment of \$9.9 million for its imprudent customer service and imprudent implementation of a new billing system in 2017 is discussed in more detail in Section VI.D.3 below. Central Maine Power Company's record also includes a \$500,000 civil penalty for illegal winter customer disconnection notices, the maximum penalty allowed under Maine law.¹⁷⁷

In addition, Avangrid, Inc.'s Maine and New York electric subsidiaries violated North American Electric Reliability Corporation (NERC) requirements for reliability assessments and analyses in 2017 (NYSEG and RG&E), in 2019 (Central Maine Power Company twice) and in 2020 (Central Maine Power Company). They paid a total of \$810,000 in fines.¹⁷⁸ Avangrid, Inc. described the causes of the violations as "lack of effective management oversight, including insufficient training."¹⁷⁹

¹⁷⁴ Order Instituting Proceedings and to Show Cause, Case Nos. 19-E-0105 and 19-E-0106, April 18, 2019, at 13-14 (Emphasis added).

¹⁷⁵ Id.

¹⁷⁶ Id., at fn 18.

¹⁷⁷ Commission Exh. 6, Joint Applicants' Response to Order Regarding Avangrid Service Quality Issues and Management Audits, May 18, 2021, at JA Exhibits May 11 Order 1A.

¹⁷⁸ Commission Exh. 6, Joint Applicants' Response to Order Regarding Avangrid Service Quality Issues and Management Audits, May 18, 2021, at JA Exhibits May 11 Order 1C.

¹⁷⁹ Tr. 371-374, *citing* Exhibit R-NEE 9.

Avangrid Networks, Inc.'s four natural gas utilities were assessed \$2.5 million in mostly pipeline safety penalties over the same five-year period.

Avangrid, Inc. Natural Gas Utilities	Penalties (2016-2020) ¹⁸⁰
Connecticut Natural Gas Corporation (CT)	\$1,710,000
Southern Connecticut Gas Company (CT)	\$425,000
Berkshire Gas Company (MA)	\$285,000
Maine Natural Gas Company (ME)	\$90,500
Total	\$2,510,500

2. Legislation in Maine to replace Central Maine Power Company

On June 30, 2021, the Maine legislature passed a bill, L.D. 1708, which provided for a statutory referendum to be placed on the November 2021 ballot to create a nonprofit, privately operated utility, Pine Tree Power Company, governed by a board of directors elected by Maine voters to replace Central Maine Power Company. The purpose was to focus on delivering reliable, affordable electricity and meeting the State's energy independence and Internet connectivity goals. The bill also provided for the Maine PUC to require the sale of the utility if the commission determines that the utility has, within the previous 5 years, been found to have met two or more of the following criteria for unfitness:

1. Customer satisfaction. Repeatedly been rated in the lowest decile of utilities of a similar size for customer satisfaction on a reputable national survey of utility business or retail customers;

2. Reliability. Repeatedly reported reliability, with or without major event days, in the lowest decile of utilities of a similar size in the country; and

¹⁸⁰ Commission Exh. 6, Joint Applicants' Response to Order Regarding Avangrid Service Quality Issues and Management Audits, May 18, 2021, at JA Exhibits May 11 Order 1A.

3. Cost. Repeatedly charged its customers residential delivery rates in the highest decile among utilities of a similar size in the country.¹⁸¹

On July 13, 2021, Maine Governor Janet Mills vetoed L.D. 1708. She described Central Maine Power Company's performance in that state as "abysmal," but she stated that the legislation was hastily drafted and amended without robust public participation:

It may well be that the time has come for the people of the State of Maine to retake control over the assets on which they depend for the lifeblood of our communities, that is, our electric transmission and distribution services. And there may be a way to create a utility with a professional governing board that is clearly eligible to issue low-interest, tax-exempt bonds that would save ratepayers money, achieve better connectivity with solar and other renewables, and further the climate goals of this Administration. . . . But L.D. 1708, hastily drafted and hastily amended in recent weeks without robust public participation, is a patchwork of political promises rather than a methodical reformation of Maine's complicated electrical transmission and distribution system.¹⁸²

3. Billing and customer service issues in Maine

Central Maine Power Company (CMP) implemented a new billing system called SmartCare in late October 2017. The Maine PUC found, in separate, parallel proceedings that CMP's implementation of the system and its customer service response to the billing issues resulting from the implementation were imprudent.

In an Order issued on February 26, 2020 after a forensic audit of the billing system, the Maine PUC found that the Company's metering and billing systems were accurately measuring and billing customer service usage but that flaws in the implementation of the billing system resulted in defects that affected tens of thousands of customers who experienced delayed bills or bill errors:

The Commission's investigation of CMP's metering and billing practices is, in many ways, without precedent. The Commission has not in recent history—and

¹⁸¹ See Procedural Order for Proceedings Addressing Contested Stipulation, May 28, 2021, Attachment 2.

¹⁸² Sandberg (7/16/21), at 69 (quotation from link on lines 3-6).

probably never before—seen complaints against a utility reach the numbers they have here, nor seen the kind of public skepticism of customers’ utility bills that has been raised against CMP in the last two years. The unusual circumstances that created this skepticism—record-high electricity usage and experience with an unfamiliar and error-prone software program—demanded a regulatory response.¹⁸³

The Commission found that the defects resulting from the imprudence were compounded by a severe windstorm and power outage occurring in late October, an 18% rate increase in January 2018 and two weeks of unusually cold temperatures in late December 2017 through early January 2018 leading to high electricity use among customers. The Commission, nevertheless, found that numerous billing defects and errors affected CMP’s customers and that the Company’s management did not reasonably manage its implementation of SmartCare and its customer service during the post-go-live period.¹⁸⁴

The Commission found that the combination of CMP’s relaxation of testing standards, deviation from standard testing methodologies and implementation-tracking practices, and insufficient resources leading up to go-live, especially at implementation, was imprudent, that the imprudence contributed to delays in addressing defects and caused customer confusion and customer distrust of the Company and its billing system, which manifested in complaints customers brought to the Commission’s Consumer Assistance and Safety Division and in testimony customers presented at the three public-witness hearings:¹⁸⁵

Prior to going live with SmartCare, CMP compressed the schedule for critical testing of the software. Instead of running different types of tests in a serial fashion—one after the other, as they had originally planned—CMP opted to run critical testing in parallel, or concurrently with one another.

CMP also, a few months prior to go-live, contradicted its software integrator in finding that the overall system was essentially ready for go-live, where the

¹⁸³ Order, Maine Public Utilities Commission, Docket No. 2018-00194, Feb. 26, 2021, at 2.

¹⁸⁴ *Id.*, at 54.

¹⁸⁵ *Id.*, at 71.

software integrator had recently identified critical ongoing, open issues with the software that required attention, and gave the project a red-light. Also, close to go-live, CMP relaxed its standards for go-live-readiness. Liberty and the OPA's consultant, Berry Dunn, criticized these decisions.

These facts, and others, lead the Commission to find that CMP's implementation of SmartCare was imprudent. By "imprudent," we mean that CMP did not act under a "course of conduct that a capably managed utility would have followed in light of existing and reasonably knowable circumstances."¹⁸⁶

The Commission found that, by February 2020, most of the defects had been corrected, but, in response to the imprudence, the Commission required the Company to engage a third party to conduct targeted testing of SmartCare and remedy the remaining defects under third-party oversight; report to the Commission monthly on the status of closing out open defects in SmartCare; and submit a comprehensive plan for managing the ongoing maintenance of the SmartCare system. It ordered the Company's shareholders to bear the costs of the work.¹⁸⁷

¹⁸⁶ Id., at 3-4.

¹⁸⁷ Id., at 1. The Commission ordered the following:

1. That CMP shall, within 45 days of this order, submit for the review of the Commission Staff and the Office of the Public Advocate a draft request for proposals (RFP) for the selection of an independent inspector to conduct additional, targeted testing of SmartCare, and, as soon as practicable but no later than 75 days after concluding that draft-review process, submit its recommended independent inspector to the Commission for review and approval;
2. That, due to the Commission's finding of imprudence, the work of the independent inspector shall be paid for by CMP and not recovered from ratepayers;
3. That CMP shall, within 30 days of this order, file with the Commission its plan for resolving all outstanding customer-facing defects, and file with the Commission a status report monthly thereafter until all such defects are resolved;
4. That CMP shall, within 30 days of this order, file with the Commission its comprehensive SmartCare maintenance plan (as described in the body of this order), and file with the Commission a status report quarterly thereafter until further notice from the Commission;
5. That CMP shall complete its meter firmware upgrade and meter replacements to resolve the issue of anomalous GE I-210+c meters no later than March 31, 2020, absent good cause for the delay;
6. That CMP shall, within 45 days of this order, file a report (as detailed in the body of this order) explaining what would be required to change SmartCare to allow for rounding in lieu of truncation when prorating;

(Cont'd on next page)

7. That CMP shall, within 30 days of this order, return to customers negatively affected by Defect #5667/5884 when incorrectly applied funds were removed from their account, through no fault of their own, the dollar amount that was removed from their account by way of a credit to their utility bill, and, once completed, file a letter in the docket informing the Commission that this task has been completed. Any waiver of CMP's terms and conditions required to permit this refund is hereby granted;

8. That CMP shall, within 60 days of this order, ensure that customers affected by Defect #5302 are on the most advantageous rate or have meter change-outs as needed to support the customers' chosen billing rate, and, once completed, file a letter in the docket informing the Commission that this task has been completed;

9. That CMP shall, within 60 days of this order, refund to customers affected by meter over-registration anomaly amounts overbilled as identified in CMP's analysis, and, once completed, file a letter in the docket informing the Commission that this task has been completed;

10. That, in CMP's next Annual Compliance Filing, CMP's rates shall be adjusted so that the general body of ratepayers do not pay for amounts (as determined in CMP's analysis) that were under-billed as a result of meter-registration anomalies;

11. That, CMP shall, within 30 days of this order, provide the CASD with contact information for customers' that were referred by the CASD to CMP's high-bill resolution team. This list should be broken down by customers whom the Company was unable to reach and those whom the Company was able to reach but for whom CMP was not able to resolve the customer's high-bill concern;

12. That, in conjunction with Docket No. 2018-00194, the Hearing Examiner shall provide an opportunity for parties to file comments and reply comments on the apportionment of costs for Liberty's audit prior to the Commission's deciding that question;

13. That CMP shall establish an Independent Electricity-Use Audit Program by (a) first submitting within 45 days of this order, for the review of the Commission Staff and the Office of the Public Advocate, a draft RFP for one or more third parties to conduct electricity-use audits for eligible customers and, (b) as soon as practicable but no later than 75 days after concluding that draft-review process, submit its recommended third-party auditor(s) to the Commission for review and approval;

14. Once the Independent Electricity-Use Audit Program commences, CMP must report to the Commission bimonthly (every two months) on the status of the audits, including, at a minimum, how many have been completed and what kind of information is being gleaned from the audits;

15. That, pertaining to the interim payment policy, which the Commission established in an April 11, 2018 order in Docket No. 2018-00052, and modified in a March 11, 2019 order in this docket:

a. all customers who availed themselves of the interim payment policy and fully complied with that policy shall be offered the opportunity to transition to the normal dispute-resolution process within CASD, and that CASD shall send these customers a letter informing them of that option and next steps. CMP shall, within 30 days of this order, provide the CASD with these customers' contact and account information to allow CASD to provide this correspondence;

b. all customers who availed themselves of the interim payment policy but failed to fully comply with that policy shall be notified by the CASD of: (i) the termination of the IPP; (ii) the customer's obligation to pay the set-aside amount; (iii) the customer's right to negotiate a reasonable payment arrangement for the set-aside amount with CMP; (iv) the customer's right to contact the CASD if the customer is not able to negotiate a reasonable payment

(Cont'd on next page)

In the parallel proceeding regarding customer service, the Commission found, in its Order issued on February 19, 2021, that the Company's customer service performance was imprudent, starting in 2016 and "certainly since the implementation of SmartCare at the end of October 2017."¹⁸⁸ The Commission found that the Company's customer service problems were severe and long-lasting and that the Company had lost its customers' trust:

Before SmartCare, the [Commission's Consumer Assistance and Safety Division] put CMP on notice of serious problems in its customer-service functions. As far back as the spring and summer of 2016, the CASD notified CMP of errors in CMP's call center, with representatives providing customers incorrect information, and of CMP's failure to correctly handle the arrearage management program. The Commission's General Counsel sent a letter to the Company in 2017 describing worsening call-center performance, erroneous disconnection notices being issued, and a growing number of customers reporting that they were unable to reach anyone at CMP to discuss credit and collections.

Yet the Commission's efforts seem to have fallen on deaf ears. After SmartCare went live—when customers were most likely to raise questions given the transition to a new billing system after decades with the old one—customers had to deal with long hold times, dropped or abandoned calls, an inability to obtain helpful and correct information from customer-service representatives, and bills delayed without adequate explanation. Customers' negative experiences with the call center and customer-service representatives only grew. For many customers, this frustration has persisted for months or even years since the problem first arose.

At the public-witness hearings, customers gave impassioned testimony about their frustrations with CMP. Customers' anger and frustration with CMP's customer

arrangement with CMP; and (v) of the Company's right to pursue credit and collections activities for set-aside amounts from customers who do not pay or negotiate a payment arrangement for the set-aside amount;

c. from now forward, no other customers shall be permitted to avail themselves of the interim payment policy; and

d. from now forward, any customer may, as always, bring a bill complaint to CASD under the procedures set out in the Commission's consumer-protection rule, Chapter 815, when the customer is unable to resolve the dispute with the utility.

16. That, in a new docket, an inquiry shall be opened seeking comments from stakeholders on the possibility of raising the income thresholds for CMP customers' participation in the arrearage management program, and what the costs of doing so might be.

Id., at 83-86.

¹⁸⁸ Order, Maine Public Utilities Commission, Docket No. 2018-00194, February 19, 2020, at 115.

service in recent years is not isolated to a few individuals, nor to one kind of problem. Instead, across customer situations, across towns, and across demographics, these customers largely had a similar assessment: due in large part to their dealings with the Company's customer service, they could not trust CMP.

Customers should be able to trust their utility bill, and when questions arise about that bill but clear, correct, and timely answers are not forthcoming, the Company fails to earn that trust or, if it had any trust with the customer, loses it completely.

From the above, the Commission concludes that CMP's customer service has reached unreasonable and inadequate levels, which are evidence of management inefficiency and imprudence.

This conclusion justifies imposing meaningful remedies. From the Commission's perspective, it is crucial to take an outcome-oriented, forward-looking view of these problems and ask: what can be done to correct the problem and improve the quality of service to customers? With that in mind, the Commission now turns to the remedy for these customer-service failings.¹⁸⁹

The Commission ordered a 100 basis point reduction in the Company's cost of equity.

The Commission found that the reduction would be equivalent to a \$6.6 million reduction to the Company's annual distribution revenues, and \$9.9 million over the 18-month period during which the reduction would likely be in effect. The Commission established Service Quality Indices (SQIs), with customer service metrics and benchmarks for business calls answered within 30 seconds, call abandonments, bill errors and estimated bills. The Commission provided that the reduction would remain in place until the Company improves its performance and satisfies the service quality standards over a rolling period of 18 consecutive months (measured beginning March 1, 2020).¹⁹⁰

In addition, the Commission ordered that a management audit be conducted of the Company and its affiliated service companies, Avangrid Management Company (AMC) and Avangrid Service Company (ASC), to determine whether the Company's current management

¹⁸⁹ Id., at 111-112.

¹⁹⁰ Id., at 1 and Appendix B.

structure and the management services provided by AMC and ASC are both appropriate and in the interest of Maine ratepayers. The Commission found that the audit would help to address the reasonableness of affiliated service-company costs and whether there is something endemic in the Central Maine Power Company/Avangrid, Inc. management structure that has led to a drop in the quality of the Company's customer service over the past several years and, if so, what can be done to avoid this in the future. The Commission also ordered that the audit should consider the effect of moving Central Maine Power personnel to Avangrid, Inc. positions, and whether the move had a negative effect on the management environment.¹⁹¹

Prior to the Commission's discovery of the return on equity disallowance in Maine, Mr. Kump testified in his April 21 rebuttal to Staff's testimony about the J.D. Power customer satisfaction rankings, that Central Maine Power Company's low J.D. Power ranking "was primarily reflective of the confluence of extraordinary events for CMP in the 2018 timeframe."¹⁹² He said the events began with challenges in rolling out a new CMP billing system in October 2017, which coincided with an extraordinary windstorm that created the largest power outage in the Company's history. He said that two months later, the "supply" component of CMP's rates for its "basic service" residential customers (*i.e.*, customers that do not elect to be served by competitive suppliers) increased by 18%, and it was followed in January 2018 by a record cold snap that had a significant impact on customer usage and bills. Mr. Kump said the magnitude of the supply increase was outside the Company's control, as it represents a pass-through of actual costs incurred by the Company and approved by the Maine Public Utilities Commission.¹⁹³

¹⁹¹ Id., at 4, 55.

¹⁹² Kump (4/21/21), at 28.

¹⁹³ Kump (4/21/21), at 28.

Mr. Kump said the Company was deeply troubled by the results of the JD Power survey. He said CMP has made significant changes to address all matters affecting service quality that are within its control.¹⁹⁴ He said the Company has brought back former CMP President and CEO David T. Flanagan with oversight of all matters at CMP. He said that the Company has created a “customer champion” position; named a new general counsel, new vice-presidents in charge of customer service and electric operations, and a new billing manager; and created a new position for manager of clean energy policy. He said that the Company has added 47 call center agents and supervisors (a 67% increase), added five positions to the billing department (an 80% increase), added positions in field operations (line workers, clerks, and planners), created a dedicated local technical support group for customer service IT applications, and hired new employees under its union contract.¹⁹⁵

Mr. Kump said the actions have already begun to bear significant fruit and that the Company is currently meeting or exceeding all of its customer-service targets. He said the Company performed well in responding to significant storms in its service territory in 2020 despite the challenges that the Covid-19 pandemic presented. He said customer-satisfaction metrics like those considered by JD Power have some lag, and that the Company is hopeful that the significantly improved service results will be reflected in future surveys.¹⁹⁶

Mr. Kump’s April 21 testimony, however, omitted any discussion of the Maine PUC proceedings, in which the Commission determined that the implementation of the SmartCare billing system and the Company’s customer service performance were imprudent. He also did not mention the Commission-ordered audit. Mr. Kump mentioned the Company’s “customer-

¹⁹⁴ Kump (4/21/21), at 28.

¹⁹⁵ Kump (4/21/21), at 28-29.

¹⁹⁶ Kump (4/21/21), at 28-29.

service targets,” but he did not note that the “targets” consisted of the SQIs that the Commission established as a result of the investigations and that the return on equity adjustment ordered by the Commission would continue until the Company satisfied those SQIs on an 18-month rolling basis, starting in March 2020.

Furthermore, the remedial efforts described above by Mr. Kump equally reflect the need that had been created by the lack of resources previously devoted to the CMP system under Avangrid, Inc. management. As is discussed more in Section VI.D.4 below, the auditors contracted by the Maine PUC questioned the extent to which CMP management will continue to devote the required level of resources going forward.

In his June 18, 2021 testimony in support of the Stipulation, after the Commission discovered the disallowances in Maine, Mr. Kump stated that the Company is currently on track to have its return on equity reduction terminated, and its full return on equity metric returned to rates.¹⁹⁷

The Joint Applicants also presented the testimony of utility consultant Forrest Small, who produced an analysis that attempted to show that the Avangrid, Inc.’s utilities’ performance ranked well compared to other Northeast utilities, despite the penalties and negative revenue adjustments ordered by the Connecticut, Maine and New York commissions.¹⁹⁸

4. Maine PUC Audit

a. General conclusions

The Maine PUC hired Liberty Consulting Group to perform the management audit ordered in Docket No. 2018-00194 cited above. The audit was completed and filed on July 12,

¹⁹⁷ Kump (6/18/21), at 39.

¹⁹⁸ Small (6/18/21).

2021.¹⁹⁹ The audit examined Avangrid, Inc.’s management structure and services beginning with the acquisition at the end of 2015 of UIL Holdings, the holding company for United Illuminating Company, Avangrid, Inc.’s electric utility in Connecticut. The auditors expressed concerns about the lack of independence on the Avangrid, Inc. board of directors. The audit stated that a board with independence, engagement, breadth of experience, and focus on operations more typical of large U.S. utility operations would have proven better situated to identify and address the challenges faced in the past five years. But it did not directly attribute Central Maine Power Company’s SmartCare billing issues to that lack of independence. The issue of board of directors’ independence is addressed more fully in Section VI.G.1.

Rather, the auditors focused on three main issues -- management’s reliance on reductions in headcount and in vegetation management to meet earnings expectations, the financial (instead of operational) backgrounds of the utility’s top managers, and the organizational instability resulting from Avangrid, Inc.’s continuing efforts to integrate UIL Holdings into the Avangrid, Inc. organization.

The audit started by discussing Central Maine Power Company’s increasingly small part of a “vast Iberdrola family.” It cited Iberdrola, S.A.’s aggressive strategy of acquisitions, including its proposed acquisition of PNMR, its non-utility growth strategy in the United States (including the expansion of Avangrid Renewables, LLC business), and Iberdrola, S.A.’s international growth strategy. Since the start of the Covid-19 pandemic, Iberdrola, S.A. has announced the PNMR acquisition plus acquisitions in France, Australia, Sweden, Japan,

¹⁹⁹ Final Report, Central Maine Power’s Management Structure and Affiliate Services, Liberty Consulting Group, July 12, 2021, attached to Sandberg (7/16/21), as Exhibit CKS-2 (hereafter “Maine Audit”).

Scotland and Brazil. The auditors noted that Central Maine Power Company comprises about 20% of U.S. operations but just 2% of Iberdrola, S.A.'s customers worldwide.²⁰⁰

b. Management's reliance on reductions in headcount and in vegetation management to meet earnings expectations

The auditors found that, through much of the five-year period they examined, Avangrid, Inc. failed to meet the financial expectations it has helped to create for the investment community. They said immediate-term efforts to close the gaps between earnings expectations and realities drove service-affecting reductions in resources and in expenditures (both capital and O&M). The auditors said they saw similar financial-results-driven measures in an audit they performed ten years ago at Iberdrola S.A.'s New York subsidiaries. They said the reductions were "driven by Spanish leadership's overarching focus on controlling financial results through reductions in headcount and vegetation management expenditures and transferring core utility functions to a profit-making subsidiary."²⁰¹

The auditors stated that Avangrid, Inc.'s inability to integrate UIL Holdings efficiently and effectively and associated resource reductions contributed to Central Maine Power Company's SmartCare customer service troubles. They said the staffing cuts at CMP impaired management's ability to address resulting problems and produced a public crisis of confidence in management and widespread concerns about loss of control over billing accuracy. They said they found a substantial increase in focus on customer operations more recently, including the addition of resources and bringing important aspects of CMP customer service leadership and

²⁰⁰ Maine Audit, at ES-2.

²⁰¹ Maine Audit, at ES-4 through ES-5.

management back to Maine, which, they said, have much improved customer service performance. But they question the sustainability of the changes.²⁰²

The auditors said the first years of their five-year review period also saw reductions in Maine distribution system expenditures for field resources and vegetation management. They said measures of work levels performed declined significantly and began to produce negative trends in reliability performance. They said management's expenditure decisions were focused on earnings or regulatory (sometimes performance penalties) implications and that the over-focus on such metrics was inconsistent with good utility practice and produced a lack of transparency on the causes of the performance problems.²⁰³

The auditors said that, unlike customer operations performance, the typical metrics for gauging distribution system performance take time to show the effects of under-commitment. They said even the country's less robust electricity delivery systems employ significant design, operations, and maintenance cushions. Declines in standard reliability metrics (measures of reliability *results*) provide one indicator of declining system performance, but the absence of perceptible declines in these metrics over a short period of years does not necessarily signal the opposite. Looking at the sufficiency of efforts to maintain system health over the short term requires attention to reliability *drivers*, such as the units of inspection, repair, and vegetation work designed to mitigate the causes of service problems.²⁰⁴

c. The financial backgrounds of the utilities' top management as opposed to operational backgrounds

²⁰² Maine Audit, at ES-3.

²⁰³ Maine Audit, at ES-3.

²⁰⁴ Maine Audit, at ES-3 (Emphasis in original).

The auditors said that Avangrid, Inc.’s lack of focus on a sufficiently broad set of operational metrics, combined with apparent pressure to take action to mitigate earnings gaps, contributed strongly to undue resource reductions.²⁰⁵ They said that, to provide confidence in the sustainability of the customer and distribution system operations improvements made in the past two years, Avangrid, Inc. needs to emphasize, when it comes to top leadership at Avangrid Networks, Inc. and Central Maine Power Company, candidates that have strong operations backgrounds. It also needs to give them the priority, accountability, authority, and resources to continue to emphasize operational excellence.²⁰⁶

The auditors found that Iberdrola S.A. has focused on financial and regulatory, as opposed to electric operational experience, in filling the top executive positions at Avangrid, Inc. and Avangrid Networks, Inc.²⁰⁷ The auditors discussed a short-lived effort in 2019 to hire a CEO at Avangrid Networks, Inc. with substantial operational experience to address organization and resourcing issues that had affected operations in Maine and New York. But his tenure lasted less than two years early in 2021 with his replacement by an executive whose background focused on law, regulation and stakeholder engagement.²⁰⁸

The auditors found that Iberdrola, S.A. has shown a clear preference for personnel without operations-centered backgrounds and that the preference appears consistent with the primacy over the years it has shown for financial performance, particularly in more recent years as it has struggled to meet the expectations it has created for and communicated to the investment community:

²⁰⁵ Maine Audit, at ES-4 through ES-5.

²⁰⁶ Maine Audit, at ES-5.

²⁰⁷ Maine Audit, at 23.

²⁰⁸ Maine Audit, at 31.

We believe that the best approach for strong long-term financial optimization lies in optimizing operational performance efficiency and effectiveness. Permitting short-term financial improvement to constrain fulfillment of operations needs tends to produce operating deficiencies, failed regulatory and stakeholder expectations, and ultimately service degradation that perpetuate financial underperformance more than promote financial improvement.²⁰⁹

The period since the UIL Holdings acquisition shows both frequent top-level changes and a preference for those whose backgrounds appear to make them more apt to focus on managing financial matters, regulatory initiatives, and stakeholder expectations than on finding means to improve operating effectiveness and efficiency. Results over this period support the general lack of effectiveness that management has shown in establishing a stable and well populated alignment and level of resources - - it continues to struggle to do so, even as it faces the potential new challenge of integrating a distant utility acquisition with a large fossil and nuclear fleet.²¹⁰

Unfortunately, the one major effort to bring in a top executive with significant operating experience during a time of focus on operational change and enhancement had a very short duration, followed by a return to more financially oriented leadership, with a focus also on shepherding regulatory initiatives.²¹¹

We believe that the weak focus on operational experience at the top has contributed to service-related problems and any optimism we may have had based on initiatives under the recently departed Networks CEO must give way to a “show me” approach to demonstrating a long-term commitment to give operations change a sufficient counterweight to a long-standing pattern of overemphasizing the meeting of immediate investment community expectations.²¹²

This structure appears to confirm that financial performance and rate recovery concerns lead operational considerations.²¹³

Significantly and consistent with the Liberty auditors’ conclusions about Central Maine Power Company and the Avangrid, Inc. group of utilities in the United States, Mr. Kump has a financial background, and the only post-merger PNMR and PNM director and management positions that Avangrid, Inc., Inc. has announced do not have operational backgrounds. If the

²⁰⁹ Maine Audit, at 31.

²¹⁰ Maine Audit, at 32.

²¹¹ Maine Audit, at 32.

²¹² Maine Audit, at 32.

²¹³ Maine Audit, at 32.

Proposed Transaction is approved, Mr. Tarry will become President and CEO of PNMR and the President, CEO and board member of PNM.²¹⁴ Mr. Tarry has a financial background and is currently the Senior Vice President and Chief Financial Officer of PNMR.²¹⁵ Mr. Darnell is PNM's Senior Vice President of Public Policy, responsible for regulatory, governmental and tribal affairs, corporate communications, pricing, community relations and stakeholder engagement.²¹⁶ He is also a member of the PNM Board of Directors. Mr. Darnell will remain in those positions if the merger is approved.²¹⁷

d. The instability resulting from Avangrid, Inc.'s faltering efforts to integrate United Illuminating Company into the Avangrid, Inc. organization

The auditors stated that Avangrid, Inc. management relies heavily on centrally provided services for all its utilities and for the non-utility, renewable energy operations managed under Avangrid Renewables, LLC. They said efforts still continue, now into the sixth year after the UIL Holdings acquisition, to find an equilibrium in providing corporate or management services (provided by Avangrid Management Company to both Avangrid Networks, Inc. and Avangrid Renewables, LLC) and operating or technical services (provided by Avangrid Service Company to Avangrid Networks, Inc. utilities). They said their now-long period of adjustment has produced continuing organization change, large swings in staffing levels in key functions, and a too-rapid cycling of senior management and executives into and back out of the United States.²¹⁸

²¹⁴ Tr. 657-658.

²¹⁵ Tarry (11/23/20), at 1.

²¹⁶ Darnell (11/23/20), at 1.

²¹⁷ Tr. 787.

²¹⁸ Maine Audit, at ES-3 through ES-4.

The auditors said that Avangrid, Inc. leadership may also soon be facing a geographically distant acquisition whose operating characteristics differ substantially from the current Avangrid Networks, Inc. utilities. They said the PNMR acquisition, with utilities in New Mexico and Texas, will bring Avangrid, Inc.'s first U.S. electric distribution operations far separated from the region now served. The resulting management challenges will become complicated by the need to address the operational and existential issues surrounding the large operated or owned fossil and nuclear fleet, many of whose units are well advanced in age. They said Avangrid, Inc. needs to complete efforts to establish a stable and effective organization, find ways to counter the disruptive effects of a possible acquisition of PNM, and to produce a U.S. management and leadership team that will remain reasonably continuous, without the need for frequent cycling of resources, often from offshore, to fill senior positions on a short-term basis.²¹⁹

E. Whether the transaction will result in the improper subsidization of non-utility activities

The Commission, in its June 28, 2001 Order Approving Formation of Holding Company in NMPRC Case No. 3137, ordered PNM to develop and file a cost allocation manual (CAM) to define the manner in which PNMR affiliate costs for shared services are allocated to PNM.²²⁰ Paragraph 20 of the Stipulation in NMPRC Case No. 03-00017-UT further requires PNM to update its Cost Allocation Manual on an annual basis or whenever a change in organization structure makes updates appropriate. PNM has complied with the NMPRC requirement since June 28, 2002.²²¹

²¹⁹ Maine Audit, at ES-4.

²²⁰ Recommended Decision, Case 3137, June 11, 2001, at 45 and 60, approved in Order Approving Formation of a Holding Company, June 28, 2001.

²²¹ Tarry (6/18/21), JA Exhibit JDT-1 (Stipulation), Cost Allocation Manual, at 3.

The Hearing Examiner in this case asked the Joint Applicants to provide with their June 18 testimony in support of the June 4 Stipulation a copy of the Cost Allocation Manual as it will need to be adjusted to address the affiliate arrangements in Avangrid, Inc.'s organizational structure described in the proposed General Diversification Plan.²²²

Mr. Tarry included a copy of PNM's current CAM in his June 18 testimony. He states that there is no immediate need to revise PNM's current CAM. He states that, following the closing of the Proposed Transaction and for some time after that, there will be no changes in how costs are allocated to PNM. Under the Proposed Transaction, PNM will remain a wholly owned subsidiary of PNMR. PNMR Services Company, Inc. (PNMR Services), which provides services to PNMR and PNM, will still exist and continue to provide services as before the Proposed Transaction.²²³

Mr. Tarry states that the extent to which there may be shared services provided by Avangrid, Inc. or Iberdrola, S.A. affiliates will be determined during the integration process following the acquisition. He states that a thorough review and analysis of PNMR services will need to be completed and an assessment will need to be made about appropriate functions to be carried out by different Avangrid, Inc. affiliates.²²⁴

He said there will, therefore, be a need in the future to revise the CAM to reflect changes resulting from Avangrid, Inc.'s acquisition of PNMR. He said the future need is contemplated in Regulatory Commitment 32. The commitment provides that PNM will be required to file a CAM for approval by the Commission for each proposed affiliate transaction for shared services provided by any Avangrid, Inc. or Iberdrola, S.A. affiliate to PNM or through PNMR. The

²²² Procedural Order for Proceedings Addressing Contested Stipulation, May 28, 2021, at Attachment 1.

²²³ Tarry (6/18/21), at 22.

²²⁴ Tarry (6/18/21), at 23.

request will include the accounting requirements consistent with the Federal Energy Regulatory Commission uniform system of accounts, including applicable restrictions on the exchange of competitively sensitive, proprietary data. The filings will be made with the Commission prior to the allocation of the costs to PNM. Pursuant to Commission rule 17.6.450.14, the burden of proof will be on PNM in a rate case or other proceeding to justify its method of allocation of expense and amounts allocated.²²⁵

Mr. Tarry states that, whether shared services are provided by Avangrid, Inc. or Iberdrola, S.A., PNM will continue to file with the Commission on an annual basis its CAM pursuant to Case No. 03-00017-UT, and will incorporate any changes to affiliate charges from Avangrid, Inc. affiliates.²²⁶

Mr. Tarry also states that Regulatory Commitment 17 provides that Avangrid, Inc., Iberdrola, S.A. and any other intermediary holding companies do not intend to charge PNM for a share of executive, management or administrative costs, other than in conformance with all applicable rules, regulations and orders of the Commission based upon a Commission-approved cost allocation methodology.²²⁷

In his July 16, 2021 testimony, NM AREA witness Mr. Gorman proposed language to clarify Commitment 32, and require the Cost Allocation Manual to be included in any general rate case.²²⁸ The proposed new section reads as follows:

32. Shared Services. In Class I transactions involving shared services provided by any Avangrid/Iberdrola, S.A. affiliated interest to PNM or through PNMR to PNM, PNM shall file for the PRC's approval of such shared services and the Cost Allocation Manual for each such affiliated interest thirty days prior to allocation of

²²⁵ Tarry (6/18/21), at 22-23.

²²⁶ Tarry (6/18/21), at 23.

²²⁷ Tarry (6/18/21), at 23-24.

²²⁸ Gorman (7/16/21), at 30-31.

any new shared services costs to PNM. PNM will consult with NMPRC Staff and any other interested stakeholders in preparing this Cost Allocation Manual prior to filing. PNM's request for approval of shared services from Avangrid/Iberdrola affiliated interests shall include the requested accounting requirements for such shared services, consistent with the Federal Energy Regulatory Commission's ("FERC") uniform system of accounts, including applicable restrictions on the exchange of competitively sensitive, proprietary data. Additionally, in any general rate case, PNM shall file its current CAM and any proposed revisions, and recovery of the costs of shared service will be subject to the Commission's review for prudence and reasonableness.²²⁹

In his July 29 rebuttal testimony, Mr. Kump and Mr. Tarry agreed with Mr. Gorman's changes.²³⁰

The Hearing Examiner finds that Regulatory Commitment 32 should be approved as modified. The Joint Applicants' lack of a plan on how it intends to integrate PNM into Avangrid, Inc.'s corporate organization in terms of the services the Avangrid, Inc. affiliates will provide to PNM is concerning. Integration issues were discussed by the auditors in Maine as being at least partially responsible for the service problems of CMP.²³¹ Nevertheless, the requirement for "the approval of . . . shared services" provides for an explicit "approval," which

²²⁹ Gorman (7/16/21), at 30-31.

²³⁰ Kump (7/29/21), at 5; Tarry (7/29/21), at 10.

²³¹ The auditors found that the integration issues deprived CMP of needed customer service and field resources and leadership for much of the period they examined:

Management under newly formed Avangrid continued, as it does through today, to rely heavily on centrally provided services for all its utilities, managed under Networks, and for the non-utility, renewable energy operations managed under Renewables. Efforts still continue, now into the sixth year after the UIL Holdings acquisition, to find an equilibrium in providing corporate or management services (provided by Avangrid Management Company to both Networks and Renewables) and operating or technical services (provided by Avangrid Service Company, but only to Networks utilities). This now-long period of adjustment has produced continuing organization change, large swings in staffing levels in key functions, and a too-rapid cycling of senior management and executives into and back out of the United States.

Management ultimately failed to meet aggressive staffing reduction targets it set early for operations after the UIL Holdings acquisition. Its continued, forceful pursuit of them deprived CMP of needed customer service and field resources and leadership for much of the period we examined.

Maine Audit, at ES-3 through ES-4.

goes beyond the mere Notification requirement for Class I transactions in the Commission's rule. Rule 450.11 requires a Notification of each Class I transaction, and Section 62-6-10(B) of the Public Utility Act and Rule 450.17 authorize the Commission to conduct investigations of any matters pertaining to such transactions.²³²

F. Qualifications and financial health of the new owner

1. Financial Qualifications

a. Avangrid, Inc. and Iberdrola, S.A.

Avangrid, Inc. and Iberdrola, S.A. are large companies. Avangrid, Inc. has over \$36 billion in assets and \$700 million in 2019 net income. Its shares are publicly traded on the New York Stock Exchange. Mr. Kump said in his November 2020 testimony that Avangrid, Inc. had better credit ratings than PNM and PNMR, and access to substantially greater capital financing at lower costs than PNM and PNMR.²³³

Iberdrola, S.A. has over \$143 billion in assets. Its market capitalization is over \$85 billion, and it had a net profit in 2019 in excess of \$3.8 billion.²³⁴ Iberdrola, S.A.'s shares are publicly traded on the Madrid Stock Exchange.²³⁵

b. Joint Applicants' estimated impacts on PNM

The Joint Applicants presented the testimony of independent financial consultant Ellen Lapson who said that PNM will be financially stronger and more resilient and will not suffer any financial harm as a result of the Proposed Transaction. She said she expects the Proposed

²³² See NMSA 1978, §62-6-19(B); 17.6.450.11 and 17.6.450.17 NMAC.

²³³ Azagra Blazquez (11/23/20), at 7; Kump (11/23/20), at 13; Tarry (11/23/20).

²³⁴ Azagra Blazquez (11/23/20), at 7.

²³⁵ *Id.*, at 5.

Transaction will increase PNM's access to equity capital via Avangrid, Inc. and Iberdrola, S.A., as compared to PNM's current parent PNMR.

Ms. Lapson said PNM's capital expenditures for future infrastructure additions are significantly higher than in the prior years.²³⁶ She said utilities with projected growth in capital expenditures that exceed internal cash flow face the need for external financing, which can be a source of financial pressure. To fund the external financing necessitated by its capital budget, PNM will need consistent and steady access to sources of debt and equity in order to remain in balance with its authorized regulatory capital structure and avoid ratings downgrades.²³⁷

Ms. Lapson said Avangrid, Inc. is viewed as a sound and low-risk participant within the U.S. utility sector, compared to other utilities. She cited the following as its primary characteristics:

1. Low-risk electric and gas distribution and transmission subsidiaries, with a diversity of regulatory jurisdictions, provide more than 60% of the consolidated cash flow of the group; and this percentage will rise with the acquisition of PNMR;
2. Its non-utility business involves renewables under long-term agreements, generally with credit-worthy counterparties;
3. Its 81.5% owner, Iberdrola, is a highly-regarded company in the E.U. and globally; and
4. Iberdrola and Avangrid's credit ratings are strong, and Avangrid has a successful record of raising money in the debt capital market and short-term funding market.²³⁸

²³⁶ Lapson (11/23/20), at 7.

²³⁷ *Id.*, at 8.

²³⁸ *Id.*, at 8-9.

Ms. Lapson said if PNM needs equity for any reason, Avangrid, Inc. (and its 81.5% parent, Iberdrola, S.A.) will have broader sources and greater assurance of the ability to supply capital to PNM.²³⁹

Ms. Lapson also said the Proposed Transaction should reduce PNM's borrowing costs by improving its credit ratings. She said Avangrid, Inc. enjoys higher credit ratings than PNMR or PNM from well-regarded credit rating agencies. She said Moody's and S&P ratings of PNM and PNMR are within the lower part of the investment grade category. In April 2020, S&P lowered its issuer credit ratings of PNMR and PNM to BBB from BBB+, citing weakening financial ratios and higher capital expenditures with more investment in renewable energy resources. She said PNM is likely to experience credit upgrades by both Standard & Poor's (S&P) and Moody's Investors Services (Moody's) upon consummation of the Proposed Transaction.²⁴⁰

She said a one-notch upgrade of PNM's rating by S&P to BBB+ would boost PNM into a more favorable pricing category under PNM's existing revolving credit agreement. That, in turn, would reduce the lender's commitment fee by 2.5 basis points (.025%) per annum, and would reduce the borrowing margin over the rate index by 12.5 basis points (0.125%) on outstanding loans. Higher credit ratings for PNM would produce lower rates for PNM's customers over many years, since the cost of debt capital is a factor in the utility's cost of service.²⁴¹ She said a higher credit rating may also make a meaningful difference in the amount of new debt that can be raised when capital markets are stressed.²⁴²

²³⁹ *Id.*, at 10.

²⁴⁰ *Id.*, at 4.

²⁴¹ *Id.*, at 13-14.

²⁴² *Id.*, at 14.

c. July 20, 2021 downgrades of Avangrid, Inc. and New York utility subsidiaries credit ratings

Instead of upgrading PNM's and PNMR's credit ratings to meet those of Avangrid, Inc., Moody's, on July 20, 2021, downgraded Avangrid, Inc.'s credit rating to PNM's level.²⁴³ At the time of the November 2020 Application in this case, Avangrid, Inc.'s credit ratings for Senior Unsecured Notes were BBB and Baa1 from S&P and Moody's respectively.²⁴⁴ PNM's credit ratings for Senior Unsecured Notes were BBB and Baa2. On July 20, 2021 Moody's announced that it lowered Avangrid, Inc.'s senior unsecured credit rating from Baa1 to PNM's level at Baa2.²⁴⁵

Moody's stated that Avangrid, Inc.'s "financial profile exhibits a sustained period of higher leverage amid a period of high execution-risk capital projects." The "high execution-risk

²⁴³ *Id.*, at 8, citing S&P Global Ratings, "PNM Resources, Inc., Public Service Co. of New Mexico, Texas-New Mexico Power Co. Downgraded One Notch; Outlook Stable," April 6, 2020. (JA Exhibit EL-7). The Moody's Global Long Term Rating Scale is reproduced below:

Aaa	Obligations rated Aaa are judged to be of the highest quality, subject to the lowest level of credit risk.
Aa	Obligations rated Aa are judged to be of high quality and are subject to very low credit risk.
A	Obligations rated A are judged to be upper-medium grade and are subject to low credit risk.
Baa	Obligations rated Baa are judged to be medium-grade and subject to moderate credit risk and as such may possess certain speculative characteristics.
Ba	Obligations rated Ba are judged to be speculative and are subject to substantial credit risk.
B	Obligations rated B are considered speculative and are subject to high credit risk.
Caa	Obligations rated Caa are judged to be speculative of poor standing and are subject to very high credit risk.
Ca	Obligations rated Ca are highly speculative and are likely in, or very near, default, with some prospect of recovery of principal and interest.
C	Obligations rated C are the lowest rated and are typically in default, with little prospect for recovery of principal or interest.

Note: Moody's appends numerical modifiers 1, 2, and 3 to each generic rating classification from Aa through Caa. The modifier 1 indicates that the obligation ranks in the higher end of its generic rating category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category. Additionally, a "(hyb)" indicator is appended to all ratings of hybrid securities issued by banks, insurers, finance companies, and securities firms. <https://www.moodys.com/Pages/amr002002.aspx>.

²⁴⁴ Kump (11/23/20), at 13.

²⁴⁵ Moody's, "Rating Action: Moody's Downgrades Avangrid to Baa2; NYSEG and RGE to Baa1," July 20, 2021, attached to Lapson (7/29/21), as JA Exhibit EL-1.

capital projects” include the NECEC transmission line undertaken by CMP and the Vineyard offshore wind project undertaken by Avangrid Renewables, LLC:

The downgrade of Avangrid reflects 1) weaker financial ratios, such as cash flow from operations before changes in working capital . . . ,
(2) a \$4 billion higher-risk capital program through 2025, \$3.1 billion of which is for first-time construction of utility-scale offshore wind generation resources in the US and \$1.0 billion for a contested 1,200 megawatt electric transmission line in Maine, and 3) heightened political influence and uncertainty in utility rate making, including financial penalties, in Avangrid's two largest regulatory environments, New York (representing about 30% of total utility rate base) and Connecticut (roughly 20% of consolidated rate base).²⁴⁶

Moody's also recognized the substantial role Iberdrola, S.A. plays in supporting Avangrid, Inc. and, at the same time, the limits of that role, given that Iberdrola, S.A. does not formally guarantee Avangrid, Inc.'s debt obligations:

At the same time, we recognize the supportive ownership and sizeable balance sheet of Iberdrola, which has shown considerable influence in Avangrid's bid to acquire PNM Resources, Inc. (PNMR, Baa3 stable), including the infusion of \$3.26 billion of equity (which replaced an intercompany \$3.0 bridge loan) and helping to facilitate the remaining \$740 million equity purchase with an external party. We view Iberdrola's efforts to maintain 81.5% ownership of Avangrid as further evidence of the strategic importance that US investments play for Iberdrola and its earnings growth targets.

We recognize Iberdrola's influence and support in the financial thresholds for factors that could change Avangrid's Baa2 rating (i.e., consistently below 13% for a downgrade to Baa3 or above 16% to be upgraded to Baa1), which are more lenient than most Baa2-peer ratios. We also see limits in Iberdrola's support, since there is no formal guarantee of Avangrid's debt obligations.²⁴⁷

Also, in the same July 20 announcement, Moody's downgraded the long-term ratings of Avangrid Inc.'s two New York utilities, NYSEG and RG&E, to Baa1 from A3, affirmed Avangrid, Inc.'s P-2 commercial paper rating, and upgraded Connecticut Natural Gas

²⁴⁶ *Id.*

²⁴⁷ *Id.* (Emphasis added).

Corporation (CNG) to A2 from A3. Moody's attributed the downgrades of the New York utilities to heightened gubernatorial rhetoric, regulatory investigations, and legislative proposals that risk higher financial penalties for utility underperformance:

The downgrade of NYSEG and RG&E reflect the financial implications of their combined three year rate plan, which will keep CFO pre-WC to debt ratios in the mid-teen's range over the next two years, in addition to heightened political intervention into New York's utility rate making and financial performance.

. . . These financial ratios are down from historical levels while political intervention into utility finances has increased. Over the past two years, we have observed heightened gubernatorial rhetoric, regulatory investigations, and legislative proposals that risk higher financial penalties for utility underperformance and challenge utility franchise rights. These efforts undermine the consistency and predictability of the state's regulatory framework, at minimum, and could also hurt the legislative and judicial underpinnings of the New York utility regulatory environment if punitive laws are passed.²⁴⁸

In her July 29 rebuttal testimony, Ms. Lapson said the downgrade for Avangrid, Inc. has not changed her favorable view of the financial benefits of the Proposed Transaction for PNM. She said Avangrid, Inc.'s financial condition and credit ratings are still stronger than those of PNMR. She said she has consistently viewed two important financial benefits of the Transaction to be: (1) her expectation that S&P will upgrade PNM's rating by one-notch to BBB+ from BBB, as well as a one-notch upgrade in PNMR's rating; and (2) the greater strength and diversification of Avangrid, Inc. and Iberdrola, S.A. compared to PNMR.²⁴⁹

Mr. Kump said he does not expect any change by S&P regarding Avangrid, Inc.'s rating, which is and remains one notch higher than PNMR.²⁵⁰

2. Criminal investigation of Iberdrola, S.A. and Avangrid, Inc. executives

a June 24, 2021 Notice Regarding Proceedings in Other Jurisdictions

²⁴⁸ *Id*

²⁴⁹ Lapson (7/29/21), at 13.

²⁵⁰ Kump (7/29/21), at 30.

On June 24, 2021, the Joint Applicants filed a three-paragraph document titled *Notice Regarding Proceedings in Other Jurisdiction* (June 24 Notice). The June 24 Notice informed the Commission of a criminal investigation in Spain involving Iberdrola, S.A., Ignacio Galán (who is both the Chairman and CEO of Iberdrola, S.A. and the Chairman of Avangrid, Inc.) and a number of current and former Iberdrola, S.A. executives. The Notice is brief. It described the “Cenyt case” and the people involved only in general terms as a case that “is aimed at investigating certain activities of a person that is accused of providing investigation services to certain companies while also providing services to certain government entities.” The Notice went on to say that “[u]nder the Spanish law, government employees are not permitted to provide services to private companies. However, there is an open question as to whether this person was a government employee or whether he was a private contractor that was permitted provide services to both private companies and to government entities.” The Notice referred to news reports published on June 23, 2021 stating that the investigation included a number of new individuals, i.e., Mr. Galán, Francisco Martínez Córcoles, Iberdrola, S.A.’s current Business CEO,²⁵¹ and two executives who are no longer at Iberdrola, S.A. (Fernando Becker and Rafael Orbegozo).²⁵² The Notice concluded by stating that “Joint Applicants will provide the Commission with any updates to this matter that involve Iberdrola.”

On July 9, 2021, NEE filed an *Objection* to the June 24 Notice, a Motion to Compel answers to related discovery requests, and a request for remedy regarding the Spanish investigation. NEE’s filing asked the Hearing Examiner to order the Joint Applicants to file additional information about the Spanish proceedings.

²⁵¹ The Iberdrola Business CEO oversees a number of subsidiaries, including Avangrid Networks, Inc.

²⁵² Joint Applicants’ Notice Regarding Proceedings in Other Jurisdiction, June 24, 2021.

After considering the Joint Applicants' July 16 response (which included an affidavit from a Spanish attorney describing the restrictions on the public disclosure of documents in the Spanish proceedings), the Hearing Examiner issued an Order on July 19 that required the Joint Applicants to file supplemental testimony by July 27 providing additional details about the executives under investigation, the activities being investigated, copies of Iberdrola, S.A.'s internal investigations about the activities, copies of the Spanish court's orders and copies of the reports of the Public Prosecutor that initiated the proceedings -- to the extent and under conditions permitted under Spanish law.

On July 27, the Joint Applicants filed the supplemental testimony of Mr. Azagra Blazquez, Mr. Kump and Mr. Darnell. The supplemental testimony included copies of most of the requested documents, but the documents were filed in their original Spanish language. Pursuant to the Hearing Examiner's subsequent orders of July 28 and July 30, 2021, English translations of the documents were filed on August 6. The documents consist of the following, which were admitted as Confidential Commission Exhibit 10:

-- June 23, 2021 Order issued by the investigating judge, Manuel Garcia-Castellon, that provided for the criminal investigation of Ignacio Galán, Fernando Becker, Francisco Martinez Córcoles and Rafael Orbegoza;

-- June 22, 2021 Public Prosecutor's report that was sent to the investigating judge, Manuel Garcia-Castellon, requesting the criminal investigation of Ignacio Sanchez Galán, Fernando Becker, Francisco Martinez Córcoles and Rafael Orbegoza;

-- July 9, 2021 Order issued by the investigating judge, Manuel Garcia-Castellon, that provided for the criminal investigation of Iberdrola Renovables Energia, S.A.; and

-- July 6, 2021 Public Prosecutor's report that was sent to the investigating judge, Manuel Garcia-Castellon, requesting the criminal investigation of Iberdrola Renovables Energia, S.A.²⁵³

In deference to the Spanish legal restrictions on public disclosure of the Spanish court filings described in the affidavit of Spanish attorney, Teresa Manso Porta, the court filings translated into English were admitted under seal, with access limited to the Commissioners, the Hearing Examiner, Office of General Counsel, Commissioner assistants and Commission advisory staff. The Manso Porta affidavit stated that the documents themselves were restricted from public disclosure but that facts that are the object of the investigation could properly be disclosed and publicly discussed:

19. The reserved nature of the proceedings does not imply a general prohibition to inform about the facts that are the object of investigation in the process, since this would imply an inadmissible restriction of the freedom of information, but it does impose a prohibition to inform or make public the "proceedings" of the judicial body or the "content of the summary."²⁵⁴

The discussion that follows in the Public version of the Certification redacts information that does not appear to be reflected in public accounts of the investigation. The information redacted in the Public version is highlighted in yellow in the Confidential version. The recipients of the Confidential version should not discuss the redacted information publicly. The Confidential version is being made available only to the Commission, Commissioner assistants, Office of General Counsel and Commission advisory staff.

The unredacted discussion below includes matters that are discussed in the Court's June 23 Order but that have been widely discussed publicly in numerous press accounts (including the news reports attached to NEE witness Sandberg's July 16, 2021 testimony as Exhibit CKS-7).

²⁵³ The original Spanish versions of the court filings were admitted as Commission Exhibit 9.

²⁵⁴ Affidavit of Teresa Manso Porta, at ¶19, attached to the Joint Applicants' July 16, 2021 response to the NEE July 9, 2021 Objection.

The Spanish court filings are included in a Confidential Appendix to the Confidential version of the Certification.

b. The Spanish criminal investigation

On June 23, 2021, Central Investigative Court No. 6 of the National High Court of Spain ordered criminal investigation proceedings to take judicial statements of current and former Iberdrola, S.A. executives. The Court is investigating Iberdrola, S.A.'s hiring of a Spanish security company, Cenyt, to interfere with opponents of Iberdrola, S.A. projects and executives of companies with interests perceived by Iberdrola, S.A. to be adverse to Iberdrola, S.A. and its executives. The Court is looking at the roles played by Iberdrola, S.A. executives, some of which will have influence over PNM if the merger is approved.

The Court named Ignacio Sánchez Galán, Fernando Becker Zuazúa, Francisco Martínez Córcoles and Rafael Orbegoza Guzmán as "Investigated Parties" for their alleged participation in the commission of the continuous offense of active bribery, the crime of violation of privacy, and the continuous offense of forgery of a commercial document committed by a private individual.

Mr. Galán is the current CEO and Chairman of the Board of Directors of Iberdrola, S.A. and the current Chairman of the Board of Directors of Avangrid, Inc. Mr. Galán started with Iberdrola, S.A. as its Executive Vice Chairman and CEO in 2001 and became Chairman in 2006. In his role as Chairman of the Board of Directors of Avangrid, Inc., Mr. Galán has the ultimate authority to approve the appointment and removal of the boards of directors and corporate offices of Avangrid, Inc. subsidiaries. That authority will apply to the PNM Board of Directors and corporate officers if the merger is approved.

Francisco Martínez Córcoles was the Head of Generation at Iberdrola, S.A. during the period in which the activities allegedly conducted by Cenyt are being investigated by the Spanish

court. He is currently a member of the Iberdrola, S.A. Board of Directors and the Business CEO for the group of subsidiaries that includes Avangrid Networks, Inc. Avangrid Networks, Inc. will be the Iberdrola, S.A. affiliate directly above PNM if the merger is approved.

Two former Iberdrola, S.A. executives were also included -- Fernando Becker Zuazúa who was the Head of Human Resources and Services during the period of the activities at issue and Rafael Orbegoza Guzmán who was described as the Chief of Staff to Mr. Galán [REDACTED]

[REDACTED]

Mr. Azagra Blazquez's July 27, 2021 supplemental testimony confirmed the criminal investigations of Mr. Galán and Mr. Córcoles and identified additional Iberdrola, S.A. executives involved in the criminal investigation -- Juan Carlos Rebollo, Director of Risks, and Jose Luis Sanpedro, who retired in 2016.²⁵⁵

These Iberdrola, S.A. executives are in addition to Antonio Asenjo Martin, who was the head of security for Iberdrola, S.A. from at least 2004 through November, 2019, when, according to Iberdrola, S.A., he voluntarily left the company. Mr. Asenjo Martin is alleged to be the Iberdrola, S.A. official directly responsible for ordering the Cenyt work.

Jose Manuel Villarejo Perez, not an Iberdrola, S.A. official, is the now-ex-police official who is being investigated for his alleged interest in Cenyt. He and Cenyt are alleged to have received payments from Iberdrola, S.A. to perform security work for Iberdrola, S.A. while Mr. Villarejo Perez was an active member of the National Police Force.

c. Bribery and Violation of Privacy

The Spanish investigation is looking at the crime of bribery insofar as Iberdrola, S.A., through Mr. Asenjo Martin, made payments to Cenyt while Mr. Villarejo Perez was an active

²⁵⁵ Azagra Blazquez (7/27/21 Supp.), at 3.

member of the National Police Force. The investigation is looking at the Spanish crime of violation of privacy with respect to the people targeted by Iberdrola, S.A., Mr. Villarejo Perez and Cenyt.

The Court found that there is evidence that, from their respective management positions in the Iberdrola Group, the Iberdrola, S.A. executives participated in the contracting of the services of Mr. Villarejo Pérez and Cenyt from 2004 through 2017 to develop information that could be used to interfere with Iberdrola, S.A. opponents while Mr. Villarejo Perez was on active service in the National Police Force. The Court also found that there is evidence of the accessing of confidential data of the people Iberdrola, S.A. and Cenyt were developing information on because they were perceived by Iberdrola, S.A. to have interests adverse to Iberdrola, S.A. The Iberdrola, S.A. executives were named as Investigated Parties pursuant to the Office of the Public Prosecutor's June 22 filing of a series of investigative reports of the Internal Affairs Unit of the National Police. The Iberdrola, S.A. executives were added to an ongoing criminal investigation involving Mr. Villarejo Perez and Cenyt with respect to similar services allegedly performed by Cenyt for other Spanish corporations.

With respect to the Iberdrola, S.A. executives, the Court is investigating work allegedly performed by Cenyt in connection with Iberdrola, S.A. projects named Arrow, Black Board, Gipsy, Posy and Wind. The work was allegedly ordered and directed by Iberdrola, S.A.'s Head of Security, Antonio Asenjo Martin.

Direct payments to Cenyt at issue from 2004 through 2017 total 1,132,024 euros. Payments to Cenyt allegedly funneled through a third party company named Castellana de Seguridad, S.A. (CASEA) total 407,740 euros.²⁵⁶

Project Arrow allegedly involved work in 2004 through 2006 to overcome the opposition of residents and obtain permits for the construction and commissioning of the combined cycle power plant in Arcos de La Frontera.

Project Black Board allegedly involved the acquisition in 2004 and 2005 of sensitive information related to both the present and past activities of Manuel Pizarro, the then Chairman of Endesa, that might impact his future actions.

Throughout 2009, Project Gipsy allegedly investigated José María Álvarez Vázquez, who was the head of general services of Iberdrola, S.A., and Francisco Julián Gutiérrez Santiago, an Iberdrola, S.A. supplier, as the company suspected that the contracting of the services might involve the payment of bribes. The investigation also looked into any links that José María Álvarez Vázquez may have had with Florentino Pérez, President of the soccer team, Real Madrid, and Chairman of ACS, Spain's largest construction company.

Project Posy also allegedly investigated Florentino Pérez in 2009. The Court stated the work was allegedly performed [REDACTED]

[REDACTED] The work was allegedly related, in part, to Mr. Perez's attempt to gain a position on the Iberdrola, S.A. board of directors.

²⁵⁶ These amounts and a summary of the underlying invoices are included in the Price Waterhouse Coopers report prepared for Iberdrola, S.A. See Commission Exhibit No. 7, at 41-46 and 52-56 of 219.

The exchange rate between euros and dollars ranged between 1.06 and 1.60 euros per dollar between 2004 and 2017. https://www.federalreserve.gov/releases/h10/hist/dat00_eu.htm

²⁵⁷ June 23, 2021 Order, Central Investigative Court No. 006 Madrid, attached to Commission Exhibit 10 (Under Seal), as JA Confidential Exhibit July 27 Supp PAB-12a, page 15 of 23.

Project Wind allegedly involved two stages. The first, in 2011, allegedly developed information on the Swiss company Eólica Dobrogea and its majority shareholder Christopher Kaap, with whom Iberdrola Renovables Energía, S.A. had partnered to undertake a series of projects in Romania and with whom various conflicts had arisen, which were resolved in favor of Iberdrola Renovables Energía, S.A. in arbitration proceedings. The second stage, starting in 2016, focused on locating the assets of Eólica Dobrogea and its majority shareholder Christopher Kaap on which to enforce the arbitration award that had been rendered in favor of Iberdrola Renovables Energía, S.A.

On July 9, 2021, the Court named a Spanish subsidiary of Iberdrola, S.A., Iberdrola Renovables Energía, S.A., as an investigated party for the crime of bribery in connection with Project Wind.²⁵⁸

d. Falsified invoices

The allegations regarding the forgery of commercial documents relate to the Public Prosecutor's claims that certain of the invoices submitted by Cenyt falsely described the work that was being billed.

Iberdrola, S.A.'s head of security, Mr. Asenjo Martin, allegedly admitted that Cenyt work performed for the above projects was falsely described in some invoices as work performed for more innocent projects, such as security protection for Iberdrola, S.A. officials during their travels abroad. He said the invoices were falsified to prevent disclosure of the work of Mr. Villarejo Perez while he was an active member of the National Police Force. As an example, Mr. Asenjo Martin said that services billed in 2005 as "Operational coordination of security for

²⁵⁸ July 9, 2021 Order, Central Investigative Court No. 006 Madrid, attached to Commission Exhibit 10 (Under Seal), as JA Confidential Exhibit July 27 Supp PAB-12d.

travel of its Spanish executives during professional trips in 2004 in Brazil, Mexico, Guatemala and Bolivia” were actually services rendered in relation to Project Arrow, the work related to gaining approval of the permits and defeating the citizen opposition to the Arcos de la Frontera combined cycle power plant.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Court said that the information collected by the police would support the fact that the orders and commercial relations between the parties were not sporadic but had continuity over time.

The Public Prosecutor also alleges that some of the work performed by Cenyt was billed through a third party, CASEA, to conceal the involvement of Mr. Villarejo Perez and Cenyt.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Court found that the criminal investigation conducted by the police was more complete than the internal reviews of the Cenyt services conducted by Iberdrola, S.A., which relied, in large part, upon the assurances provided by Mr. Asenjo Martin, the Iberdrola, S.A. head of security who was directly responsible for ordering the Cenyt work.

The Court noted that reviews performed by Iberdrola, S.A. in 2018 and 2019 found that there were no irregularities in the procurement process involving Cenyt on the part of Iberdrola, S.A. and Iberdrola Renovables Energia. However, Iberdrola, S.A.’s subsequent reports of

February 21, 2020 and March 19, 2020, including an independent report by Price Waterhouse, concluded that the processing of invoices without a previously authorized order for the Project Arrow and Project Black Board services violated Iberdrola, S.A.'s internal regulations in effect at the time the Cenyt invoices were issued and accepted in 2004 through 2006.²⁵⁹ The reports from 2020 found that it was not until 2013 that Iberdrola, S.A.'s internal regulations were amended to broaden the number of cases in which invoices submitted without a previously authorized order were permitted.

The Court stated that the 2020 reports performed by Iberdrola, S.A.'s auditors and Price Waterhouse also concluded that the Cenyt work did not entail any loss of corporate control based upon assurances provided by Mr. Asenjo Martin. The 2020 reports noted that all of the invoices were signed by Mr. Asenjo Martin, who was authorized to procure the services. The reports also noted that, despite the fact that no related documentation had been located to substantiate the provision of the services, Mr. Asenjo Martin stated that the invoices corresponded to services actually rendered and that greater detail was not included due to the confidential nature of the services.

e. Relevance

The criminal investigation in Spain is relevant and of concern in this case. It is a criminal investigation of the highest officials in the Iberdrola, S.A. and Avangrid, Inc. corporate chain, which is seeking to acquire PNM. It is also a criminal investigation of an Iberdrola, S.A. subsidiary in Spain that develops energy projects.

²⁵⁹ Iberdrola's internal audit report and the Price Waterhouse Coopers (PwC) report were included in the Joint Applicants' July 27 filings. They were admitted into evidence initially as Commission Exhibits 7 (Spanish version) and 8 (English translation). The documents filed on July 27, however, omitted several appendices related to the internal audits. A complete version of the internal audit reports was thereafter admitted into the record as Commission Exhibit 11 (including both the Spanish version and the English translation).

There have been no formal criminal charges issued against the officials or the subsidiary at this point and no convictions. But a Spanish court has found that the Public Prosecutor and the police have presented sufficient evidence to warrant the criminal investigation.

The criminal investigation raises questions about one of the legal standards for the approval of a merger -- the qualifications of the company seeking to acquire PNM. Utility requests for approvals are supposed to be accomplished within the confines of the Commission's discovery and hearing processes based upon the Commission's rules of procedure. Hiring of security companies to investigate and harass a utility's opponents might not be illegal in New Mexico, but it does go beyond the norms considered appropriate here. The discussion below regarding the investigative activities of Central Maine Power Company, a U.S. subsidiary of Iberdrola, S.A. and Avangrid, Inc., is concerning in this regard.

The issue of document falsification is even more significant. Much of utility regulation involves the review of documents prepared and maintained by utilities. This is important for enforcement and for the discovery process associated with utility rate cases and requests of resource acquisitions. Allegations of document falsification are therefore especially concerning.

Moreover, apart from whether the actions of Iberdrola, S.A.'s executives and its subsidiary constitute crimes under Spanish law, their actions appear to represent methods of doing business that should raise concerns for the Commission.

The criminal investigation is also important due to the prevalence of Iberdrola, S.A. executives on the Avangrid, Inc. board of directors, which appoints and removes directors and management of Avangrid, Inc.'s utility companies. Six of Avangrid, Inc.'s 14 board members are senior executives in the Iberdrola, S.A. corporate structure.²⁶⁰ Ignacio Galán, Iberdrola,

²⁶⁰ Maine Audit, at 16.

S.A.'s CEO and Chairman, serves as the Board Chair of Avangrid, Inc. Mr. Galán is under investigation in the Spanish court proceedings. The four members of Avangrid, Inc.'s executive committee also include Mr. Galán, plus Iberdrola, S.A.'s Chief Financial Officer, the Avangrid, Inc. CEO and one independent board member.²⁶¹

²⁶¹ Maine Audit, at 16.

3. Political Action Committee investigation of proposed citizen referendum

a. Clean Energy Matters

Two Avangrid, Inc. subsidiaries, Central Maine Power Company and NCEC Transmission LLC (NCEC) created and funded a political action committee in Maine, Clean Energy Matters, in September 2019 to oppose the 2019-2020 citizen initiative campaign begun by the opponents of the proposed NCEC transmission line. The initiative proposed a referendum that would have reversed the Maine PUC order that granted a certificate of public convenience and necessity for the New England Clean Energy Connect Transmission Project -- a 145.3 mile long 1,200 MW transmission line that would run from the Maine-Quebec border to Lewiston, Maine to serve the New England power grid.²⁶²

Avangrid Networks, Inc., the direct owner of Central Maine Power Company, challenged the initiative in Court and ultimately succeeded in preventing the placement of the initiative question on the November 2020 ballot. The Maine Supreme Court held that, if passed, the referendum would exceed the scope of citizen legislative powers under the direct initiative process established in article IV, part 3, section 18 of the Maine Constitution.²⁶³

The PAC's activities, however, preceded the court challenge. The PAC challenged the signature gathering campaign to place the initiative on the ballot. In an affidavit attached to NEE's May 25, 2021 *Reply to Joint Applicants' Responses to Order Regarding Avangrid Service Quality Issues and Management Audits*, State Representative Seth A. Berry, one of the

²⁶² Kump (7/27/21), at 3, 7.

²⁶³ See, *Avangrid Networks, Inc. v. Secretary of State*, 237 A.3d 882 (2020).

organizers of the citizen initiative, said the campaign to discredit the citizen initiative process included a network of out-of-state political consultants and aggressive strategies:

- \$397,467 spent on lawyers to challenge the Secretary of State's certification of the petition signatures, sue the State of Maine in an effort to block the referendum from appearing on the ballot after failing to disqualify sufficient signatures, and then appeal the court's decision that the ballot measure was valid;
- \$99,021 on a private detective firm, Merrill's Investigations, to stalk Maine citizens who were gathering signatures;
- \$117,820 on an Arizona-based political firm, Signafide, whose sole purpose was to attempt to discredit signatures for citizen initiatives; and
- \$112,114 on an Oakland, California-based opposition research firm, VR Research, to dig into the records of organizations and presumably individuals opposed to the project.²⁶⁴

Mr. Kump states that Representative Berry misstates the legal and factual debate regarding the NECEC project and the proposed referendum. Mr. Kump did not deny that the amounts claimed by Representative Berry were spent in the amounts indicated for the purposes stated.

b. Legal fees -- \$397,467

Mr. Kump states that the PAC challenged the petition signatures of the citizen initiative proponents before the Maine Secretary of State and in the Maine courts. He identified the PAC's legal counsel as the firm of Pierce Atwood, LLP.

c. Merrill's Investigations -- \$99,021

Mr. Kump states that the NECEC opponents hired Revolution Field Strategies (RFS), an out-of-state signature gathering firm, to collect the signatures needed to get the initiative on the ballot. He states that signature gathering firms are increasingly part of the landscape of ballot measure campaigns and are often strategically necessary to meet the threshold. But he said RFS

²⁶⁴ May 25, 2021 Verified Statement of Seth A. Berry, at 18 (attached to New Energy Economy's *Reply to Joint Applicants' Response to Order Regarding Avangrid Service Quality Issues and Management Audits*).

has a documented history of fraud. As a result, the PAC engaged Merrill's Investigations (Merrill's) to help determine whether any of the activities of RFS were unlawful. He says Representative Berry's use of the word "stalked" is purposely alarmist and inaccurate. He states that the investigators assigned to the matter were professional investigators licensed by the Bureau of Maine State Police and that they conducted their investigative work in accordance with applicable law including the Maine Professional Investigators Act. 32-M.R.S., Chapter 89. He says the investigators used only lawful means, such as observing persons and activities that appear in plain view and that could have been observed by any member of the public. He says they monitored the NECEC opponents' campaign activities, including specifically those of RFS's paid circulators. Mr. Kump states that Merrill's investigative work ultimately uncovered unlawful activity by RFS, including fraud.²⁶⁵

Mr. Kump also states that Representative Berry's mischaracterization ignores the fact that the PAC found clear evidence that the NECEC opponents violated Maine law in attempting to put the measure on the ballot. Through Merrill's investigative work, Mr. Kump states that the PAC learned that circulators and employees hired by RFS were notarizing petitions, in addition to providing services for the campaign, violating Maine law designed to address the potential conflict of interest. Mr. Kump states that the Secretary of State invalidated approximately 179 signatures for this reason.²⁶⁶

d. Signafide -- \$117,820

Mr. Kump states that Signafide is a company that specializes in reviewing and validating the petition sheets used in signature gathering campaigns across the United States. Signafide

²⁶⁵ Kump (7/27/21), at 10-11.

²⁶⁶ Kump (7/27/21), at 11.

scans every petition sheet (15,785 individual documents in this instance) and uses proprietary software and a robust computer system to electronically analyze each signature to determine its accuracy. Mr. Kump states that Signafide uncovered fraudulent signatures, which resulted in 734 invalidated signatures that were duplicates and 122 invalidated signatures that were either undated or dated after the circulator had signed the petition.²⁶⁷

Mr. Kump also states that, with the support of Signafide's research, the PAC identified a circulator hired by RFS who forged the signatures of at least two individuals. The PAC subsequently learned that an RFS supervisor was informed of this fraud and the circulator was fired, but RFS submitted the forged documents to the municipality and Secretary anyway. The Secretary ultimately invalidated all of the 174 signatures submitted by this circulator.²⁶⁸

e. VR Research -- \$112,114

Mr. Kump states that the PAC hired VR Research to review whether the more than 200 circulators used by RFS were residents of Maine and registered to vote in the town in Maine where they reside, as required by the State Constitution. He states that the Secretary of State invalidated 713 signatures for this reason and an additional 744 signatures that were submitted by persons who did not supply the required affidavit that they were registered to vote and residing in the State.²⁶⁹

Mr. Kump also states that VR Research's services included researching public statements by NECEC opponents in connection with the project or related issues, the review of publicly

²⁶⁷ Kump (7/27/21), at 11-12.

²⁶⁸ Kump (7/27/21), at 12-13.

²⁶⁹ Kump (7/27/21), at 13.

available information to understand the campaign's funding sources, review of regulatory filings and research and analysis on a broad range of matters, including energy, economics and policy.²⁷⁰

He states that the VR Research work also led to the filing of a complaint with the Maine Ethics Commission in January 2020 that a group known as Stop the Corridor (STC) should have registered as a PAC. He states that STC was engaged in grassroots activities and paid advertising opposed to the NECEC throughout 2018 and 2019 and that STC became engaged in the signature gathering effort when that began in August 2019. He states that VR Research collected and organized media, digital or other direct mail expenditures made by STC during the signature gathering campaign from a variety of available public resources and the PAC provided it to the Ethics Commission on January 31, 2020. He states that the Ethics Commission decided to investigate STC in March 2020 and that STC refuses to fully respond to the Commission's questions or fully comply with the Commission's subpoenas.²⁷¹

f. The Maine Secretary of State's review of the challenged signatures

The PAC did not succeed in its challenges to the petition signatures. The proponents of the referendum initially submitted 15,785 petitions containing 82,449 signatures, compared to the 63,067 signatures required to place the initiative on the November 2020 ballot.²⁷² Petitions for citizen initiatives are filed with the Secretary of State's office in Maine, whose role is to examine the signatures and determine whether the petitions satisfy the statutory requirements to proceed to the ballot. The Secretary of State uses its own resources and considers information submitted by challengers, such as the PAC.

²⁷⁰ Kump (7/27/21), at 13-14.

²⁷¹ Kump (7/27/21), at 14-15.

²⁷² Proponents of a citizen initiative in Maine must gather a number of signatures equal to 10% of the total vote for Governor cast in the last Maine gubernatorial election. The threshold for the citizen initiative regarding the NECEC ballot question was 63,067 signatures.

On March 4, 2020, the Secretary of State found 12,735 signatures to be invalid and 69,714 signatures to be valid -- exceeding the required threshold by a margin of 6,647 valid signatures. After an appeal by the PAC to the Maine Superior Court, the Secretary of State reviewed the PAC's claim that an additional 17,000 signatures were invalid, and on April 1, 2020, the Secretary of State found that 3,597 of the 17,000 challenged signatures were invalid. Thus, the April 1, 2020 decision found finally that 66,117 signatures were valid -- 3,050 signatures above the 63,067 requirement.²⁷³

Mr. Kump's claims of fraud appear to be over-stated based upon the facts alleged in his July 27 testimony and the exhibits attached to that testimony. The Secretary of State's findings on the petition signatures attached to Mr. Kump's testimony made one finding of fraud. Secretary of State Matthew Dunlap found that the petitions circulated by one of the more than 200 people who collected signatures for the citizen initiative included signatures of people who claimed they did not sign the petitions. The Secretary of State thus invalidated all 174 signatures on those petitions, which had been included as valid in the March 4 decision.²⁷⁴ Mr. Dunlap made no other findings of fraud.

Mr. Kump's testimony also appears to have characterized as fraudulent 1,035 of the 3,597 additional signatures that the Secretary of State invalidated in his April 1, 2020 decision. The 1,035 additional invalidated signatures cited by Mr. Kump included 734 signatures that were duplicates, 179 signatures collected by people who were legally prohibited from doing so because they had provided notarial services to the initiative campaign, and 122 signatures that

²⁷³ Kump (7/27/21), at JA Exh. July Supp. RDK-7, p. 9 of 10.

²⁷⁴ Amended Determination of the Validity of a Petition for Initiated Legislation Entitled: "Resolve to Reject the New England Clean Energy Connect Transmission Project," Office of the Secretary of State, April 1, 2020, attached to Kump (7/27/21) as JA Exhibit July 27 Supp. RDK-7.

were either undated or dated after the circulator had signed the petition. The Secretary of State did not find that these 1,035 additional signatures were fraudulent.

In the end, the largest number of invalidations consisted of 6,260 signatures that were not certified as belonging to a registered voter and 3,127 signatures that were duplicates.²⁷⁵ The Secretary of State did not find that these invalidations were the result of fraud.

Further, Mr. Kump provided no support for his claim that the signature gathering firm, Revolution Field Strategies, hired by the citizen initiative proponents, “has a documented history of fraud.”

Finally, Mr. Kump does not describe how VR Research’s gathering of information about NECEC opponents was related to the signature gathering process before the Secretary of State. This includes VR Research’s researching of public statements by NECEC opponents in connection with the project and the review of publicly available information to understand the campaign’s funding sources.

Mr. Kump and Mr. Darnell both state that Avangrid, Inc.’s affiliates and PNM have not conducted any similar information gathering activities in New Mexico. But Mr. Kump said at the August 19 hearing that PNM would do so if it believed falsehoods were being put against it:

What I would say to you is this: Yes, we've used them. We didn't have a history of using them at all up until the last three years. We use them in a very open and transparent manner, and what I can assure you is that if there was ever an instance in New Mexico where we felt, you know, there were falsehoods being put against PNM, and we needed to defend ourselves, and the process required to do that, a very transparent manner through a PAC that discloses all its funding sources, we would certainly do that again.²⁷⁶

²⁷⁵ Id., at pp. 8-9 of 10.

²⁷⁶ Tr. 1807-1808.

4. Prudence of CMP's distributed energy resource implementation practices

One of the general benefits cited of the Proposed Transaction is Avangrid, Inc.'s expertise in bringing renewable energy resources onto PNM's system. A recently opened proceeding in Maine, which is investigating the prudence of CMP's interconnection practices for small distributed energy resources, such as rooftop and community solar projects, draws that expertise into question.

On April 6, 2021, the Maine PUC opened a formal investigation into CMP's interconnection practices for small distributed energy resources. The investigation responds to a February 10, 2021 request filed by the Coalition for Community Solar Access and the Maine Renewable Energy Association (CCSA/MREA) alleging that CMP signed agreements with developers for costs the developers were required to pay to CMP to accommodate the interconnections, and then months later CMP dramatically increased the costs. CCSA/MREA stated that CMP's actions were "egregiously incompetent and are jeopardizing hundreds of millions of dollars in investment and immediate cost savings for Maine homeowners and businesses."²⁷⁷

The Maine Commission's April 6 order announced it would address the following issues:

1. Whether CMP acted prudently with respect to the enactment of LD 1711?²⁷⁸
2. Whether the timeliness of CMP's identification of the Ground Fault Over Voltage (GFOV) issue²⁷⁹ was prudent under the circumstances?

²⁷⁷ NEE Exhibit 30, Notice of Formal Investigation, Docket No. 2021-00035, Maine Public Utilities Commission, April 6, 2021.

²⁷⁸ LD 1711 is legislation adopted in 2019 to promote solar energy projects and distributed generation resources in Maine.

²⁷⁹ The interconnection cost increases appear to have resulted from CMP's identification of the T-GFOV issue in the course of its reviews of interconnection applications. In a Bench Memorandum filed in Docket No. 2021-00035, the Commission described the T-GFOV problem as follows:

(Cont'd on next page)

3. Whether CMP's response to the GFOV issue was prudent under the circumstances?
4. Whether the "less traditional" solution to the GFOV issue selected by CMP is "safe and reliable" and "just and reasonable" and would ensure that interconnection-related costs are borne by interconnection customers and not ratepayers?
5. Whether CMP's communications to generation developers and other stakeholders associated with the GFOV issue and its costs were reasonable?
6. Whether the Commission should impose on CMP any penalties pursuant to Chapter 324 § 14 and 35-A M.R.S. § 1508-A associated with the issues listed above?²⁸⁰

At the hearing in the current case on August 12, Mr. Kump addressed the subsidies he states that are created by Maine's net metering legislation and the strain the increased number of distributed generation interconnection requests have been creating for CMP, but he did not directly address the prudence issues that are being examined in the Maine proceeding. Moreover, he described CMP's lack of experience in integrating distributed generation projects onto its system:

The difficulty becomes, and I'll use the example that I used earlier, if you have five or six developers looking to interconnect into the same substation, that was only designed in the first place for several hundred customers, it oftentimes can result in significant costs that the developers would have to pay in order to interconnect.

That's been a part of the contention, too, because I'll be frank, we're all learning right now in terms of -- we have the systems design of the past, and the design you're going to need in the future, where you have all forms of distributed

According to CMP, islanding is a condition in which a distributed generator's facilities continue to provide power to a collection of customer loads when electricity from a T&D utility's grid is no longer supplying power to those customers. T-GFOV occurs following a single-phase fault on a transmission line when backfeed flow through a distribution transformer occurs as a result of an unintended islanding condition. When this happens, the voltage rise on un-faulted phases of the transmission circuit can result in extremely high voltage on these phases for indefinite periods of time unless appropriate protections are added to the system.

Bench Memorandum, Docket No. 21-00035, September 14, 2021, at fn. 3.

²⁸⁰ NEE Exhibit 30, Notice of Formal Investigation, *Id.*

generation on the network. And we're all learning about what are the most efficient ways to, you know, design the system to do that?

I'm not an engineer by trade, but in talking to our team, it's a very, you know, complex issue, and one that we're quite frankly learning on the fly as we go through this.²⁸¹

5. Avangrid Renewables, LLC compliance issues in New Mexico

Avangrid Inc. has been operating in New Mexico since at least 2017 through its Avangrid Renewables, LLC subsidiary. Avangrid Renewables, LLC builds renewable energy projects and sells the energy to public utilities.

In his April 2 testimony, Staff witness, John Reynolds, Director of Staff's Utility Division, expressed concerns about Avangrid Renewables, LLC's skirting of New Mexico law and non-compliance with Commission orders in regard to the company's two wind projects in the state -- before Avangrid, Inc. asked for approval of the Proposed Transaction. He said Avangrid Renewables, LLC deliberately skirted New Mexico law in 2016-2017 by claiming that its El Cabo Wind Farm has a capacity of 298 MW while the Public Utility Act provides for location control of generation facilities designed for or capable of operation at a capacity of 300 MW or more and a right-of-way width determination for the related gen-tie line. Avangrid Renewables, LLC did not seek the Commission's approval either for location control for the El Cabo Wind Farm, nor did it apply to the Commission for a right-of-way width determination.²⁸²

Mr. Reynolds said Avangrid Renewable, Inc.'s actions are inconsistent with the ethical principles and good corporate governance values it espouses in this case.²⁸³ And he

²⁸¹ Tr. 503 (Emphasis added).

²⁸² Reynolds (4/2/21), at 16.

²⁸³ Reynolds (4/2/21), at 35. Mr. Reynolds said Avangrid Renewables, LLC's actions are inconsistent with ethical principles and good corporate governance values that Mr. Azagra Blazquez claims represents Iberdrola's general business philosophy:

(Cont'd on next page)

recommended that the issue should be remedied by the Joint Applicants promptly seeking in a new docket the Commission's approval for location of the El Cabo Wind Farm, and for right-of-way width determination as necessary.²⁸⁴

Mr. Reynolds also said that the Avangrid Renewables, LLC subsidiary, Pacific Wind Development LLC (Pacific), properly obtained location control and a right-of-way width greater for its 304 MW La Joya Wind Farm in Case No. 18-00353-UT.²⁸⁵ But Pacific did not comply with the conditions of the Commission's approval.²⁸⁶ He said Pacific did not make compliance filings concerning either the construction permits that were required within two weeks, nor any notices that the La Joya Wind Farm or the gen-tie facilities were being placed into service.²⁸⁷

Mr. Kump is President of Avangrid, Inc, which owns Avangrid Renewables, LLC. In his April 21 rebuttal testimony, he said that, upon reading Mr. Reynolds' testimony, he immediately looked into the La Joya issues, and determined that Avangrid Renewables, LLC did not make the necessary post-approval compliance filings. He said the compliance filings have since been made with the Commission.²⁸⁸ Mr. Kump said one of the filings was not timely due to a miscommunication between his team and the contractor as to who would compile the

Iberdrola's mission and purpose is to become the leading multinational company in the energy sector, creating sustainable value by providing quality service for citizens, customers, and shareholders, and for the communities in which we operate. We are committed to ethical principles, good corporate governance and transparency, customer focus, the safety of people and supplies, operational excellence, innovation, protection of the environment, and the Sustainable Development Goals approved by the United Nations. Iberdrola works to recruit, retain and promote talent and to encourage the personal and professional growth of its workforce.

Azagra Direct; Page 6, Lines 14-22 (emphasis added).

²⁸⁴ Reynolds (4/2/21), at 35.

²⁸⁵ Reynolds (4/2/21), at 16-17.

²⁸⁶ Decretal Paragraphs B & C, Recommended Decision filed April 18, 2019 (adopted by the Commission in its Final Order issued May 16, 2019), Case No. 18-00353-UT.

²⁸⁷ Reynolds (4/2/21), at 17.

²⁸⁸ Kump (4/21/21), at 25.

construction permits and file them with the Commission. He said the second was a failure on Avangrid Renewables, LLC's part to provide notice that the project was placed in service. He apologized for the errors, and said Avangrid, Inc. will work diligently to ensure they do not occur again.²⁸⁹

Mr. Kump did not agree to Staff's proposed review and approval of the El Cabo project. He said the El Cabo Wind Farm is rated at 298 MW, which is below the statutory level required for the Commission's location approval. He said construction is already well underway, and El Cabo is nearing the point where it will be put into operation. He said, for future projects, Avangrid Renewables, LLC will consult with Staff regarding any project with a rated capacity that falls within 5% of the statutory minimum requirement for the Commission's location approval.²⁹⁰ The Stipulation, however, does not incorporate Mr. Kump's promise.²⁹¹

In Mr. Reynolds' July 16 testimony opposing the Stipulation, he states that Staff developed information in discovery that confirms his belief that Avangrid Renewables, LLC deliberately skirted the Public Utility Act's location control and right-of-way width determination requirements for the El Cabo wind project. He cited two documents in which the developers stated that the nominal capacity of the El Cabo Wind Farm was approximately 298 MW, that generation as then planned will not exceed 299 MW, and that a 300+ MW project would clearly fall under the Commission's jurisdiction and therefore jeopardize the initial project due to unnecessary regulatory risk.²⁹²

²⁸⁹ Kump (4/21/21), at 25.

²⁹⁰ Kump (4/21/21), at 26.

²⁹¹ Reynolds (7/16/21), at 17.

²⁹² Reynolds (7/16/21), at 17-18.

Mr. Reynolds said that Avangrid developed the El Cabo project to maximize its nameplate capacity while deliberately avoiding the Commission's oversight by 1 MW.²⁹³ Mr. Reynolds acknowledged that he is not an engineer, but he said his experience as a Staff witness addressing renewable energy generation suggests that it is unlikely that a wind facility could effectively be limited to operating at any given moment at no more than 1 MW (or 0.336%) over its 298 MW nameplate capacity given the normal range of wind velocities. Given that the nameplate capacity of Avangrid's La Joya facility has variously been stated as 304 MW or 306 MW, he said there appears to be at least some margin of error in establishing wind turbine capacities.²⁹⁴

In his July 16 testimony, Mr. Reynolds proposes an alternative to his April 2 recommendation for the retroactive request for location control approval and right-of-way width determination. He proposes that the Joint Applicants commit to not opposing an inquiry initiated by Staff, subject to the Commission's approval, to examine whether Avangrid should have in hindsight sought the approvals Mr. Reynolds claims are required for the El Cabo Wind project. He states the Joint Applicants should further commit to collaborating in good faith with the inquiry by providing available information to support a reasonable finding with recommendations to develop, clarify or strengthen Commission rules related to location control and right-of-way determinations.²⁹⁵

In his July 29 rebuttal testimony, Mr. Kump states that Avangrid agrees to Staff's alternative proposal, which is not included in the Stipulation.²⁹⁶

²⁹³ Reynolds (7/16/21), at 18-19.

²⁹⁴ Reynolds (7/16/21), at 18, fn. 19.

²⁹⁵ Reynolds (7/16/21), at 20.

²⁹⁶ Kump (7/29/21), at 14.

Commissioner Maestas pursued the issue further at the August 19, 2021 hearing. Citing Mr. Kump's July 29 rebuttal testimony, Commissioner Maestas asked why a formal investigation docket is needed for Avangrid to provide the information Staff seeks:

Q. As a Commissioner, I don't understand this back-and-forth. I believe the rated capacity was maybe 2 megawatts under the 300 megawatt threshold that triggers location approval of the PRC.

Now whether, you know, other people might see that as being cute, "it's under 300." My point is why not just provide the information to the PRC and avoid a formal investigatory docket.

Tell us what the actual operating capacity is, just to allay concerns of Staff, instead of having us, again, open a formal investigatory docket.

Why do we keep, you know, going back and forth on this? Maybe it's a PNM issue, but I think it is an Avangrid project, I believe.²⁹⁷

Mr. Kump agreed but appeared to hedge on the strength of his commitment:

A. Yeah, I have not been, Commissioner, incredibly close to this on the renewable side and this project, but I can commit to you that I will sit down with our folks in our renewables business and better understand this issue, and figure out a way to provide the information that Staff is looking for.

I think our comment here more was rather to, you know, look in the rearview mirror retrospectively back. We're more than willing to sit down and figure out exactly what we should be doing prospectively to make sure we don't have a situation like this again. But if there is still an interest in getting the information associated with this El Cabo project, I'm sure we can work with Staff to work through that.²⁹⁸

6. Failure to disclose service problems for Avangrid, Inc. utility subsidiaries

The Joint Applicants' original filing failed to disclose any of the penalties and disallowances in the current proceeding, despite their relevance to this case, i.e., the risk that the adequacy of PNM's service may deteriorate under the direct or indirect control of Avangrid, Inc.

²⁹⁷ Tr. 1800-1801.

²⁹⁸ Tr. at 1801 (Emphasis added).

The failure is also significant, given that Avangrid, Inc. considered the issues to be sufficiently important to include them in its reports filed with the U.S. Securities and Exchange Commission. Avangrid, Inc. also failed to disclose the pendency of the management audits in Maine and Connecticut that review the extent to which the organizational structure may have contributed to the failures in those states.

Instead, the Joint Applicants' testimony filed prior to the June 4 Stipulation was less than forthcoming on these issues. In his April 2 testimony opposing the Application, Staff witness Evan Evans cited the results of J.D. Power's 2020 Electric Utility Customer Satisfaction Studies, which ranked Central Maine Power last among the 128 investor-owned electric utilities surveyed for residential customer satisfaction.²⁹⁹ In his April 21 rebuttal testimony, the President of Avangrid, Inc., Robert D. Kump, described improvements the company has been making in customer service at Central Maine Power Company but cited only the J.D. Power survey as the reason for the improvements.³⁰⁰ Mr. Kump omitted any reference to the regulatory proceedings in Maine. The February 19, 2020 order of the Maine PUC reduced the company's return on equity for its customer service failures and provided that the reduction will continue until the company proves over a rolling 18-month period that its customer service has improved to acceptable standards (resulting in a disallowance of at least \$10 million). Mr. Kump also omitted any reference to the management audit required by the February 19, 2020 order.³⁰¹

Avangrid, Inc.'s failures to disclose its electric utilities' service problems in the Northeast were discussed at the status conference held on May 11. Based upon that discussion, the Hearing

²⁹⁹ Rochester Gas & Electric Company ranked 1st among the 12 midsize electric utilities surveyed in the East region, but the United Illuminating Company ranked 11th in that group. New York State Electric and Gas Company ranked 17th of the 18 large electric utilities surveyed in the East region. *See* Evans (4/2/21), at 19.

³⁰⁰ Kump (4/21/21), at 27-29.

³⁰¹ Order, Docket No. 2018-00194, February 19, 2020, *supra*, at 137.

Examiner found in an Order issued that day that the scheduling of further proceedings in this matter should not take place until after the Joint Applicants provided further information on the issues. The Hearing Examiner found that the Joint Applicants' failure to disclose this information to the Commission in this proceeding was troubling and was also relevant to the credibility of their witnesses' testimony and the transparency by which Avangrid, Inc. and PNM would conduct their business in New Mexico if the merger is approved. The Hearing Examiner stated that the results of the management audits in Connecticut and Maine would help the parties and the Commission understand the impact of Avangrid, Inc.'s organizational structure on PNM's ability to provide adequate service if the proposed merger is approved.³⁰²

Accordingly, the Hearing Examiner issued an Order on May 11 requiring the Joint Applicants to make a filing by May 18 answering questions about why they failed to notify the Commission of the Connecticut, Maine and New York decisions imposing the penalties and negative revenue adjustments. The May 11 Order also directed the Joint Applicants to provide a list of enforcement actions and enforcement measures in rate or other proceedings initiated or concluded by state and federal regulatory agencies since January 1, 2016 against Avangrid, Inc.'s electric and gas utility subsidiaries and the results of the actions and measures.³⁰³

In the Joint Applicants' May 18 response, Mr. Kump stated that Avangrid, Inc. "reviewed the most recent merger and acquisition cases at the Commission, including Case Nos. 08-00078-UT, 13-00231-UT, 15-00327-UT, and 19-00234-UT, as well as the Commission's regulations, and did not find a requirement for an affirmative filing of this type of information with the Commission." He stated that Avangrid, Inc. "understands that in Case No. 19-00234-UT, Sun

³⁰² Order Regarding Avangrid Service Quality Issues and Management Audits and Suspension of the Filing Date for Statements in Opposition to the May 7, 2021 Stipulation, May 11, 2021.

³⁰³ Order Regarding Avangrid Service Quality Issues and Management Audits and Suspension of the Filing Date for Statements in Opposition to the May 7, 2021 Stipulation, May 11, 2021, Attachments 3 and 4.

Jupiter filed supplemental testimony in response to a Bench Request in which Hearing Examiner Glick asked whether there were any regulatory investigations involving any Sun Jupiter affiliated utility. This Bench Request occurred after an uncontested stipulation was filed with the Commission where no testimony was filed in opposition to the merger application.”³⁰⁴ He did not explain why Avangrid, Inc.’s awareness of the interest expressed by the Hearing Examiner in Case No. 19-00234-UT was not sufficient to motivate Avangrid, Inc. to be forthcoming in this case.

Mr. Kump said no one at Avangrid, Inc. made an affirmative decision not to notify the Commission of the penalties and negative revenue adjustments. He said Avangrid, Inc. “did not believe that any and all utility issues in other jurisdictions were matters that should affirmatively be reported to the Commission.”³⁰⁵

In answer to the Hearing Examiner’s question about why Mr. Kump narrowly addressed the discussion in Mr. Evans’ April 2 testimony about the negative J.D. Power customer satisfaction ratings for the Avangrid, Inc. electric utilities and omitted mention of the Maine PUC sanctions and management audit, Mr. Kump said his “testimony was for the purpose of rebuttal, and Avangrid understands that 1.2.2.35(N)(1) NMAC provides that ‘rebuttal evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff.’”³⁰⁶ He said his rebuttal testimony “sought to explain the issues related to the J.D. Power Customer Satisfaction Survey that were raised by Mr. Evans, as well as explain how Avangrid is working to improve customer satisfaction.”³⁰⁷

³⁰⁴ Commission Exhibit 6, Joint Applicants’ Response to Order Regarding Avangrid Service Quality Issues and Management Audits, May 18, 2021, at 8-9.

³⁰⁵ *Id.*, at 9.

³⁰⁶ *Id.*, at 13.

³⁰⁷ *Id.*

Avangrid, Inc.’s incomplete response to the May 11 Order to provide a list of enforcement actions and enforcement measures in rate or other proceedings initiated or concluded by state and federal regulatory agencies since January 1, 2016 against Avangrid, Inc.’s electric and gas utility subsidiaries and the results of the actions and measures is discussed in Section VI.F.7.c below.

7. Compliance issues in this proceeding

The Avangrid, Inc./Iberdrola, S.A. group of companies have experienced compliance issues in this proceeding that may foretell future compliance issues if the Proposed Transaction is approved.

a. Discovery violations and sanctions

(i) NEE Discovery request 4-55 and NEE’s Motion for Sanctions

On May 27, 2021, NEE filed a Motion for Rule to Show Cause Why Joint Applicants Shouldn’t be Held in Contempt and for Sanctions (NEE Motion). The NEE Motion seeks sanctions for the Joint Applicants’ alleged discovery violations and excessive requests for confidential treatment of discovery responses in violation of the January 14, 2021 Protective Order.

The NEE Motion concerns NEE Interrogatory 4-55, which was served on January 11 and which asked the Joint Applicants to “identify all current or pending instances of non-compliance with any state, federal law or commission rule by Iberdrola, S.A., Avangrid, Inc., or any of its affiliates for which the company may be liable and subject to civil or criminal penalties for the last ten years.” The Joint Applicants’ response was provided on January 21, 2021. The response referred to “Avangrid Exhibit NEE 4-55,” which was purportedly attached to the response, but which was not, in fact, attached. The Joint Applicants’ January 28, 2021 response included a series

of exhibits designated as confidential (CONFIDENTIAL Avangrid Exhibits 4-55 (a)-(i) 1-28-21 Supplemental) identifying violations and fines against Avangrid, Inc. and its utility subsidiaries. However, according to the NEE Motion, the exhibits did not include all violations and fines responsive to NEE 4-55 that occurred and were assessed prior to January 28.

NEE argues that the Joint Applicants' response to NEE Interrogatory 4-55 was late and incomplete and that the Joint Applicants failed to supplement the response with additional penalties and fines assessed after January 28 as required by the Commission's discovery rules. NEE also argues that the Joint Applicants' discovery response asserted unjustified confidentiality requests in violation of the January 14 Protective Order. The Joint Applicants eventually waived their request for confidential treatment on May 21, 2021 -- approximately four months after the Joint Applicants' January 28 response to NEE 4-55 and the related request for confidential treatment.

(ii) The Hearing Examiner's June 14 Order requiring testimony

After review of the Joint Applicants' June 4 response to NEE's Motion, the Hearing Examiner issued an Order on June 14, 2021 that directed the Joint Applicants to file testimony by June 28 showing cause why the Commission should not find that the Joint Applicants' response to NEE 4-55 violated the Commission's discovery rules, the discovery requirements in the December 18, 2020 Procedural Order, and the prohibition in the January 14 Protective Order against the over-designation of discovery responses as confidential.³⁰⁸

³⁰⁸ Order Addressing NEE Motion for Rule to Show Cause Why Joint Applicants Shouldn't be Held in Contempt and for Sanctions, June 14, 2021.

The June 14 Order provided that the issue of whether to order sanctions and/or administrative penalties and the amount thereof would be litigated through examination of the above testimony at the hearings scheduled to start on August 11. The issue would be resolved in the recommendation to be issued by the Hearing Examiner after the hearing and the subsequent decision issued by the Commission.

The June 14 Order set July 16 as the deadline for responsive testimony, which was supposed to include the amount of and support for any recovery of attorney fees as a sanction, and July 29 for rebuttal testimony.

**(iii) Mr. Kump's testimony on the completeness of
Avangrid, Inc.'s January 28 response to NEE 4-55**

On June 28, the Joint Applicants filed the testimony of Mr. Kump. Mr. Kump acknowledged that the Joint Applicants' January 21 response to NEE 4-55 omitted the exhibit of information requested by NEE and said the omission was due to a miscommunication among the Joint Applicants. He said the complete exhibit was included in its response of January 28. He said the omission was inadvertent human error and not an intentional delay.³⁰⁹

Mr. Kump said Avangrid, Inc. interpreted NEE 4-55 narrowly. He said the exhibit that Avangrid, Inc. submitted on January 28 was not prepared for the specific purpose of responding to NEE 4-55. He said the exhibit was the compilation of annual reports that Avangrid, Inc. has prepared historically as part of its internal data collection efforts to track fines, penalties, and lawsuits at Avangrid, Inc.'s regulated businesses.³¹⁰

He said that, at the end of each calendar year, Avangrid, Inc. collects data for the year related to fines, penalties, and lawsuits (if any) at Avangrid, Inc.'s regulated businesses. The

³⁰⁹ Kump (6/28/21), at 12-13.

³¹⁰ Kump (6/28/21), at 1-2.

data collection initiative is a manual process that typically takes approximately two months to complete. The effort involves a search for information that may relate to fines from the subject year resulting from environmental violations (emissions, noise, effluents, waste, etc.), marketing activities, health and safety violations (Occupational Health and Safety Administration), competition violations, and other issues to the extent they arose (e.g., allegations of corruption, human rights violations, and electromagnetic fields issues).³¹¹

He said the internal reports do not typically include negative revenue adjustments from regulatory proceedings or voluntary settlements that would avoid the imposition of fines or penalties. He said Avangrid, Inc. does not consider settlement amounts that are mutually agreed to between the relevant utility and the regulator and that do not involve monetary payments to the regulator/State to be civil penalties for purposes of the annual data collection initiative.³¹²

Mr. Kump said NEE 4-55 is a broad question about noncompliance that either resulted in a penalty or would be expected to result in a penalty. He said Avangrid, Inc. believed in good faith that the best repository for this information would be the records from the above-referenced annual data collection effort.³¹³

Mr. Kump said that, in hindsight, some explanation of the data collection effort and what it was intended to address may have added context and helped to avoid confusion around what the response to NEE 4-55 included.³¹⁴ He said that, upon further review, Avangrid, Inc. should have included three additional categories of information in response to NEE 4-55.³¹⁵

³¹¹ Kump (6/28/21), at 2.

³¹² Kump (6/28/21), at 2.

³¹³ Kump (6/28/21), at 3.

³¹⁴ Kump (6/28/21), at 3.

³¹⁵ Kump (6/28/21), at 12.

-- Settlements and negative revenue adjustments that did not result in a monetary payment to the regulator/State.

-- “Lower level financial penalties” that Avangrid, Inc. inadvertently omitted from its January 28 discovery response.

-- Proceedings that did not involve noncompliance, or were not expected to yield a penalty based on Avangrid, Inc.’s experience and historical precedent, or the status of the proceeding.

The additional categories of information are discussed below.

(iv) Negative revenue adjustments and settlements that did not result in a monetary payment to the regulator/State.

Mr. Kump said the January 28 response to NEE 4-55 did not include settlements and negative revenue adjustments. He said a negative revenue adjustment is a component of performance-based regulation, wherein the utility’s revenues are adjusted on a downward basis if certain targets are not hit. He said the adjustment is an incentive mechanism rather than a penalty or a fine under this type of regulatory regime. He said Avangrid, Inc.’s January 28 response omitted the following:

	Company	Problem
\$300,000 negative revenue adjustment	RG&E	2016 RG&E excessive estimated meter reads
\$525,000 negative revenue adjustment	RG&E	2017 RG&E excessive estimated meter reads/speed of answer
\$544,000 negative revenue adjustment	RG&E	2017 RG&E gas safety metrics
\$3,500,000 negative revenue adjustment	NYSEG	2018 CAIDI metrics
\$67,000 negative revenue adjustment	NYSEG	2018 Gas Safety Records
\$136,000 negative revenue adjustment	RG&E	2018 Gas Safety Records

\$7,000,000 negative revenue adjustment	NYSEG	2019 SAIFI metrics
\$750,000 negative revenue adjustment	NYSEG	2019 Gas Safety Records
\$525,000 negative revenue adjustment	RG&E	2019 Excessive Estimated Meter Reads
\$1,800,000 negative revenue adjustment	RG&E	2019 Gas Safety Records
\$7,000,000 negative revenue adjustment	NYSEG	2020 SAIFI
\$1,400,000 negative revenue adjustment	NYSEG	2020 Excessive Estimated Meter Reads
\$1,000,000 negative revenue adjustment	NYSEG	2020 Gas Safety Records
\$1,800,000 negative revenue adjustment	RG&E	2020 Excessive Estimated Meter Reads
\$600,000 negative revenue adjustment	RG&E	2020 Gas Safety Records
\$3,900,000 settlement	NYSEG and RG&E	NYPSC Case No. 17-E-0594, NYSEG and RG&E Order to Show Cause Relating to March 8, 2017 Windstorms
\$1,500,000 penalty	Connecticut Natural Gas	Failure to install properly rated plastic tees; Public Utilities Regulatory Authority Docket 17-12-02
\$9,000,000 fine	NYSEG	Fine for response to a spate of winter and spring storms in 2018 NYPSC Docket 19-E-0105
\$1,500,000 fine	RG&E	Fine for response to a spate of winter and spring storms in 2018 NYPSC Docket 19-E-010. ³¹⁶

(v) Inadvertent omission of “lower level financial penalties”

Mr. Kump said the January 28 response omitted 11 “lower level financial penalties” that Avangrid, Inc. included in its annual internal reports but inadvertently omitted from its response to NEE 4-55. He said these types of violations are commonplace in the Northeast among all gas utilities, but Avangrid, Inc.’s goal is to avoid any such violations:

Penalties	Company	Problem
\$50,000 penalty	Maine Natural Gas	Issues with quality assurance and quality control programs. MPUC Docket No 2019-00129

³¹⁶ Kump (6/28/21), at 5 -8.

\$500 penalty	Maine Natural Gas	Issue with Maine Damage Prevention Rule. MPUC DFU 19-254
\$25,000 penalty	Maine Natural Gas	Trenchless technology installation by a third-party contractor. MPUC Docket No. 2018-00128
\$15,000 penalty	Maine Natural Gas	Plastic pipe work and inspection without the necessary qualifications. MPUC Docket No. 2018-00012
\$15,000 penalty	Connecticut Natural Gas	Installation practice incident. PURA Docket 19-07-14
\$25,000 penalty	Connecticut Natural Gas	Inspector qualifications. PURA Docket 17-09-22
\$50,000 penalty	Connecticut Natural Gas	Joining installation practices. PURA Docket 16-12-07
\$25,000 penalty	Southern Connecticut Gas	Joining installation practices. PURA Docket 20-11-12
\$15,000 penalty	Southern Connecticut Gas	Safety testing practices. PURA Docket 16-05-11
\$30,000 penalty	Berkshire Gas Company	Installation practices. DPU 19-DS-0588
\$20,000 penalty	Berkshire Gas Company	Installation practices. DPU 19-DS-0617A ³¹⁷

(vi) Proceedings that did not involve noncompliance, or were not expected to yield a penalty based on Avangrid, Inc.'s experience and historical precedent, or the status of the proceeding.

Mr. Kump said Avangrid, Inc.'s January 28 response to NEE 4-55 did not include proceedings that did not involve noncompliance, or were not expected to yield a penalty based on Avangrid, Inc.'s experience and historical precedent, or the status of the proceeding:

\$ Amount	Company	Problem
Not determined	RG&E	New York Public Service Commission (NYPSC) Case No. 20-M-0360, Rochester Gas & Electric (RG&E) Pole Attachments (ongoing). Provided in response to the May 11 Order but not NEE 4-55 because it is unclear whether a civil penalty will be imposed.
Disallowances of previously incurred costs	CMP	Maine Public Utilities Commission (MPUC) Docket No. 2019-00015, Investigation into Roll Out of New SmartCare Billing System. Provided in response to the May 11 Order but not NEE 4-55

³¹⁷ Kump (6/28/21), at 10-11.

		because ultimate remedies prescribed by MPUC in response to implementation of CMP SmartCare billing system were disallowances of previously incurred costs, not civil or criminal penalties.
\$9.9 million	CMP	MPUC Docket No. 2018-00194, Investigation into CMP Distribution Rates. Provided in response to the May 11 Order but not NEE 4-55 because the 100 basis point Return on Equity reduction for 18 months until specified service targets are hit was part of a performance incentive mechanism, not a civil or criminal penalty
Not determined	CMP	MPUC Docket No. 2020-00228, Investigation into Standard Offer Uncollectible Adder. Provided in response to the May 11 Order but not NEE 4-55 because the investigation into whether the amount of standard offer write-offs that CMP should be able to collect through its standard offer uncollectible adder does not involve a civil or criminal penalty. ³¹⁸

(vii) Mr. Kump’s testimony on Avangrid, Inc.’s failure to supplement its response to NEE 4-55 after January 28

Furthermore, Mr. Kump admitted that the Joint Applicants did not supplement their January 28 response to NEE 4-55. He cited the following matters that were not captured in the data set provided on January 28, because they originated in 2021 or they occurred after Avangrid, Inc. responded to NEE 4-55 on January 28:

\$ Amount	Company	Problem
Not yet determined	CMP	MPUC Docket 2021-00035 dated April 6, 2021, Investigation Into Interconnection Practices Involving Central Maine Power. Mr. Kump said it would arguably be responsive as a supplement to NEE 4-55 because the order opening the investigation cites the potential for civil penalties.

³¹⁸ Kump (6/28/21), at 4-5.

\$1.5 million penalty	NYSEG	NYPSC Case No. 20-E-0586 dated January 21, 2021, Investigation into the Utilities' Preparation for and Response to August 2020 Tropical Storm Isaias and Resulting Electric Power Outages. Mr. Kump said it would arguably be responsive as a supplement because it concluded with NYSEG agreeing to a specified amount deemed to be a penalty.
\$50,000 penalty	Berkshire Gas Company	Regarding safety testing practices Massachusetts Department of Public Utilities (DPU) 20-PL-33,. Mr. Kump said it was not included with the response to NEE 4-55 because a Notice of Probable Violation regarding the matter was issued on March 1, 2021.
\$75,000 penalty	Berkshire Gas Company	Inspection practices. DPU 20-PL-37, Berkshire Gas. Mr. Kump said it was not included with the response to NEE 4-55 because a Notice of Probable Violation was issued on February 2, 2021.
\$10,000 penalty	Berkshire Gas Company	Control room practices. DPU 20-PL-65. Mr. Kump said it was not included with the response to NEE 4-55 because a Notice of Probable Violation was issued on February 16, 2021.
\$360,000 penalty	CMP, NYSEG and RG&E	Self-reported NERC violations. ³¹⁹

Mr. Kump's list, however, continued to omit the \$1 million annual negative revenue adjustment ordered on April 28, 2021 by the Connecticut Public Utilities Regulatory Authority

³¹⁹ Kump (6/28/21), at 8-9.

(PURA) and the \$2.1 million penalty assessed against the United Illuminating Company by the PURA on May 6, 2021 for its response to Tropical Storm Isaias.

Mr. Kump said that “[o]nce Avangrid became aware that it had not provided certain items in response to NEE 4-55, Avangrid offered to supplement its January 28 response on May 18, 2021.”³²⁰ He said all of the information was produced in subsequent responses to other parties’ discovery requests, so any inadvertent omission of certain information would have been captured in subsequent submittals. However, he acknowledged that Avangrid, Inc. could have and should have supplemented its January 28 response prior to May 18.³²¹

(viii) Mr. Kump’s testimony on the overbreadth of the confidentiality designations

Mr. Kump said that the spreadsheets in Avangrid, Inc.’s January 28 response to NEE 4-55 (JA Exhibits 4-55(a) through (i)) are internal work product and include Avangrid, Inc.’s own internal working notes and impressions of each of the items. He said the inputs for the documents are the work of Avangrid, Inc. employees who review various documents related to fines, penalties, and lawsuits. The employees then categorize which topic area each event or proceeding may be responsive to, and provide a summary of the event or proceeding which incorporates the employees’ interpretations of the proceedings and the outcomes. Avangrid, Inc.’s practice is to not make these documents accessible to the public in this form. As such, Avangrid, Inc. believed that the exhibits and each item in them were justifiably marked confidential.³²²

³²⁰ Kump (6/28/21), at 11.

³²¹ Kump (6/28/21), at 11.

³²² Kump (6/28/21), at 14.

Mr. Kump states that NEE contacted Avangrid, Inc.'s counsel in May 2021 and asked that Avangrid, Inc. reconsider its determination that the items were confidential. Avangrid, Inc. reviewed the material and concluded again that all of the information was non-public and contained Avangrid, Inc. employees' mental impressions. However, in the interest of making a good faith effort to work with NEE and to avoid a discovery dispute, and even though Avangrid, Inc. would not typically make documents of this nature public, Avangrid, Inc. agreed to make the information public in this specific instance.³²³

Mr. Kump said the breadth of the confidential designation in the Joint Applicants' response to NEE 4-55 did not violate Paragraph 8 of the Protective Order. He said every entry in the exhibits produced in response to NEE 4-55 contains an Avangrid, Inc. employee's summary and mental impression of an event or proceeding. Those summaries and mental impressions were not made public until Avangrid, Inc. agreed to make them public at NEE's request.³²⁴

Mr. Kump said Avangrid, Inc. believes it acted in good faith when it initially determined these documents were confidential and acted in good faith when it agreed to make them public in order to avoid a discovery dispute.³²⁵

(ix) Findings -- The Joint Applicants' January 28 response to NEE 4-55 (incompleteness and failure to supplement)

The Commission's rules on discovery favor prompt and complete discovery as a means toward effective presentations at public hearing and avoidance of the use of cross-examination at public hearing for discovery purposes.³²⁶ Paragraph M of the December 18, 2020 Procedural

³²³ Kump (6/28/21), at 14-15.

³²⁴ Kump (6/28/21), at 15.

³²⁵ Kump (6/28/21), at 16.

³²⁶ 1.2.2.25.A NMAC.

Order³²⁷ requires responses to discovery requests within ten calendar days after service.

Significantly, too, the New Mexico Rules of Civil Procedure consider an evasive or incomplete answer as a failure to answer.³²⁸

The Commission's rules on discovery and the New Mexico Rules of Civil Procedure also require parties to provide supplemental responses on a timely basis to responses that have been previously provided.³²⁹

NEE 4-55 was served on January 11, 2021. It asked the Joint Applicants to "identify all current or pending instances of non-compliance with any state, federal law or commission rule by Iberdrola, S.A., Avangrid, Inc., or any of its affiliates for which the company may be liable and subject to civil or criminal penalties for the last ten years." The Joint Applicants' response was provided on January 21, 2021. The response referred to "Avangrid Exhibit NEE 4-55" that was purportedly attached to the response, but the exhibit was not, in fact, attached. The late filing of the January 28 response is excusable, but the January 28 response was incomplete and evasive.

The Joint Applicants' January 28 response included a series of exhibits designated as confidential (CONFIDENTIAL Avangrid Exhibits 4-55 (a)-(i) 1-28-21 Supplemental) identifying violations and fines, but the exhibits did not include all violations and fines responsive to NEE 4-55 that occurred and were assessed prior to that date. The Joint Applicants also did not supplement

³²⁷ Procedural Order, December 18, 2020, Ordering paragraph M.

³²⁸ Rule 1-037(A)(3).

³²⁹ Section 1.2.2.25.I NMAC requires timely supplementation of responses to discovery requests:

I. Supplementation of responses to discovery requests: A party or staff who has responded to a request for discovery is under a duty reasonably and promptly to amend or supplement their previous response if they obtain information which they would have been required to provide in such response if the information had been available to them at the time they served the response.

Rule 1-026(E) NMRA of the New Mexico Civil Rules of Procedure is similar.

their January 28 response with violations and fines that were subsequently determined and assessed.

Mr. Kump admits the violations. He states that Avangrid, Inc. interpreted the request in NEE 4-55 to be consistent with its annual practice of recording fines and penalties and excluding settlements and negative revenue adjustments. He admits that the company's interpretation was misleading and that response should have explained the basis for the response and/or provided the settlements and negative revenue adjustments.

The Joint Applicants' violations negatively impacted the proceedings. Indeed, a primary reason for the further proceedings ordered in this case after the originally scheduled hearing dates in May was the Hearing Examiner's discovery in early May of the violations, fines and cost disallowances not previously disclosed by the Joint Applicants in their pre-filed testimony.

Timeline

NEE 4-55 served on Joint Applicants	January 11, 2021
Joint Applicants response (w/o Avangrid Exhibit NEE 4-55)	January 21, 2021
Joint Applicants response to NEE 4-55 with confidential exhibits	January 28, 2021
Staff & intervenor testimony	April 2, 2021
Initial Stipulation	April 23, 2021
May 7 Stipulation	May 7, 2021
Originally scheduled hearings (rescheduled to August)	May 4-12, 2021
Joint Applicants waive confidentiality request for NEE 4-55	May 21, 2021

The Hearing Examiner expressed frustration at the intervenors (and at the Joint Applicants) at the May 11 status conference for their failures to address these issues. The Joint Applicants' incomplete response to NEE 4-55 on January 28 and their failure to supplement that response help explain why the intervenors failed to address the Avangrid, Inc. utilities' violations, penalties and cost disallowances in other states in the testimony they filed on April 2. If the information had been promptly provided in response to NEE 4-55, the issues could have been addressed in the intervenors' April 2, 2021 testimony. The information may have also prompted some of the parties

not to have joined in the Stipulation or to have insisted that the Stipulation include stronger protections to ensure service quality.

(x) Findings -- The overbreadth of the Joint Applicants' confidentiality requests

On the issue of confidentiality, Paragraph 8 of the January 14, 2021 Protective Order issued in this case discusses the Commission's policy on the disclosure of public records and the requirements of the Inspection of Public Records Act. Paragraph 8 states that parties "should avoid designating documents as confidential that would not be entitled to such protection under IPRA."

The Joint Applicants' confidentiality request is not supported by the law. The Joint Applicants do not argue that the mental impressions of employees qualify as an exception to the Inspection of Public Records Act, as a trade secret or otherwise. They have presented no authority for their initial request. Their baseless claim led to the non-disclosure of the response to NEE-45 until May 21, when they agreed to waive their request -- approximately four months after the Joint Applicants' January 28 response to NEE 4-55 and the related request for confidential treatment.

Mr. Kump's claim that the confidentiality request for the Applicants' January 28 response to NEE 4-55 was justifiably based upon the mental impressions of Avangrid, Inc.'s employees is also not supported by an examination of the response. The items identified in the Joint Applicants' January 28 response to NEE 4-55 do not appear to include the mental impressions claimed by Mr. Kump nor any information that might deserve confidential treatment under the January 14, 2021 Protective Order.

(xi) Recommendation -- Sanctions

The imposition of discovery sanctions under the New Mexico Rules of Civil Procedure requires a finding that a party's failure to comply is willful, in bad faith, or due to his own fault. Wrongful intent is not required, but willful failure implies conscious or intentional failure, as distinguished from accidental or involuntary noncompliance. A finding of willfulness may be based upon either a willful, intentional, and bad faith attempt to conceal evidence or gross indifference to discovery obligations. *Lopez v. Wal-Mart Stores, Inc.*, 1989-NMCA-013, ¶7, 108 N.M. 259, 261, citing *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, ¶¶ 203, 382, 96 N.M. 155, 202, 238.³³⁰

Mr. Kump states that Avangrid, Inc.'s January 28 discovery response was not made in bad faith, but he acknowledges that he and Avangrid, Inc. were aware of the limited scope of information contained in Avangrid, Inc.'s internal reports and that, in hindsight, Avangrid, Inc. should have provided a more complete response. He also admits that Avangrid, Inc. did not

³³⁰ The New Mexico Supreme Court stated in *United Nuclear Corp. v. General Atomic Co.*, that offending parties' decisions to disregard court orders affect the integrity of the judicial process in addition to the rights of other parties:

A party cannot approach its obligation to make good faith discovery however it chooses as to certain matters, and at the same time expect to have the case proceed in a normal fashion as to other issues. See *Haney v. Woodward & Lothrop, Inc.*, 330 F.2d 940, 945 (4th Cir. 1964). At stake is not only the appellees' right to a fair trial on the merits, but also, the integrity of the orders of the court. As the court in *Perry v. Golub*, supra, 74 F.R.D. at 365, stated:

The refusal of a party . . . to comply with an Order of the Court cuts substantially deeper than the question of prejudice to litigants and their attorneys. A basic tenet of our government of law is that a party is required to obey a Court order.

In imposing stringent sanctions to preserve this basic principle, "courts are free to consider the general deterrent effect their orders may have on the instant case and on other litigation, provided that the party on whom they are imposed is, in some sense, at fault." *Cine Forty-Second St. Theatre v. Allied Artists*, supra, 602 F.2d at 1066.

United Nuclear Corp., v. General Atomic Co., 1980-NMSC-094, ¶ 394, 96 N.M. 155, 241.

comply with the requirement to supplement the January 28 response. And, it is clear from the Hearing Examiner's discussion above that the failure to supplement the January 28 response helped to avoid disclosure of significant penalties and negative revenue adjustments imposed after January 28. Finally, Mr. Kump provided no arguable justification for the confidentiality claim it made for the entirety of the January 28 response.

The Hearing Examiner, accordingly, finds that the violations at issue were willful and that sanctions are appropriate.

The issue of the appropriate sanction is made more difficult due to the failure of NEE to provide any testimony on this issue. The NEE Motion asks that the Joint Applicants be ordered to "reimburse Mariel Nanasi, attorney for New Energy Economy, for the time expended on NEE's six efforts to resolve discovery disputes including the bringing of this Motion, paid for by shareholder funds (not to be reimbursed by ratepayers)."³³¹

The Hearing Examiner finds that the breadth of Avangrid, Inc.'s violations and their impact on the development of evidence in this case justifies the imposition of sanctions. The Hearing Examiner therefore recommends that New Energy Economy should be awarded its attorney fees for the time expended on NEE's efforts to resolve the discovery dispute regarding NEE 4-55, including the bringing of the NEE Motion, paid for by shareholder funds (not to be reimbursed by ratepayers).

b. Failure to disclose *Levesque v. Iberdrola, S.A.*

Avangrid, Inc. appears to have committed a further discovery violation that was identified during the course of the August evidentiary hearings. NEE Interrogatory 1-67 asked the following: "Please provide a list of all lawsuits, by case name, number and date that

³³¹ NEE Motion, at 16.

Avangrid has been named as either a plaintiff or defendant, petitioner or respondent, appellee or appellant in any and all jurisdiction in the United States for the last twenty years.”³³² Avangrid, Inc. provided a list of three cases but omitted *Levesque v. Iberdrola, S.A.*, a 2019 class action filed initially in the Maine courts but later removed to the U.S. District Court in Maine. The complaint in *Levesque* seeks damages from CMP, Avangrid, Inc. and Iberdrola, S.A. for their roles in the implementation of the SmartCare billing system. Counsel for NEE questioned Mr. Kump about the case and an August 6, 2021 decision that addressed a motion to dismiss filed by the defendants.³³³

The decision was significant, however, for the Court’s reliance on information produced during discovery in that case that showed the influence of Iberdrola, S.A. and Avangrid, Inc. on CMP’s implementation of the billing system. In an August 2017 email (prior to the October 2017 implementation) cited by the Court, an Iberdrola, S.A. executive pressured Mr. Kump about the unacceptability of further delays in the project’s implementation:

What are the regulatory consequences of any delay? And the economic impac[t] (which must be transfer[ed] to ITRON)? This project should have finished last July. Delays [from] September are not acceptable. The team must work on a[] scenario of September completion, unless non regulatory, economic or reputational impact.³³⁴

The above information discussed in *Levesque*, which was not provided in the discovery in this case, reveals the extent to which Iberdrola, S.A. intervenes in the management decisions of Avangrid, Inc.’s electric utilities and the negative impact that such actions can have on the utilities’ services.

³³² R-NEE Exhibit 1, Interrogatory NEE 1-67.

³³³ Tr. 406-410.

³³⁴ *Levesque v. Iberdrola, S.A.*, 2021 U.S. Dist. LEXIS 147847, 2021 WL 3476092, August 6, 2021, slip op. at 16.

c. Skirting of Hearing Examiner orders

(i) Incomplete response to May 11 Order

The Hearing Examiner’s May 11 Order Regarding Avangrid Service Quality Issues and Management Audits required the Joint Applicants to “[p]rovide a list of enforcement actions and enforcement measures in rate or other proceedings initiated or concluded by state and federal regulatory agencies since January 1, 2016 against Avangrid, Inc.’s electric and gas utility subsidiaries and the results of the actions and measures.”³³⁵

The Joint Applicants’ May 18 response to the Hearing Examiner’s May 11 Order, however, was incomplete. A comparison of the May 18 response to the May 11 Order with the Joint Applicants’ January 28 response to NEE 4-55 (i.e., Exhibits 4-55(a)-(i) (1-28-21 Supplemental)) indicates that a number of enforcement measures in the form of fines for the five-year period covered by the May 11 Order have been omitted from the Joint Applicants’ May 18 response to the May 11 Order. The omissions total \$924,154, including \$462,369 in penalties for a variety of violations and \$461,785 in penalties for safe digging violations.

Amount	Company	Problem
3,000 penalty	Maine Natural Gas	2016 penalty for 2015 Pipeline Safety Violation. Avangrid Exhibit 4-55(b)(1-28-21 Supplemental), p. 3.
\$1,800 penalty	NYSEG	2017 penalty for violating a SPDES permit exceeding limit for phosphorous. Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$25,000 penalty	Avangrid Renewables, LLC	2017 penalty assessed by U.S. Fish and Wildlife Service for potential takes of Golden Eagles at the Company’s western wind farms. Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$57,000 penalty	United Illuminating	Two unpermitted discharge events of coal tar into the Mill River through underground storm drain system (assessed by Connecticut Department of Energy and

³³⁵ Order Regarding Avangrid Service Quality Issues and Management Audits, May 11, 2021, at Attachment 3.

		Environmental Protection). Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$7,500 penalty	RG&E	Violation related to workplace injury. Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$500 penalty	Maine Natural Gas	Damage prevention fine. Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$8,875 total penalties \$6,735 total penalties \$2,500 total penalties \$55,000 total penalties	Connecticut Natural Gas Southern Connecticut Gas NYSEG CMP	2017 fines for safe digging violations. Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$240,000 penalty	CMP	Settlement related to hazardous waste disposal in the 1970s at the Shulam Salvage yard. Avangrid Exhibit 4-55(i)(1-28-21 Supplemental).
\$10,575 total penalties \$14,700 total penalties \$75,000 total penalties	Connecticut Natural Gas Southern Connecticut Gas CMP	2018 fines for safe digging violations. Avangrid Exhibit 4-55(c)(1-28-21 Supplemental).
\$9,750 penalty	United Illuminating Company	2019 penalty assessed by CT DEEP for not completing remediation of property. Avangrid Exhibit 4-55(f)(1-28-21 Supplemental).
\$6,819 penalty	NYSEG	2019 OSHA violation. Avangrid Exhibit 4-55(f)(1-28-21 Supplemental).
\$30,000 total penalties \$58,500 total penalties \$39,000 total penalties \$25,000 total penalties	RG&E/NYSEG CMP Southern Connecticut Gas/Connecticut Natural Gas Berkshire Gas Company	2019 fines for safe digging violations. Avangrid Exhibit 4-55(f)(1-28-21 Supplemental).
\$100,000 total	Southern Connecticut Gas/Connecticut Natural Gas	2019 pipeline safety violations. Avangrid Exhibit 4-55(f)(1-28-21 Supplemental).

\$11,000 penalty	NYSEG	2020 violation of wetlands permit. Avangrid Exhibit 4-55(g)(1-28-21 Supplemental).
\$33,500 total penalties	Maine	2020 fines for safe digging violations. Avangrid Exhibit 4-55(g)(1-28-21 Supplemental).
\$32,400 total penalties	Connecticut	
\$60,000 total penalties	Massachusetts	
\$10,000 total penalties	New York	

(ii) Use of non-record evidence

At the close of the evidentiary hearings on August 19, 2021, the Hearing Examiner stated that his recommendation to the Commission would be based upon the record to date and not on any changes that may be negotiated after the close the hearings:

My recommendation to the Commission is going to be based upon the record to date. I will not consider any changes that may be negotiated after the end of these hearings. What I'm looking for, or what I'm going to be looking for soon, either by the end of next week, August 27, or by August 30, are statements of position on the Second Amended Stipulation as they are reflected in the current record, and specific sections of the Regulatory Commitments that each party -- positions on each of those Regulatory Commitments on which each party has taken a position. And citations to the record where those positions have been stated. That's not a brief, that is just an indication of what your positions have been through the end of this hearing process.³³⁶

No party stated an objection.

The Hearing Examiner followed that with an Order on Post-Hearing Filings issued the next day. The Order stated that the Hearing Examiner's recommendation to the Commission in this case will be based upon the parties' positions as expressed as of the close of the evidentiary hearings. The recommendation will not consider any changes to the parties' positions that may be negotiated after the close of the evidentiary hearings. In addition to setting a briefing

³³⁶ Tr. 1825-1826.

schedule, the Order required the parties to file statements of the parties' positions on the Stipulation by August 30, 2021 as the Stipulation and the parties' positions are reflected in the current record. It also required parties to include citations to the record where the positions were stated. The statements of positions were required to be filed by August 30, 2021.³³⁷

On August 23, 2021, the Joint Applicants and Staff filed a Verified Motion to Permit Filing of Agreed-Upon Positions or In the Alternative for Limited Reopening of Evidentiary Record. They requested permission to file compromise positions of record that they said were being considered by the movants during the hearing and that are responsive to the inquiries made by Commissioner Maestas during his questioning of Joint Applicants' Witness Robert Kump on the last day of the public hearing. They requested the ability to reflect their agreed-upon positions in the movants' and other parties' position statements and briefs. In the alternative, they asked the Hearing Examiner to reopen the record for the limited purpose of introducing their compromise positions into evidence.

On August 27, 2021, the Hearing Examiner issued an Order finding that the compromise positions that the Joint Applicants and Staff ask be admitted into the evidentiary record constitute new evidence in the form of proposed additions and modifications to the June 4 Stipulation. The Order found that other parties should have the opportunities to cross-examine the witnesses sponsoring the Motion and to provide responsive testimony. It stated further that the admission of the new evidence without those procedures would, unless waived by the parties, violate the objecting parties' due process rights.

But the Order also provided the opportunity for an appropriate reopening of the record. It provided that, if the Joint Applicants and Staff wish to introduce the new evidence, they should

³³⁷ Order on Post-Hearing Filings, August 20, 2021.

file a motion to reopen the record pursuant to 1.2.2.37.E NMAC and propose a schedule, after consultation with all parties, that provides for the filing of responsive testimony and a proposed hearing date for the cross-examination of witnesses.

The Joint Applicants and Staff did not follow up with a further motion to properly reopen the record.

Nevertheless, the Joint Applicants included the compromise positions in their Post-Hearing Brief as if the positions had been admitted into evidence. The Joint Applicants said they reached a compromise with Staff “mere hours after the close of the public hearing, and due to the schedules of other proceedings and work obligations, there was not sufficient time to seek to reopen the evidentiary record as contemplated by the Hearing Examiner.”³³⁸ They stated that they believe the existing evidentiary record provides grounds to adopt the compromise positions reached with Staff, which provide additional protections and benefits to New Mexico.³³⁹

The Joint Applicants’ belief that there was not sufficient time to seek the re-opening of the evidentiary record is not a proper basis to ignore the due process requirement reflected in the Hearing Examiner’s August 27 Order that new evidence be admitted only after an evidentiary hearing. It is not within the Joint Applicants’ authority to make determinations and take actions that violate Commission orders. The Hearing Examiner, accordingly, issued an Order Striking Portions of Joint Applicants’ Post-Hearing Brief on November 1, 2021 striking the relevant pages of the Joint Applicants’ Post-Hearing Brief.

³³⁸ Joint Applicants’ Post-Hearing Brief, at 18.

³³⁹ Joint Applicants’ Post-Hearing Brief, at 18-19.

d. Regulatory norms

In his July 16 testimony in opposition to the Stipulation, Staff witness John Reynolds commented about the lack of respect Iberdrola, S.A. and Avangrid, Inc. have for the regulatory process. He said it is disturbing as to what it may foretell about the relationship between the Commission and a future PNM with a Board tightly controlled by Iberdrola, S.A. and Avangrid, Inc.:

There appears to be a lack of understanding or respect for a protocol of regulatory conduct by Iberdrola and Avangrid which has manifested itself in the conduct of the settlement discussions in this case. Clients and attorneys communicate with each other. Attorneys speak for the clients. While this can be cumbersome, this protocol respects the attorney-client relationship, and it minimizes confusion. In this high-profile case, there has been a steady concern shared by some parties about Iberdrola or Avangrid circumventing this protocol in order to apply pressure indirectly. While no overt pressure has been exerted on me, I am aware that senior NMPRC staff has met with PNM senior management concerning the Proposed Transaction and Staff's position. This is disturbing as to what it may foretell about the relationship between the Commission and a future PNM with a Board tightly controlled by Iberdrola and Avangrid. This lingering concern is in significant part why Staff has continued to advocate for an independent PNM Board. Having worked on two investor-owned merger cases in the last two years, the contrast has been clear. In the earlier case, the buyers were represented by a handful of decision makers who met with the parties as a group and who responded swiftly and decisively to various parties' demands. In this case, the settlement discussions have been difficult, contentious, and drawn out. There has been a small number of group meetings with a variety of representatives from Iberdrola, Avangrid and PNM. Aside from these few group meetings, there appear to have been a significant number of bilateral meetings which have resulted in many of the more targeted Regulatory Commitments. While Iberdrola and Avangrid appear to be in charge, Staff has found its bilateral meetings with PNM alone to have been more productive. Iberdrola's and Avangrid's impatience with established protocol and refusal to follow that protocol has been a major impediment to resolving this matter outside the contentious litigation process.

Staff believes that it is necessary to address this issue in any order about this merger. Utility regulation is a delicate balancing act between the regulator and the regulated entity that should be based on mutual respect. If this is addressed correctly, it may mitigate some of Staff's concerns that underlie our recommendation for an independent PNM Board.³⁴⁰

³⁴⁰ Reynolds (7/16/21), at 20-22.

In response, the Joint Applicants offered an unusual, additional provision to the Stipulation intended to govern and constrain themselves in their future relationships with Staff and other parties:

The Joint Applicants agree that during the pendency of any PNM proceeding at the Commission, they will provide the attorney that has entered an appearance on behalf of any party prior notice of their intent to contact that party about substantive issues in dispute in the Commission proceeding. In the case of a party that is a membership organization, this notice will be provided before the Joint Applicants contact any member of that organization. This notice provision includes contacts that will be made by any employee, contractor, agent or retained outside counsel of the Joint Applicants or any of their affiliated interests. This provision does not limit the utility from contacting customers regarding routine service quality and other customer service issues.³⁴¹

Mr. Darnell, however, states that the provision does not prohibit contact that is not intended to change a party's position in a proceeding at the Commission, or undermine regulatory counsel's representation of the party. He also said the provision is a courtesy that could be provided equally by all parties in PNM proceedings.³⁴²

The provision is unusual and remarkable for the fact that it needs to be included in the Stipulation. One might expect that normal, respectful, professional behavior need not be specified as a regulatory practice that requires monitoring and potential enforcement.

e. Conflict of interest

Iberdrola, S.A. hired an attorney, Marcus Rael, to assist it in negotiating the Stipulation in this case. Mr. Rael, however, was concurrently representing two of the parties in the case, i.e., the Attorney General and Bernalillo County, as clients in unrelated litigation.

³⁴¹ Azagra Blazquez (7/29/21), at 14-15; Darnell (7/29/21), at 36-37.

³⁴² Darnell (7/29/21), at 37.

NEE made a series of filings in July 2021 claiming that Mr. Rael's representations constituted concurrent conflicts of interest prohibited by Rule 16-107 of the New Mexico Rules of Professional Conduct.

16-107. Conflict of interest; current clients.

A. Representation involving concurrent conflict of interest. Except as provided in Paragraph B of this rule, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

B. Permissible representation when concurrent conflict exists.

Notwithstanding the existence of a concurrent conflict of interest under Paragraph A of this rule, a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.³⁴³

In response to the Hearing Examiner's July 27 Order that required the Joint Applicants, the Attorney General and Bernalillo County to file their positions on NEE's claim,³⁴⁴ the Joint Applicants filed the affidavit of Mr. Azagra Blazquez. Mr. Azagra Blazquez said Iberdrola, S.A., on behalf of itself and Avangrid, Inc., retained the services of Mr. Rael to assist Iberdrola, S.A.

³⁴³ Rule 16-107 NMRA. The Rule 16-107 analysis is not limited solely to conflicts in related matters. In a situation, as here, where an attorney represents Client A and Client B in different matters, the attorney has a concurrent conflict of interest if the attorney represents Client A in a matter in which Client A's interests are directly adverse to the interests of Client B -- whether the attorney is representing Client B in that matter or not. Committee Commentary 6 to Rule 16-107 NMRA states that "[l]oyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated."

³⁴⁴ Order Requiring Positions of the Joint Applicants, Attorney General, and Bernalillo County on Alleged Conflicts of Interest, July 27, 2021.

and Avangrid, Inc. in negotiating a stipulation in this case. Mr. Azagra Blazquez said Iberdrola, S.A. was aware at the time it hired Mr. Rael's law firm that Mr. Rael was concurrently representing the Attorney General and Bernalillo County in other litigation. He said Iberdrola, S.A. did not consider Mr. Rael's representations of the Attorney General and Bernalillo County to be adverse to Iberdrola, S.A. and there was no consent given to the concurrent representation.³⁴⁵ Affidavits filed by the Attorney General and Bernalillo County also indicated that neither party provided written consent for the concurrent representations.³⁴⁶

On August 6, 2021, the Hearing Examiner issued an Order Disqualifying Iberdrola Attorney. The Hearing Examiner found that Mr. Rael's representation of Iberdrola, S.A. resulted in a prohibited conflict of interest in connection with his concurrent representation of the Attorney General and Bernalillo County in unrelated matters.³⁴⁷

The Hearing Examiner found that NEE had shown that Mr. Rael's representation of Iberdrola, S.A. (on behalf of Avangrid, Inc.) in this case was directly adverse in this proceeding to the interests of the Attorney General (and to the residential and small business customers the Attorney General is statutorily charged with representing) and to the interests of Bernalillo County. Indeed, both the Attorney General and Bernalillo County expressed opposition to the Proposed Transaction.³⁴⁸

The New Mexico Supreme Court has held that an objective standard is used when determining whether the lawyer reasonably could believe that the representation of a client with

³⁴⁵ NEE Exhibit 19, Affidavit of Pedro Azagra Blazquez in Support of Position Alleged Conflict of Interest, July 30, 2021.

³⁴⁶ Affidavit of Matt Baca, attached to The Attorney General's Position on Alleged Conflict of Interest, July 30, 2021; Affidavit of W. Ken Martinez, attached to Bernalillo County's Verified Pleading in Response to Order Requiring Positions on Alleged Conflict of Interest, July 30, 2021.

³⁴⁷ Order Disqualifying Iberdrola Attorney, August 6, 2021.

³⁴⁸ *Id.*, at 25-26.

interests adverse to those of another client would not adversely affect the lawyer's relationship with the other client. The Court said in *In re Stein* that “Respondent's subjective belief that no conflicts existed is irrelevant.” *In re Stein*, 2008-NMSC-0013, ¶22, 143 N.M. 462, 468. The Court stated in that case that, “[v]iewed objectively, the facts speak for themselves.” *Id.*, at ¶23, 143 N.M. at 469.

The Supreme Court described the same objective standard in *In re Sheehan, Esq.*:

This is an area in which a lawyer should not simply rely on instinct to comply with ethical obligations. The determination of whether a conflict exists requiring that the Rule 16-107(A) conditions be met prior to proceeding with the representation is an objective standard. The fact that an attorney failed to consult with the clients and obtain consent because he or she did not believe the interests were directly or substantially adverse is not a defense to a conflict of interest charge. Careful analysis and erring on the side of caution in these situations is recommended.

In re Sheehan, Esq., 2001-NMSC-020, at ¶12, 130 N.M. 485, 487. See also *In re Houston*, 1999-NMSC-32, at ¶12, 127 N.M. 582, 584.

Further, NEE showed that Mr. Rael had taken actions in which the conflict of interest may have negatively impacted the clients. NEE cited Joint Applicants’ discovery responses that showed that Mr. Rael met with the Attorney General’s Office 18 times in late February through early April while the Attorney General was preparing its testimony opposing the Joint Applicants’ proposal.

2/26/2021	9:30 AM	Meeting with NM AG’s Office
3/4/2021	8:00 AM	Meeting with NM AG’s Office
3/10/2021	8:00 AM	Meeting with NM AG’s Office
3/10/2021	11:30 AM	Meeting with NM AG’s Office
3/11/2021	8:00 AM	Meeting with NM AG’s Office
3/11/2021	8:30 AM	Meeting with NM AG’s Office
3/16/2021	9:00 AM	Meeting with NM AG’s Office
3/18/2021	11:30 AM	Meeting with NM AG’s Office
3/23/2021	1:30 AM	Meeting with NM AG’s Office
3/24/2021	8:00 AM	Meeting with NM AG’s Office
3/24/2021	8:30 AM	Meeting with NM AG’s Office

3/25/2021	9:30 AM	Meeting with NM AG's Office
3/25/2021	11:30 AM	Meeting with NM AG's Office
3/25/2021	3:00 PM	Meeting with NM AG's Office
3/30/2021	10:00 AM	Meeting with NM AG's Office
3/31/2021	5:00 PM	Meeting with NM AG's Office
4/1/2021	8:30 AM	Meeting with NM AG's Office
4/5/2021	2:00 PM	Meeting with NM AG's Office ³⁴⁹

The discovery response also showed that Mr. Rael met with the Bernalillo County Attorney on March 10, 2021 and also “had a number of telephone conferences” with the County Attorney. Either way, if Mr. Rael was advocating for Iberdrola, S.A.’s position or the positions of the Attorney General and Bernalillo County in the meetings and phone calls, his representation at the time was adverse to at least one of the clients.³⁵⁰

The Order disqualified Marcus Rael from further representation on behalf of Iberdrola, S.A. and the Joint Applicants in connection with the issues and Stipulation in this proceeding and directed Iberdrola, S.A. to cease Mr. Rael’s representation for the duration of this proceeding. The Order stated further that the Hearing Examiner and the Commission can and will consider Iberdrola, S.A.’s and the Attorney General’s actions as they weigh the reasonableness of the Stipulation and the parties’ supporting testimony.³⁵¹

In addition, separately and on a parallel track, NEE and three other civic groups filed a complaint with the Disciplinary Board of the New Mexico Supreme Court on July 15, 2021 alleging Mr. Rael’s violation of the concurrent conflict of interest rule. In response an Assistant Disciplinary Counsel wrote a letter dated August 5, 2021 finding that a conflict of interest did not exist and stating that the Disciplinary Board will take no further action. A further letter issued on August 12, 2021 by the same attorney declined to reverse the August 5 dismissal,

³⁴⁹ *Id.*, at 26-27.

³⁵⁰ *Id.*

³⁵¹ *Id.*, at 28, 31.

finding, in part, that the issue was moot. The August 5 and 12 letters, however, notified of its right to request review by the Chair the Disciplinary Board, and NEE exercised that right. The findings of the Chair are still pending. At the requests of the Attorney General and the Joint Applicants, the Hearing Examiner took administrative notice of the letters.³⁵²

Nevertheless, in the Hearing Examiner's August 23 Order taking administrative notice of the August 5 and 12 letters, the Hearing Examiner also addressed the independent duty and authority of the Commission to make the disqualification determination at issue. The Hearing Examiner noted the New Mexico Supreme Court's decision in *Living Cross Ambulance Serv., Inc. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-036, 338 P.3d 1258, which held that the Commission has the authority and duty to determine conflict of interest questions in proceedings before it.³⁵³ The August 23 Order also noted that Rule 17-201 NMRA states that the Disciplinary Rules shall not be construed to deny to any other court such powers as are necessary for that court to maintain control over proceedings conducted before it. The New Mexico Court of Appeals has stated that administrative agencies have the same authority as courts to maintain control over their proceedings and that the authority is separate and apart from, and does not infringe upon, the Supreme Court's exclusive authority to discipline attorneys.³⁵⁴ Further, the disqualification at issue here does not interfere with any disciplinary action that might be ordered by the Supreme Court.³⁵⁵

³⁵² Order Addressing Notices of Supplemental Authority, Requests for Administrative Notice, and the Joint Applicants' Motion for Partial Reconsideration of Order, August 23, 2021.

³⁵³ *Id.*, at 4.

³⁵⁴ *Id.*, at 2-3, citing, *Chavez v. State Workers' Comp. Admin.*, 2012-NMCA-060, ¶15, 280 P.2d 927, 932.

³⁵⁵ Rule 17-206 defines the types of discipline that may be ordered by the Supreme Court and the Court's Disciplinary Board for violations of the Rules of Professional Conduct. The disciplinary actions include disbarment by the Supreme Court; finite and indefinite suspensions by the Supreme Court; public censure by the Supreme Court; formal and informal reprimands by the Disciplinary Board; probation; and restitution. Rule 17-206 NMRA. The disqualification at issue here applies only to this proceeding and does not constitute any of the types of discipline in Rule 17-206 NMRA.

The Hearing Examiner's August 6 Order Disqualifying Iberdrola Attorney cited the Supreme Court's statement in *Living Cross* that, if left unchecked, conflicts of interest will taint an entire case and call into question the integrity of the attorney-client relationship.³⁵⁶ The Hearing Examiner stated that this case is not private litigation among two parties. "It is a case of public interest that concerns the 530,000 ratepayers of PNM and the New Mexico economy as a whole. It is crucial that the proceeding and the Commission's final decision are viewed by the public as credible and without any taint of improper influence."³⁵⁷

G. Adequacy of protections against harm to customers.

1. Regulatory Commitment 17 - Governance and management

The issue of governance and management independent of the upstream Avangrid, Inc./Iberdrola, S.A. group of companies after the Proposed Transaction was and remains a major issue of disagreement. At issue is the apparent contradiction between Avangrid, Inc.'s professed commitment to local control by PNM over PNM's operations versus its refusal to accept any regulatory condition that would impose any independent or disinterested director obligations that would negatively impact or limit Avangrid, Inc.'s control over PNM in any material respect. Stated more specifically, will PNM have a board of directors and management that will have the authority to make decisions on how to provide adequate service to PNM's customers without influence from Avangrid, Inc. and Iberdrola, S.A.? Or will Avangrid, Inc. and Iberdrola, S.A. control the PNM board to serve their purposes -- by cutting expenses to achieve their profit goals and to pursue their goals of expansion in the Southwest?

³⁵⁶ Order Disqualifying Iberdrola Attorney, at 21, *citing Living Cross*, 2014-NMSC-036 at ¶ 22.

³⁵⁷ Order Disqualifying Iberdrola Attorney, at 29-30.

Most of the original opponents on this issue have reached compromises on the issue or reached compromises in exchange for other concessions. But NEE and Staff remain opposed.

a. The Joint Applicants' original proposal

In its Application, the Joint Applicants made only the following commitments as to local control. Mr. Kump said PNM's Board of Directors would include at least two local leaders from New Mexico. PNM's Board of Directors' meetings would be held in New Mexico or virtually. PNM's day-to-day operations would be conducted by PNM's local management and employees. PNM's local management would continue to establish company priorities and respond to local conditions. And PNM's headquarters would remain in Albuquerque for so long as Avangrid, Inc. owns PNM.³⁵⁸

b. The initial opposition and the Joint Applicants' responses

The Attorney General's witnesses cited as a primary reason for their initial opposition to the Proposed Transaction the control Avangrid, Inc. and Iberdrola, S.A. would invariably exercise over the PNM board of directors, even if the board were to include a majority of independent directors. Ms. Crane testified that the independent directors would still owe a fiduciary duty to PNM's stockholders, which ultimately are Avangrid, Inc. and Iberdrola, S.A.:

In its Joint Application, the Applicants have attempted to portray a situation where local control will prevail. They have done this by guaranteeing at least two local Board members and by ensuring that day-to-day operations will be conducted by PNM local management. Obviously, these conditions do not represent a benefit vis-a-vis the status quo, since the entire PNMR Board is currently local and local management is the only management involved in current day-to-day decisions. But more importantly, it is questionable how much local control is even possible given the Iberdrola / Avangrid management structure.

While it is important to have local New Mexicans on the PNM Board, the Board will have fiduciary responsibility to its shareholders, including Avangrid and ultimately Iberdrola. Moreover, the Chairman of the Avangrid Board is the

³⁵⁸ Kump (11/23/20), at 18-19.

Chairman of Iberdrola. Therefore, no matter how “local” the Joint Applicants want to spin this arrangement, the fact is that Avangrid and ultimately Iberdrola, will be the entity that is largely directing operations.³⁵⁹

Witnesses for Bernalillo County, NM AREA, NEE and Staff, however, stated initially and in response to the June 4 Stipulation that (among other reasons for their opposition to the Proposed Transaction) the PNM board should be required to have a majority of independent and disinterested members post-merger. They wanted the PNM board to be able to act without being unduly influenced by and without the direct control of Avangrid, Inc. and/or Iberdrola, S.A.³⁶⁰

NM AREA, NEE and Staff referred to the stipulation in the recently approved merger/acquisition involving El Paso Electric Company (EPE) and Sun Jupiter Holdings, LLC (Sun Jupiter).³⁶¹ In that case, the parties agreed and the Commission approved a board structure that included ten directors, of which one was EPE’s Chief Executive Officer (CEO), up to two were representatives of the parent company, and the remaining seven, including the Chair, were required to be “independent” as that term is defined by the New York Stock Exchange (NYSE).³⁶² In addition, the Commission required that of the seven independent Directors, at least two would reside in the utility’s service territory. It also required that at least two of the Directors would be members of the pre-acquisition board and would be local leaders in the community. Finally, the Commission required that at least four of the Directors would be

³⁵⁹ Crane (4/2/21), at 38-39 (Emphasis added).

³⁶⁰ See, e.g., Gorman (4/2/21), at 41-42.

³⁶¹ Final Order Adopting Amended Certification of Stipulation, Case No. 19-00234-UT, March 11, 2020, approving Amended Certification of Stipulation, February 12, 2020.

³⁶² Amended Certification of Stipulation, Case 19-00234-UT, at 33-34. According to Section 303A.02, Independence Tests, of the NYSE’s Listed Company Manual “No director qualifies as “independent” unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).”

“disinterested,” defined as individuals that have had no material financial relationship with the parent company or any affiliate of the parent company over the preceding five years.³⁶³

NM AREA proposed the same structure in this case.³⁶⁴ NEE made a similar recommendation, with the exception that, of the seven independent directors, at least four should be people of color who reside in New Mexico.³⁶⁵

Bernalillo County recommended that the PNM Board consist of 7 directors, to include at least four disinterested directors; that the Chair be a disinterested director; that the board exclude any employees, directors, or individuals with direct responsibility for the management or strategies of competitive affiliates; that every director be a U.S. citizen and New Mexico resident; and that the board include a minimum number of people of color.³⁶⁶

Also consistent with the EPE stipulation, NM AREA recommended that PNM be required to file a document, described as a “Delegation of Authority,” in which the Avangrid, Inc. board would set forth the matters that would be “exclusively reserved” to PNM’s board and for which PNM’s board would have no obligation to seek the parent company’s approval before taking action. The Delegation of Authority would recognize that the post-acquisition utility board would have day-to-day control of the utility operations, would determine the volumes and types of equity and debt issuances, would control the dividend policy and issuances, and would be the point of contact for all regulatory filings and community engagement matters.³⁶⁷

The Joint Applicants adamantly opposed the recommendations for a majority of independent directors. In his April 21 rebuttal testimony, Mr. Azagra Blazquez stressed the

³⁶³ Id., at 33-34.

³⁶⁴ Gorman (4/2/21), at 38-39; Reynolds (4/2/21), at 23-24.

³⁶⁵ Sandberg (4/2/21), at 61.

³⁶⁶ Reno (4/21/21), at 2-8.

³⁶⁷ Gorman (4/2/21), at 40-41.

independent judgments that directors and officers of the Iberdrola, S.A./Avangrid, Inc. group of companies exercise despite their overlapping roles within the group. He said the Avangrid, Inc. board of directors acts independently of Iberdrola, S.A. He said all Iberdrola, S.A. strategic decisions and dividend decisions are made by Iberdrola, S.A.'s Board of Directors, and its day-to-day operations are conducted by its executive officers.³⁶⁸

He said Iberdrola, S.A. does not manage Avangrid, Inc.'s day to day decisions. He said the Avangrid, Inc. Board of Directors appoints the company's executive officers, makes all strategic decisions, and declares dividends, and Avangrid, Inc.'s executive team makes all day-to-day decisions for Avangrid, Inc.

Mr. Azagra Blazquez also said Iberdrola, S.A. does not control the day-to-day operations of Avangrid Networks, Inc. or any of Avangrid Networks, Inc.'s utilities. He said Iberdrola, S.A. is available to provide advice and support for Avangrid, Inc. and its affiliates, but it does not make any decisions for, or dictate decisions to, Avangrid Networks, Inc. or any of Avangrid Networks, Inc.' utilities.³⁶⁹

Mr. Azagra Blazquez acknowledged that the Chairman and CEO of Iberdrola, S.A. is also the Chairman of Avangrid, Inc.'s board of directors and that he, Mr. Azagra Blazquez, is a member of Iberdrola, S.A.'s executive committee as well as a board member of Avangrid, Inc. But he said the board members at Avangrid, Inc. take their responsibilities very seriously and act in the best interests of Avangrid, Inc., regardless of whether they have other positions and responsibilities. He said when he is working as a member of the Avangrid, Inc. board of directors, his duty is to make the best decisions for Avangrid, Inc.³⁷⁰

³⁶⁸ Azagra Blazquez (4/21/21), at 6.

³⁶⁹ Azagra Blazquez (4/21/21), at 7.

³⁷⁰ Azagra Blazquez (4/21/21), at 8.

Mr. Azagra Blazquez said board members at Avangrid, Inc. have a fiduciary duty to Avangrid, Inc.'s shareholders. He said Iberdrola, S.A. is Avangrid, Inc.'s largest shareholder, but it is not the only shareholder.³⁷¹ He said Avangrid, Inc. has over 3,000 shareholders, who include some of the world's largest investment funds.³⁷²

He said the Commission should not require that any future PNM board of directors be comprised of a majority of independent directors. He said Avangrid, Inc. believes that a PNM board of directors comprised of experienced industry executives that serve across multiple entities within the Avangrid, Inc. family of companies, combined with local residents focused on matters of local concern, will yield the best results for PNM and its customers. He said familiarity with Avangrid, Inc. and its other utilities helps ensure best practices flow throughout the Avangrid, Inc. organization, and lessons learned at one utility can quickly and easily be shared with leaders at all other utilities.³⁷³

Mr. Azagra Blazquez also said most independent directors are paid over \$100,000 per year. Therefore, expanding PNM's Board of Directors from a five-person Board to a ten-person Board with a majority of independent directors would add hundreds of thousands to millions of dollars of unnecessary extra cost to PNM's customers every year.³⁷⁴

He said the EPE case is not similar to the merger proposed here. He said IIF US 2, the ultimate parent company of Sun Jupiter, was an investment fund that had never previously owned an interest in an electric utility in the United States. He said investment funds like IIF US 2 do not seek to grow opportunities at utilities and maximize investment, but instead are seeking

³⁷¹ Azagra Blazquez (4/21/21), at 7.

³⁷² Azagra Blazquez (4/21/21), at 8.

³⁷³ Azagra Blazquez (4/21/21), at 8-9.

³⁷⁴ Azagra Blazquez (4/21/21), at 9.

guaranteed returns for their investors with a targeted sale date for their interests. Avangrid, Inc., on the other hand, is a public utility holding company listed on the New York Stock Exchange that already owns eight public utilities providing electric and gas service to millions of customers in the United States, as well as tens of millions of customers in Europe, South America, and Central America. Iberdrola, S.A. and Avangrid, Inc. invest in their utilities and seek long-term growth without any plans to sell their interests.³⁷⁵

Second, he said EPE declared bankruptcy in the 1990s due to mismanagement. Customers and regulators had a reason to be concerned that an investment fund parent with no experience in providing electric utility service might pose a risk to EPE and its customers.³⁷⁶

Third, EPE and Sun Jupiter's merger application in Texas and New Mexico initiated the commitment to have majority independent directors on EPE's Board. He said the EPE/Sun Jupiter commitment followed the recent Texas merger between ONCOR and Sempra Energy, in which ONCOR agreed to a majority independent board of directors.³⁷⁷ Mr. Azagra Blazquez said ONCOR, which is a large Texas transmission and distribution utility, had experienced financial problems similar to EPE's history and had declared bankruptcy. EPE's application offered a majority of independent directors from the start, even though that was never requested by anyone in New Mexico.³⁷⁸

Finally, Mr. Azagra Blazquez noted that Avangrid, Inc. and PNMR recently entered into a unanimous settlement in their application before the Texas Public Utility Commission of

³⁷⁵ Azagra Blazquez (4/21/21), at 9-10.

³⁷⁶ Azagra Blazquez (4/21/21), at 10.

³⁷⁷ Order, Joint Report and Application of ONCOR Electric Delivery Company LLC and Sempra Energy for Regulatory Approvals, Public Utility Commission of Texas, March 8, 2018, at ¶48.

³⁷⁸ Azagra Blazquez (4/21/21), at 10.

Texas. The Texas settlement did not provide for a majority of independent directors at PNMR's TNMP subsidiary in Texas.³⁷⁹

Mr. Azagra Blazquez said Emera Inc.'s acquisition of TECO Energy and TECO's subsidiary in New Mexico, New Mexico Gas Company, is more analogous to the Proposed Transaction in this case. Emera is a large energy company that owns and operates multiple utilities across the United States and throughout North America. He said Emera, like Avangrid, Inc., has millions of utility customers, and is a prudent utility operator. He said New Mexico Gas Company and its parents committed to create a board of directors for New Mexico Gas Company that would include directors from New Mexico, but there was no commitment that the members would be independent.³⁸⁰

Mr. Azagra Blazquez said the Merger Agreement in this case specifically anticipated concerns about independent directors. The agreement provides that Avangrid, Inc. shall not be required to accept any regulatory approvals that "impose any independent or disinterested director obligations that would negatively impact or limit Parent's control over the Company or its subsidiaries in any material respect" ³⁸¹

c. The June 4 Stipulation

The Joint Applicants reached compromises with the Attorney General and some of the opponents on some of the issues in the June 4 Stipulation, but the Joint Applicants did not agree to a PNM board with majority of independent directors.

³⁷⁹ Azagra Blazquez (4/21/21), at 11.

³⁸⁰ Azagra Blazquez (4/21/21), at 12.

³⁸¹ Azagra Blazquez (4/21/21), at 12-13, citing to the Merger Agreement attached to Azagra Blazquez (11/23/20), JA Exhibit PAB-3, at §6.5(d).

Regulatory Commitment 17 states that the Joint Applicants recognize the importance of having a utility board that has a significant local voice. The commitment requires that PNM's board of directors will be comprised entirely of New Mexico residents, at least 40% of whom (e.g., 2 of 5 or 3 of 7 directors) must qualify as "independent" and "disinterested" -- meaning that they will have no material relationship with or ownership interest in the Iberdrola, S.A./Avangrid, Inc. group of companies or in PNM and its affiliates within the last five years.

The commitment also requires majority votes of independent and disinterested directors for dividend policy and the compensation paid to PNM directors and officers. The board of directors, including the affirmative vote of a majority of independent and disinterested directors, will have the sole right to determine dividends and dividend policy. The Compensation Committee will be made up exclusively of the three independent and disinterested directors, and it will have sole responsibility to set the compensation and benefits for all directors and officers of PNM.

Regulatory Commitment 17 states further that local management will continue to have day-to-day control over PNM's operations and PNM's local management will continue to establish company priorities and respond to local conditions.

The commitment also requires that PNM's headquarters will remain in Albuquerque, New Mexico for so long as Avangrid, Inc. owns PNM. And it requires that PNM's board of directors meetings will be held in New Mexico or virtually.

The Joint Applicants continue to state that a majority of independent and disinterested board members is not acceptable and that Avangrid, Inc. would refuse to proceed with the Proposed Transaction if it is required. Mr. Kump acknowledged that eight of the nine board members of PNMR are independent, but he said PNM's board of directors currently consists of

five PNMR employees. None of the board members is “independent” as defined by the NYSE.³⁸² He said the commitment of at least two independent directors is an improvement over what exists currently at PNM, and a majority of local directors ensures that the PNM board of directors will maintain a local perspective on how PNM can meet customers’ needs. Additionally, the independent director decision-making authority with respect to dividends and dividend policy reflect new protective mechanisms that do not currently exist.³⁸³

Mr. Azagra Blazquez noted that the Joint Applicants also committed to increase diversity on the PNM management team as set forth in Regulatory Commitment 10 (discussed in Section VI.B.6 above).³⁸⁴

Mr. Azagra Blazquez said the requirement of an independent board is not acceptable because, other than in the acquisition of El Paso Electric, this has not been a component of a merger proceeding in New Mexico. He repeated his references to the Emera acquisition of TECO, where the stipulation did not provide for any independent directors, and the El Paso Electric case, where the applicants readily offered a majority independent board because he said that was not unusual or problematic for a fund ownership structure to have a majority independent board.³⁸⁵

He also said the company’s accountants have advised that if PNM has a majority independent board, Avangrid, Inc. would be unlikely to be able to consolidate the accounts of PNM. He repeated that it was such an important consideration for Avangrid, Inc. that Avangrid, Inc. negotiated a provision in Section 6.5(d) of the Merger Agreement that allows Avangrid, Inc.

³⁸² Kump (4/21/21), at 11.

³⁸³ Kump (4/21/21), at 11.

³⁸⁴ Azagra-Blazquez (6/18/21), at 16-17.

³⁸⁵ Azagra-Blazquez (6/18/21), at 17.

to walk away from the transaction if it requires the imposition of “any independent or disinterested director obligations that would negatively impact or limit Parent’s control over the Company or its subsidiaries in any material respect.”³⁸⁶

He also referred again to the approval they received in Texas for the merger and acquisition of TNMP that did not require a majority independent board and where Avangrid, Inc. offered three out of seven independent directors, as they are offering here. Also, in Texas, the three independent directors would have exclusive authority to make decisions regarding dividends, dividend policy and officer and director compensation at the utility, as Avangrid, Inc. is offering here.³⁸⁷

He said “[t]o be clear, there is no reason to have a majority independent board at PNM, and Avangrid, Inc. would not be in a position to close the Proposed Transaction if a majority of independent directors is required.”³⁸⁸

d. Negotiations after the June 4 filing of the Stipulation

The Joint Applicants continued negotiating with parties after the filing of the June 4 Stipulation, and they reached compromises with NM AREA and Bernalillo County on most of the governance issues in Regulatory Commitment 17. NM AREA and Bernalillo County reflected their newly negotiated positions in their July 16 testimonies of Mr. Gorman and Ms. Reno, and the Joint Applicants indicated their agreement with most of those terms in the July 29 testimony of their witnesses.

The newly negotiated terms include the following:

³⁸⁶ Azagra-Blazquez (6/18/21), at 17-18.

³⁸⁷ Azagra-Blazquez (6/18/21), at 18.

³⁸⁸ Azagra-Blazquez (6/18/21), at 18.

-- A provision that, within 30 days following closing of the Proposed Transaction, PNM will file with the Commission a Delegation of Authority specifying that the PNM Board of Directors will have decision-making authority over PNM dividend policy, issuance of dividends (except for contractual tax payments), debt issuance, capital expenditures, management and services fees, and operation and maintenance expenditures. After review and approval by the Commission, the Delegation of Authority will be adopted by the PNM Board as a corporate resolution of PNM.

-- A provision that PNM's Board of Directors will be comprised of seven directors, all of whom shall be New Mexico residents. Three of the directors shall be "independent" as that term is defined in the rules and regulations of the NYSE and "disinterested." The definition of "disinterested director" was also clarified.

-- A provision stating that notwithstanding any contrary provision contained herein, the matters directly under the control of PNM are subject to and are understood to be in compliance with all applicable requirements of any order of the NMPRC, including, specifically, any commitments made by PNM in connection with any such order.

-- A provision stating that Board decisions will be by a simple majority vote of the directors, with the exception of dividend matters. A super majority of the Board (which means a majority of the Board that also includes a majority of independent and disinterested members) is required for dividend policy matters and the issuance of dividend payments.

-- Clarification of the day-to-day control of PNM's CEO and senior management over PNM's operations, providing that contact with local stakeholders and intervenors will be through local management and employees for all regulatory, operational and community engagement matters. This operational authority includes the sole authority by PNM to settle any proceeding

at the NMPRC if in the sole discretion of senior management (subject to general oversight of the PNM Board) it is in the best interests of the Utility to do so.

-- Clarification that PNM's Board of Directors meetings will be held in New Mexico or virtually so long as New Mexico's or national Covid-19 or other similar travel restrictions are in effect.

-- Clarification that Avangrid, Inc., Iberdrola, S.A. and any other intermediary holding companies will not charge PNM for a share of executive, management or administrative costs.

-- Further clarification about role of PNM's local management and employees over day-to-day operations, including the establishment of company priorities and responses to local conditions.

-- Clarification that an affirmative vote of a majority of independent and disinterested directors will be required for any amendments or changes to the dividend policy.

-- Clarification that PNM's headquarters will remain in Albuquerque, New Mexico for so long as Avangrid, Inc., Iberdrola, S.A. or any parent company or any affiliated interest owns PNM.

-- A provision authorizing the Commission to initiate a management audit of PNM, to be performed by a consulting firm chosen by and under the direction of the Commission to review the impacts of the merger's Class II Transactions upon PNM's local management of the utility, including the conduct of PNM's day-to-day operations and establishment of company priorities in response to local conditions, consistent with the Commission's regulations governing the General Diversification Plan (17.6.450.10(C)(8) NMAC). The costs of this audit will be borne by PNM shareholders and not recoverable from ratepayers.

-- A provision prohibiting the payment of excessive dividends to a holding company, prohibiting the holding company from taking action that will have an adverse and material effect on the public utility's service and rates, and requiring the public utility to obtain prior approval for any PNM investment in an affiliated interest.³⁸⁹

The Joint Applicants would not agree to Ms. Reno's proposal that the Chair of the PNM Board of Directors be independent and disinterested. Mr. Azagra Blazquez said the Chairman of the Board typically has the authority to schedule meetings of the Board of Directors and set the agenda for meetings. He said that leaving that for an independent/disinterested director to control runs the risk of missing important deadlines for the utility. He said the Joint Applicants are willing, however, to have one of the independent/disinterested directors be designated as the Lead Independent Director. He said the board would designate an independent director as the "lead" person to represent the independent directors in conversation with management, shareholders, and other stakeholders. He said the concept has been utilized in the U.S. and in certain European countries. He said the Lead Independent Director is often responsible for requesting the holding of board meetings, including new points on the board agenda, and coordinating the relationships with the other directors.³⁹⁰

Mr. Tarry proposed specific language to include the Lead Independent Director concept:

Joint Applicants will establish a Lead Independent Director position, designated and elected solely by the independent board members. The position of Lead Independent Director will be designed to promote strong, independent oversight of the Company's management and affairs. The Lead Independent Director will:

- jointly establish meeting schedules with the Chair to ensure sufficient time for discussion of all agenda items;
- chair all meetings of the independent directors, including the independent directors' compensation committee, and preside at all meetings of the Board in the absence of the Chair;

³⁸⁹ Azagra-Blazquez (7/29/21), at 7-10.

³⁹⁰ Azagra-Blazquez (7/29/21), at 15-16.

- in consultation with the Board, retain independent advisors and consultants on behalf of the Board;
- facilitate the annual self-evaluation of the Board and Board committees;
- serve as a liaison for communications between (1) management and the independent directors, and (2) the Board and other interested parties; and
- perform such other duties as the Board may from time to time delegate.³⁹¹

The “Lead Independent Director” requirement was not included in any of the changes NM AREA and Bernalillo County agreed on.

e. Continued opposition

NEE continues to oppose the Proposed Transaction, including the Stipulation’s failure to establish the same independence requirements that were agreed upon in the EPE merger case. NEE witness Christopher Sandberg cited Avangrid, Inc.’s disclosure, in its 2020 annual 10-K report with the U.S. Securities & Exchange Commission, about the degree of control that Iberdrola, S.A. exercises over Avangrid, Inc.’s affairs, including the appointment of Avangrid, Inc.’s board of directors:

Iberdrola owns approximately 81.5% of outstanding shares of our common stock and will be able to exercise significant influence over AVANGRID’s policies and affairs, including the composition of our board of directors and any action requiring the approval of our shareholders, including the adoption of amendments to the certificate of incorporation and bylaws and the approval of a merger or sale of substantially all of our assets, subject to applicable law and the limitations set forth in the shareholder agreement to which we and Iberdrola are parties. The directors designated by Iberdrola may have significant authority to effect decisions affecting our capital structure, including the issuance of additional capital stock, incurrence of additional indebtedness, the implementation of stock repurchase programs and the decision of whether or not to declare dividends.³⁹²

Mr. Sandberg said that because Iberdrola, S.A. will control Avangrid, Inc., and Avangrid, Inc. will control PNMR, and PNMR will control PNM, Iberdrola, S.A. will have all the pieces in place post-merger to control PNM without an independent board to prevent that outside

³⁹¹ Tarry (7/29/21), at 13-14; Azagra Blazquez (7/29/21), at 16.

³⁹² Sandberg (7/29/21), at 11; Exhibit CKS-2.

direction. He said there is a clear warning about Iberdrola, S.A. in Avangrid, Inc.’s end-of-2020 report:

Risk Factors Relating to Ownership of Our Common Stock

Iberdrola exercises significant influence over AVANGRID, and its interests may be different from [the interests of Avangrid, Inc. stockholders]. Additionally, future sales or issuances of our common stock by Iberdrola could have a negative impact on the price of our common stock.³⁹³

Mr. Sandberg said, as Avangrid, Inc. warned, Iberdrola, S.A. “may” have interests adverse to Avangrid, Inc. investors, and, without a fully independent board, it would also be free to act in ways adverse to the interests of PNM ratepayers through its control over PNM.³⁹⁴

Second, Mr. Sandberg said an independent board reflects the need for a director to exercise their independent judgment in carrying out their responsibilities. He quoted the Attorney General’s witness Scott Hempling who noted the essential nature of truly independent board members:

If a utility board member were truly committed to New Mexico’s needs, and truly independent of the holding company, she could veto any holding company instruction that conflicted with the utility’s obligation to its customers. No typical independent director has that power—and Iberdrola/Avangrid hasn’t proposed one who will have that power. New Mexico residents on the PNM and PNMR Boards? Of course. But they must be legally free to vote New Mexico’s needs, regardless of Iberdrola/Avangrid’s wishes.³⁹⁵

Third, Mr. Sandberg said, in his experience, standard corporate governance practice is for the board to be composed of independent directors, with the CEO participating as the management director and frequently also serving as chairman.³⁹⁶

Fourth, he said there is significant evidence that Iberdrola, S.A. -- which will be the

³⁹³ Exhibit CKS-2 at 34 (emphasis added).

³⁹⁴ Sandberg (7/29/21), at 11-12.

³⁹⁵ Sandberg (7/16/21), at 30, citing Hempling (4/2/21), at 71.

³⁹⁶ Sandberg (7/16/21), at 30.

controlling parent entity -- through its Chairman Galán and its executive committee, have been involved in alleged crimes of bribery, corruption and fraud. He said the Spanish Judge Manuel García-Castellón found that the “[t]he commissions and commercial relations [alleged in that case] were not sporadic or specific, but had continuity over time.” <https://trashbilling.club/the-choose-imputes-the-president-of-iberdrola-for-the-alleged-espionage-orders-of-villarejo-economy/>.³⁹⁷ He said the allegations are serious and they provide an additional basis for requiring outside, truly independent board members.³⁹⁸

Fifth, Mr. Sandberg said the lack of independent board members will have an impact on future PNM rates. He said a utility’s board of directors approves capital and expense budgets and the volumes and types of equity and debt issuances and that these decisions are the primary drivers of a utility’s costs of service. He said without the oversight of directors who are not beholden to PNMR, Avangrid, Inc., and/or Iberdrola, S.A., a crucial safeguard against inflated costs of service is missing.³⁹⁹

Staff witness John Reynolds said that the Joint Applicants’ insistence on a role for independent directors is a critical issue -- that Staff is concerned “about the potential transition of New Mexico’s largest public utility from an independent enterprise that is locally managed to a relatively small element of a multinational conglomerate based overseas.”⁴⁰⁰ He said the Joint Applicants’ “commitment to local control and management appears to be inconsistent with [their] determination to control PNM’s Board.”⁴⁰¹ He said Staff’s recommendations about this

³⁹⁷ Sandberg (7/16/21), Exhibit CKS-7.

³⁹⁸ Sandberg (7/16/21), at 30-31.

³⁹⁹ Sandberg (7/16/21), at 31.

⁴⁰⁰ Reynolds (7/16/21), at 8-9.

⁴⁰¹ Id., at 9.

matter are not inherently unreasonable as many are modeled based on the recent acquisition of El Paso Electric Company.⁴⁰²

Mr. Reynolds said he would be concerned if the Proposed Transaction were to fall through for this reason after about two years of work by the Joint Applicants. But he said he is equally concerned by what is essentially an unreasonable ultimatum on the issue by the Joint Applicants to the Commission that Avangrid, Inc. insists on having control of PNM or else it walks away. He said it is simply inconceivable that the Joint Applicants are seeking the Commission's approval of the Proposed Transaction but are not willing to consider governance alternatives that would preserve at least some of PNM's current independence. He said the ultimatum is not an encouraging indicator of the relations between the Commission and a future PNM dominated by Avangrid, Inc. He asked, "Would regulation only by ultimatum become the future and why is that not an adverse impact of the Proposed Transaction?"⁴⁰³

Mr. Reynolds also referenced the July 12 management audit of CMP conducted for the Maine PUC. He said the audit found that Avangrid, Inc.'s governance structure differs from the typical governance structure for U.S.-based utility holding companies where the use of independent directors in larger and dominant numbers at the holding company level has become nearly universal.⁴⁰⁴ The management audit further states that "a board largely independent of management comprises a core element of effective governance in the United States."⁴⁰⁵ The audit stated that such an independent filter does not exist within Iberdrola, S.A. and Avangrid, Inc. and that a more typical governance structure would have been more effective in addressing the

⁴⁰² Id.

⁴⁰³ Id., at 10.

⁴⁰⁴ Id., at 10, citing Maine Audit, at 11-12..

⁴⁰⁵ Id., at 11, citing Maine Audit, at 17.

challenges faced by Avangrid, Inc.’s Maine affiliate at the time.⁴⁰⁶ While the report does not find any causal relationship between Avangrid, Inc.’s governance structure and the service issues at its Maine affiliate, the audit found “high value in a strongly independent board that operates under a wide range of business and institutional experience.”⁴⁰⁷

f. Recommendations

The issue of governance is particularly problematic, and it is not capable of cure with the modifications proposed by the parties, including the last-minute modifications proposed by NM AREA and Bernalillo County, which have been largely accepted by the Joint Applicants. There is a clear contradiction between Avangrid, Inc. and Iberdrola, S.A.’s professed goals of local control and their refusal to allow that control. The limitations on local control that the Joint Applicants will allow indicate that Avangrid, Inc. and Iberdrola, S.A.’s insistence on their right of control will prevail and that PNM’s customers will be subject to the risks that the customers of Avangrid, Inc.’s other utilities have experienced.

Whether there are independent directors or not or a majority of independent directors or not, the board of directors, as Mr. Azagra Blazquez and Ms. Crane noted, will have a fiduciary duty to act in the best interests of the corporation’s stockholders.⁴⁰⁸ If the Proposed Transaction is approved, those stockholders will ultimately include Avangrid, Inc. and Iberdrola, S.A.⁴⁰⁹ Plus, the Chairman of the Avangrid, Inc. Board is the Chairman of Iberdrola, S.A. Ms. Crane said, “Therefore, no matter how “local” the Joint Applicants want to spin this arrangement, the

⁴⁰⁶ Id., at 11, citing Maine Audit, at 11-12.

⁴⁰⁷ Id., at 12, citing Maine Audit, at 11.

⁴⁰⁸ Indeed, PNMR has a nine-member board of directors that includes eight independent directors. Commission Exh. 12. The loyalty of the independent PNMR board in regard to the transactions proposed here has been to PNMR’s stockholders.

⁴⁰⁹ Azagra Blazquez (4/21/21), at 8; Crane (4/2/21), at 38-39.

fact is that Avangrid and ultimately Iberdrola, S.A., will be the entity that is largely directing operations.”⁴¹⁰

Indeed, Avangrid, Inc. would appoint both the directors and management of PNM. And it would also have the power to remove them. Mr. Kump said Avangrid, Inc. would work with Mr. Tarry and his senior team at PNM to look for appropriate members for the board, but he acknowledged that the appointment and removal of directors and management would be reviewed and approved by the Avangrid, Inc. board of directors.⁴¹¹ The process would include the Chairman of the Avangrid, Inc. board of directors -- who is also the Chairman of Iberdrola, S.A.⁴¹² As is noted in Section VI.F.2, the Iberdrola, S.A. Chairman, Ignacio Sanchez Galán, is currently being investigated by a Spanish court on potential charges of bribery, violation of privacy and forgery of a commercial document.

Further, in addition to the fiduciary duties of PNM’s board members to Avangrid, Inc. and Iberdrola, S.A. and the appointment and removal authority of the Avangrid, Inc. board, there is the likelihood that the Avangrid, Inc. board may exercise direct influence over PNM’s activities. The audit commissioned by the Maine PUC in the wake of the SmartCare billing fiasco was intended to study the impact that the Avangrid, Inc. organizational structure may have had in the problems. The audit found that Avangrid, Inc.’s board of directors and its executive committee were comprised with a large contingent of Iberdrola, S.A. executives and that

⁴¹⁰ Crane (4/2/21), at 38-39.

⁴¹¹ Tr. 366; Kump (6/18/21), at 22-23, Exh. RDK-2. Mr. Kump said Avangrid has not yet determined the members of the PNMR or PNM boards of directors. He also said where intermediate holding companies within the Avangrid Networks organization are not actively involved in any other business activities (other than being the owner of its subsidiary), those intermediate holding companies oftentimes do not have active boards. He said Avangrid will be evaluating whether to have an active board for PNMR post-closing. Kump (6/18/21), at 22-24.

⁴¹² Tr. 484.

Avangrid, Inc. exercised its influence over CMP to cut costs and reduce resources in an effort to help Avangrid, Inc. meet its earnings targets.

The audit found that the Avangrid, Inc. board consists of 14 members. Six are independent. The remaining eight include six who serve as senior executives in Iberdrola S.A.'s Spanish corporate structure:

Iberdrola S.A. CEO (serves as board chair)

Iberdrola S.A. CFO

Iberdrola S.A. Chief development officer

Iberdrola S.A. Legal services director

Iberdrola S.A. Director of risk management

Iberdrola S.A. Director of human resources, general service & corporate security⁴¹³

The other two Avangrid, Inc. directors include the Avangrid, Inc. CEO, and a former Maine governor and U.S. House member whose connections make him non-independent, who serves as board vice chair.⁴¹⁴

The audit also noted that the Avangrid, Inc. board employs a five-member executive committee, consisting of a majority of Iberdrola S.A. officers -- the Iberdrola, S.A. CEO, CFO and Chief Development Officer. The two other members include the Avangrid, Inc. CEO and one independent member.⁴¹⁵ The audit found that “[n]otably, and unfortunately in our view, its executive committee meets regularly, uncommonly often, and in lieu of the entire board -- also very anomalous for U.S. utility holding company governing bodies.”⁴¹⁶ The audit found that the

⁴¹³ Maine Audit, at 16.

⁴¹⁴ Id.

⁴¹⁵ Id.

⁴¹⁶ Maine audit, at ES-6.

large proportion of Iberdrola, S.A. representatives, especially on the Avangrid, Inc. executive committee, permits an unusual degree of Iberdrola, S.A. influence over Avangrid, Inc.'s decisions:

The large proportion of Avangrid board members from Iberdrola S.A. and the extensive (in comparison to what we have seen elsewhere in the U.S.) use of this executive committee create a structure that permits an unusual degree of management influence over actions by the Avangrid board, despite the ability of the full board to review actions and decisions of the executive committee.⁴¹⁷

Further, the audit found that Avangrid, Inc.'s focus on earnings contributed to the resource cuts that contributed to the SmartCare billing issues at CMP:

Avangrid's lack of success in meeting forecasted financial results proved a strong driver of operational decisions and actions that adversely affected CMP during the period we examined. Long Term Outlooks intended primarily for the investment community formed a core of the Avangrid planning process, which occurred primarily at the Networks level. Capital budgeting should reflect a balance between financial goals and bottom-up analyses of expenditures needed to sustain effective service quality and reliability. While such earnings-related goals are not unusual for utility holding company planning, the effective balancing of such goals with reliable utility operations has not been evident at Avangrid (before 2020), especially in the case of CMP. Avangrid has based continuing forecasts of earnings growth on rate base increases and aggressive management of O&M expenses. As management struggled to meet those forecasts, subsidiaries, functions, and work groups subject to continuing organization and function change experienced resource shortages, staffing reductions and limitations, and a resulting need to fill talent gaps.⁴¹⁸

. . .

Driven by an over-focus on closing earnings gaps, the earlier staffing reductions contributed to degradation in CMP operations and customer service and reductions in efforts to maintain its system. Responding in 2019 to improve operations, management initiatives to improve performance have added resources to Maine operations, producing improvements.⁴¹⁹

⁴¹⁷ Maine audit, at 16-17.

⁴¹⁸ Maine audit, at ES-7.

⁴¹⁹ Id., at ES-8.

The case of *Levesque v. Iberdrola, S.A.*, the pending class action case in the U.S. District Court in Maine discussed in Section VI.F.7.b above, illustrates Iberdrola, S.A.'s influence. The Court found on August 6, 2021 that Iberdrola, S.A.'s involvement in the implementation of the SmartCare billing system was sufficient to exercise the Court's jurisdiction over the company. For the purpose of addressing the defendants' motion to dismiss, the Court relied upon the claims, based upon plaintiffs' discovery, that multiple Iberdrola, S.A. employees were involved with the SmartCare rollout, including employees in Maine; that Iberdrola, S.A. sought to integrate SmartCare into its global system, and that a previous SmartCare project by an Iberdrola, S.A. subsidiary in Scotland had been saddled with similar issues as those alleged to have occurred in Maine. The Court stated that, most crucially, Iberdrola, S.A. employees directed its Maine subsidiaries, CMP and Avangrid, Inc., to avoid any further delays with SmartCare's go-live and that an Iberdrola, S.A. executive directly told the SmartCare executive team that "[d]elays . . . are not acceptable," and that the team had to work toward a September completion of the project.⁴²⁰

Another more formal vehicle for the exertion of Iberdrola, S.A. influence is the use of agreements between Iberdrola, S.A. and companies within the "Iberdrola Group," such as Avangrid, Inc., pursuant to which Iberdrola, S.A. provides services to Avangrid, Inc. and other such companies. As an example, Mr. Azagra Blazquez is participating in these proceedings pursuant to such an agreement -- Agreement for the Provision of Development Services. Avangrid, Inc. is paying Iberdrola, S.A. for his services, along with other costs incurred by Iberdrola, S.A. The agreement, dated December 9, 2020 and executed by Iberdrola, S.A. on

⁴²⁰ See, Order on Motion to Dismiss, *Levesque v. Iberdrola, S.A.*, 2:19-cv-00389-JDL, 2021 U.S. Dist. LEXIS 147847, 2021 WL 3476092, August 6, 2021.

February 12, 2021, is for the period January 1, 2021 through December 31, 2021 at a cost not to exceed 7 million euros.⁴²¹ Mr. Azagra Blazquez is also simultaneously (i) the Chief Development Officer and Member of the Executive Committee of Iberdrola, S.A. and (ii) a Member of Avangrid, Inc.'s Board of Directors.⁴²²

This overarching control by Iberdrola, S.A. is consistent with the disclosure provided by Avangrid, Inc. in the annual 2020 10-K report it filed with the U.S. Securities and Exchange Commission, cited by NEE above.⁴²³

If the Commission decides to approve the Proposed Transaction, the Hearing Examiner recommends that a majority of independent directors be required for the PNM board. The auditors in Maine stated that a board largely independent of management comprises a core element of effective governance in the United States.⁴²⁴ A majority of independent board members would also be consistent with the stipulation in the recent EPE merger case. The rules of the NYSE require a majority of independent board members for companies listed on the NYSE. The sole exception is for controlled corporate structures, such as the Avangrid, Inc. structure.⁴²⁵

The Hearing Examiner acknowledges that the Joint Applicants have stated their refusal to accept a majority of independent directors. But the Hearing Examiner finds that, under the circumstances present here, such a condition is reasonable and necessary to protect the interests

⁴²¹ Azagra Blazquez (6/18/21), at JA Exhibit PAB-3 (Stipulation).

⁴²² Azagra Blazquez (11/23/20), at 1.

⁴²³ Commission Exhibit 5.

⁴²⁴ Maine audit, at 17.

⁴²⁵ See, NYSE Rule 303A.01 Independent Directors (Commission Exhibit 4). The Rule states that “[e]ffective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the probability of damaging conflicts of interest.”

of PNM customers. The Joint Applicants are asked to reconsider their position on this reasonable condition.

The only substantive reason the Joint Applicants provide for retaining Avangrid, Inc.'s control is Mr. Azagra Blazquez's statement that its accountants have advised that Avangrid, Inc. would be unlikely to be able to consolidate the accounts of PNM in Avangrid, Inc.'s financial statements. Mr. Kump, however, acknowledged that Avangrid, Inc. already includes \$1.3 billion of "non-controlling interests" in the estimated year-end 2021 balance sheet it would include in its financial reports.⁴²⁶

In addition, the new requirement for the filing of a Delegation of Authority should be made more specific -- to indicate that the Delegation of Authority is to come from the Avangrid, Inc. board of directors. As an additional clarification, the requirement for PNM to obtain prior approval for any PNM investment in an affiliated interest should state that the approval to be obtained is from the Commission.

Further, if the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner also recommends that the Lead Independent Director concept proposed by Mr. Tarry and Mr. Azagra Blazquez be included -- even if the Commission requires a majority of independent directors on PNM's board:

Joint Applicants will establish a Lead Independent Director position, designated and elected solely by the independent board members. The position of Lead Independent Director will be designed to promote strong, independent oversight of the Company's management and affairs. The Lead Independent Director will:

-- jointly establish meeting schedules with the Chair to ensure sufficient time for discussion of all agenda items;

⁴²⁶ Tr. 470-471; Commission Exhibit 3. Mr. Kump said the non-controlling interests are the El Cabo Wind, Patriot Wind, and Aeolus VII wind projects, plus Avangrid, Inc.'s investment in the Maine Electric Power Company. Tr. 518-519.

- chair all meetings of the independent directors, including the independent directors' compensation committee, and preside at all meetings of the Board in the absence of the Chair;
- in consultation with the Board, retain independent advisors and consultants on behalf of the Board;
- facilitate the annual self-evaluation of the Board and Board committees;
- serve as a liaison for communications between (1) management and the independent directors, and (2) the Board and other interested parties; and
- perform such other duties as the Board may from time to time delegate.⁴²⁷

Finally, the Hearing Examiner finds that certain of the modifications included in Regulatory Commitment 17 should not be adopted and that a further modification should be included. One of the modifications included in the exchange between NM AREA and the Joint Applicants consisted of the following statement: "Notwithstanding any contrary provision contained herein, the matters directly under the control of PNM are subject to and are understood to be in compliance with all applicable requirements of any order of the NMPRC, including, specifically, any commitments made by PNM in connection with any such order." The parties provided no explanation for this modification, and, on its face, it appears to provide a far-reaching blanket finding that matters directly under the control of PNM are understood to be in compliance with all applicable requirements of any order of the NMPRC. There is no evidence to support this provision and no apparent reason to include it in the Stipulation's provisions in Regulatory Commitment 17. It should, therefore, not be included.

Further, Mr. Azagra Blazquez stated in the Joint Applicants' April 19, 2021 response to Bench Request No. 1 that the Joint Applicants will agree to, at a minimum, meet the terms of the Unanimous Stipulation and Agreement entered in Docket No. 51537 before the Public Utility

⁴²⁷ Tarry (7/29/21), at 13-14; Azagra Blazquez (7/29/21), at 16.

Commission of Texas that apply to the acquisition of TNMP, except for certain non-material commitments that are specific to Texas.⁴²⁸ The TNMP stipulation includes board of director requirements similar to the terms the NM AREA, Bernalillo County and the Joint Applicants finally agreed to here. But the TNMP stipulation also includes a commitment that prohibits TNMP employees, including TNMP's President and senior management, from simultaneously holding positions with any upstream affiliate.⁴²⁹ A similar requirement should be adopted here to further limit the potential influence of the Avangrid, Inc./Iberdrola, S.A. group of upstream holding companies.

Finally, the requirement of a majority of independent board members as a condition of approval for the Proposed Transaction does not violate New Mexico's Business Corporation Act or the separation of powers established under the New Mexico Constitution. The Joint Applicants argue that an independent majority requirement would conflict with Section 53-11-35 of the Business Corporation Act. They argue that Subsection B of Section 53-11-35 mandates the consideration of shareholder interests in all board decisions, and Subsection D makes consideration of the interests of non-shareholder stakeholders or constituents optional or discretionary:

B. A director shall perform his duties as a director... in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation, and with such care as an ordinarily prudent person would use under similar circumstances in a like position.

D. For purposes of Subsection B of this section, a director, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following:

⁴²⁸ Response to Request 2, Joint Applicants Response to Bench Request No. 1, p. 2 of 3 (Commission Exhibit No. 1).

⁴²⁹ Regulatory Commitment 2.c, Joint Applicants Response to Bench Request No. 1, Exhibit A, p. 19 of 27 (Commission Exhibit No. 1).

- (1) the interests of the corporation's employees, suppliers, creditors and customers;
- (2) the economy of the state and nation;
- (3) the impact of any action upon the communities in or near which the corporation's facilities or operations are located; and
- (4) the long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation.⁴³⁰

The Commission's decision to require a majority independent board as a condition of its approval of the Proposed Transaction would not violate Section 53-11-35. The Commission has the authority under Sections 62-6-12 and -13 of the Public Utility Act to approve or reject applications for utility mergers and acquisitions based upon their lawfulness and consistency with the public interest.⁴³¹ That authority necessarily includes the power to approve an application subject to conditions reasonably related to those interests, including the factors considered by the Commission in determining whether the Proposed Transaction satisfies the public interest.

The requirement of a majority of independent board members is not an arbitrary condition. Indeed, the discussion above notes that the requirement is the standard requirement for companies listed on the NYSE.

A condition requiring a majority of independent board members would not require an independent board member to act in any way contrary to the interests of the corporation's shareholders. Independent members would still be subject to the requirements of Section 53-11-35.

Subsection B of Section 53-11-35 requires directors to perform their duties "in a manner the director believes to be in or not opposed to the best interests of the corporation." A

⁴³⁰ NMSA (1978), § 53-11-35 (B) and (D).

⁴³¹ Joint Applicants Post-Hearing Brief, at 109-110, *citing* NMSA 1978, §§ 62-6-12 and -13.

requirement that the board consist of a majority of independent members would not change that duty.

Subsection B provides for the exercise of each board member's judgment in the performance of their duties. The requirement of independence would only limit the extent to which influence could be exerted to interfere with the director's exercise of that duty. An independent board member would still have the duty to act in the best interests of the corporation and its shareholders, and the independent board member would also have the discretion to consider the broader interests in Subsection D.

Cuts in corporate resources to achieve short-term profits are also not necessarily in the best interests of a corporation and its shareholders. Decisions that benefit one shareholder at the expense of other shareholders are not necessarily in the best interests of a corporation.

In this case, the evidence indicates the potential for harm if Iberdrola, S.A. and Avangrid, Inc. exercise influence over the PNM board of directors in the manner in which they have influenced actions of Avangrid, Inc.'s Northeastern utility subsidiaries -- actions that may not have been in the best interests of the utilities and their shareholders.

Avangrid, Inc.'s most recent annual report filed with the U.S. Securities & Exchange Commission, discussed above, provides an example that supports this concern. The report informs current and potential investors of the influence that its major shareholder, Iberdrola, S.A., exercises over the composition and decisions of Avangrid, Inc.'s board of directors. And it warns investors that the interests of Avangrid, Inc.'s other shareholders that may not align with Iberdrola, S.A.'s interests. The example shows that the perception of a corporation's and its shareholders' best interests is not a clear-cut issue and that, if not properly separated, the

corporate interests of PNM may be negatively influenced by the interests of Iberdrola, S.A. and Avangrid, Inc.

Similarly, a condition of approval requiring a majority independent board would not violate the Section 53-11-36 requirement that shareholders elect directors at each annual meeting of the shareholders.⁴³²

2. Regulatory Commitment 36 - Reliability and customer service standards

a. As per the June 4 Stipulation

Regulatory Commitment 36 in the June 4 Stipulation attempts to establish system reliability standards and a process to develop customer service standards. It contains two general requirements and a series of more specific requirements. Generally, Regulatory Commitment 36 requires (1) that PNM will invest in its system to ensure reliability and safety and (2) that PNM will retain a sufficient number of dedicated operations and maintenance employees to ensure that it can promptly respond to service calls, outages, distribution line knock-downs, substation issues, and similar service issues.

More specifically, Regulatory Commitment 36 requires PNM to file an annual report that identifies PNM's performance with respect to the System Average Interruption Frequency Index (SAIFI) and the System Average Interruption Duration Index (SAIDI) on a system-wide basis and for each distribution feeder that serves 10 or more customers.⁴³³ The SAIFI measures the number of times during a one-year period that service to the average customer is interrupted. SAIFI is equal to the total of the number of customers affected by every outage in a one-year

⁴³² NMSA 1978, §53-11-36.

⁴³³ A distribution feeder is a single distribution circuit that leaves a substation and runs out throughout the neighborhoods at a lower voltage. An individual feeder may run down several streets, cover four or five blocks of area in the city, and may serve 800 to 1200 customers. A feeder in a rural area might serve as few as five or ten. Industrial customers with large loads may be served with their own feeder or even multiple feeders. Tr. 938-940.

period, divided by the total number of customers.⁴³⁴ The SAIDI measures the minutes of outage experienced by the average customer during a one-year period. SAIDI is equal to the total customer-minutes interrupted during the year divided by the total number of customers.⁴³⁵

Regulatory Commitment 36 establishes system-wide performance standards based upon the baseline reflected in PNM's SAIFI and SAIDI performance for the five-calendar year period for 2016-2020. The paragraph does not prescribe any consequences for PNM's failure to meet the five-year baseline in any annual reporting period.

Regulatory Commitment 36 also establishes reliability standards for distribution feeders. Within 180 days of submitting its annual service reliability report, Regulatory Commitment 36 requires PNM to develop and submit a plan to address the service reliability issues for any distribution feeders that have SAIFI or SAIDI indices that are in the worst 10% of reported feeders for four or more consecutive years. The plan is also required to provide the estimated cost and benefit for remediating a feeder's performance and a feeder performance improvement plan for any distribution feeder with ten or more customers that sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.

For enforcement, Regulatory Commitment 36 provides that any person, including the Utility Division Staff, may petition the Commission for appropriate enforcement action regarding the stipulated reliability performance standards, including proposed fines or penalties, taking into consideration a distribution feeder's operation and maintenance history, causes of service interruptions, PNM's responsive actions, and any other relevant factors.

⁴³⁴ Evans (4/2/21), at 7-8.

⁴³⁵ Evans (4/2/21), at 8.

Finally, Regulatory Commitment 36 requires PNM to meet with representatives from the Commission's Consumer Relations Division and Utility Division Staff to develop a list of appropriate customer service quality indices and reliability standards. It also requires PNM to file a report with the Commission as an element of its Rule 17.3.510 NMAC annual report that reflects its performance based on these measures. The commitment further requires the Joint Applicants to work with Staff to support the initiation of a Commission rulemaking proceeding to create customer service quality standards and reliability standards based upon the average SAIDI and SAIFI with appropriate enforcement provisions for under-performance.

b. Staff and NM AREA recommended standards

Staff and NM AREA recommend changes and additions to strengthen Regulatory Commitment 36. In his April 2 testimony prior to the Stipulation, Staff witness Evan Evans testified that, pursuant to the Stipulation in Case 04-00315-UT, PNM has been required to file annual reports with the Commission that contain information on four reliability indices -- SAIDI, SAIFI, the Customer Average Interruption Duration Index (CAIDI) and the Average Service Availability Index (ASAI). The CAIDI measures the length of an average outage, or, in other words, the average time required to restore service.⁴³⁶ The ASAI measures the percentage of time which service is available on average in a year.⁴³⁷

Mr. Evans said the 04-00315-UT Stipulation enabled the Commission to monitor PNM's performance. He said it did not provide for the assessment of penalties or corrective measures for underperformance, but it also did not restrict the Commission from doing so in the future.⁴³⁸

⁴³⁶ The CAIDI is equal to the total customer-minutes interrupted divided by the total customers affected. CAIDI is also equal to SAIDI / SAIFI. Evans (4/2/21), at 8.

⁴³⁷ Mr. Evans said the ASAI should always be above 99.9%. Evans (4/2/21), at 8.

⁴³⁸ Evans (4/2/21), at 10.

Accordingly, Mr. Evans recommended in this case that Regulatory Commitment 36 clearly establish reliability and customer service standards and prescribe specific penalties for noncompliance. He said the measures are necessary in view of PNM's declining reliability performance from 2005 through 2019 and the customer service issues affecting Avangrid, Inc.'s Northeast electric utilities.⁴³⁹ Mr. Evans proposed a series of reliability standards based upon PNM's performance in the years 2013 through 2017 that included pre-determined penalty amounts for violations.⁴⁴⁰

Mr. Evans also recommended a post-merger process in which PNM would meet with representatives from the Commission's Consumer Relations and Utility Divisions to establish a list of customer service quality indices and require PNM to file a report with the Commission on an annual basis that reveals its performance based on these measures. The reports would assist the Commission in determining whether the quality of PNM's customer service is diminishing and whether that customer service quality is at reasonable and adequate levels on a going forward.⁴⁴¹

After the filing of the June 4 Stipulation, Mr. Evans discussed, in his July 16 testimony in opposition to the Stipulation, the inadequacy of the requirements included in Regulatory Commitment 36. He re-emphasized the importance of his April 2 recommendations based upon the reliability issues experienced by Avangrid, Inc.'s Northeast utilities that were revealed after the May 11 Order Regarding Avangrid Service Quality Issues and Management Audits.⁴⁴²

⁴³⁹ Evans (4/2/21), at 8-9, 18-20.

⁴⁴⁰ Id., at 13-14.

⁴⁴¹ Id., at 20.

⁴⁴² Evans (7/16/21).

He said PNM's commitments in Regulatory Commitment 36 to invest in its system to ensure reliability and safety and to retain a sufficient number of dedicated operations and maintenance employees to promptly respond to service calls are fundamental obligations of all utilities without the need for a stipulation. He said it is not clear that Regulatory Commitment 36 actually establishes a system-wide performance standard (since there are no obligations tied to their failure). Also, if the commitment intends to establish the five-year period of 2016 through 2020 chosen by PNM as a system-wide standard, the baseline represents PNM's historically worst reliability period (making future performance relatively easy to meet the standard). He said the requirements for annual reports and plans for underperforming feeders are a good step, but the commitment lacks an obligation to implement the plans. He also said that Regulatory Commitment 36's reliance on the enforcement provision in the Public Utility Act for administrative penalties does not convey any rights that are not already available. Finally, he noted the findings in the Maine Audit of CMP that suggested a pattern of CMP reducing O&M expenditures needed to maintain service reliability as a means to improve financial performance.⁴⁴³

PNM's Vice President of Operations, Todd Fridley, said PNM does not oppose an effort to alter and refine the reliability requirements for utilities in New Mexico and agrees with undertaking a review and refinement of reliability criteria, metrics and potentially penalties. But he said Mr. Evans' proposal has nothing to do with the Proposed Transaction and appears to be an effort to impose standards that PNM is currently incapable of meeting. He also said the

⁴⁴³ Id., at 7-20.

standards would apply only to PNM, notwithstanding that PNM performs in the top among its peers.⁴⁴⁴

Mr. Fridley states that PNM's current reliability indices reflect a history of reliable performance that is similar to or better than other New Mexico utilities. He states that the provisions in the June 4 Stipulation demonstrate that the Joint Applicants are committed to investing in PNM's system consistent with PNM's existing multi-year plans and to maintaining current personnel to provide existing services post-merger. He also states that the Commission has broad authority to enforce the commitments under its current authority.⁴⁴⁵

Mr. Fridley states that there is no sound rationale for radically disparate treatment of PNM compared to other New Mexico utilities and that Staff is attempting to "jump start" a type of penalty system it is unsure it can obtain through a rulemaking. He also argues that the penalty system is unreasonable because it:

- applies an arbitrary baseline;
- applies an impermissibly narrow variance from the baseline that does not account for observable variability caused by uncontrollable events;
- inappropriately applies combined transmission and distribution average SAIDI and SAIFI metrics as a measure for distribution only systems;
- unreasonably imposes penalties before PNM can reasonably identify whether an individual distribution feeder underperforms from an engineering perspective rather than due to unrelated and uncontrollable events and before PNM has a reasonable opportunity to address identified performance issues; and

⁴⁴⁴ Fridley (7/29/21), at 2.

⁴⁴⁵ Id., at 4-12.

-- rewards preemptive fixes to individual distribution feeders that make the first- and second-year “worst” list, rather than a systematic approach to improving the reliability of the distribution system as a whole.⁴⁴⁶

Mr. Fridley states that it is also critical that any requirements that single out PNM for disparate standards and penalties that are not imposed on other utilities should only be implemented on an interim basis, and should sunset on a date certain, such as no more than 3-4 years after implementation. If the Commission has not commenced a rulemaking for a permanent and uniform approach to setting standards, it is arbitrary and unfair for PNM to be indefinitely held to a penalty system that bears little relationship to the merger.⁴⁴⁷

Nevertheless, Mr. Fridley attached to his July 29 rebuttal testimony an “illustration” of how potential penalties might be established if Staff’s penalty structure were more reasonably constructed.⁴⁴⁸ He said any standards and penalties should terminate upon the earlier of the effective date of a reliability metrics rule promulgated by the Commission or five calendar years after the closing of the Proposed Transaction.

c. PNM’s illustrative standards vs. Staff’s proposals

(i) System performance

PNM suggests reliability performance standards based upon PNM’s average system-wide SAIFI and SAIDI performance in the reporting years 2016-2020. Staff recommended 2013-2017.

PNM suggests that its SAIFI and SAIDI values not exceed the system-wide SAIFI and SAIDI standards by more than 30.0%. Staff recommended maximum exceedances of 10%.

⁴⁴⁶ Id., at 12-13.

⁴⁴⁷ Id., at 13.

⁴⁴⁸ Id., at 24, JA Exhibit TF-2 (7/29/21).

(ii) System penalties

PNM suggests the following penalties for failures to meet the reliability performance standards:

- \$100,000 per year if its system SAIFI or SAIDI, separately, exceed the system-wide standard by 30% or more for two consecutive years;
- \$200,000 for each system SAIFI or SAIDI exceeding the system-wide standard by 30% for three consecutive years; and
- \$250,000 for each SAIFI or SAIDI exceeding the system-wide standard by 30% for four consecutive years.

Staff recommended the following penalties:

- \$340,000 for each reliability index that exceeds the standard by more than 10% for two consecutive years. The penalty would increase by \$34,000 for each additional percentage point above 10%;
- \$510,000 for each reliability index that exceeds the standard by more than 10% for three consecutive years. The penalty would increase by \$51,000 for each additional percentage point above 10%; and
- The penalty for each reliability index that exceeds the standard by more than 10% for four or more consecutive years would increase by \$170,000 each consecutive year. The penalties would also increase by \$17,000 each consecutive year for each additional percentage point above 10%.

(iii) Distribution feeder performance

PNM suggests that it file a detailed report with the Commission as part of its Rule 17.3.510 NMAC annual report identifying the SAIDI and SAIFI performance for each feeder

that serves 10 or more customers. PNM would provide information by feeder for SAIFI and SAIDI separately and would rank feeders from worst performing to best performing feeders for the reporting year and would include each feeder's ranking for that index for the previous year. If any distribution feeders have SAIFI or SAIDI values that are in the worst 10% of reported feeders for four or more consecutive years, PNM would be required to develop and file a plan to correct the service reliability issues and submit it to the Commission within 90 days.

Staff recommended that PNM file a report with the Commission by April 1 of each calendar year identifying both the system-wide SAIDI and SAIFI performance and the SAIDI and SAIFI performance for each feeder that serves 10 or more customers. The report should include information by feeder for SAIFI and SAIDI separately and rank the feeders in order from worst performing to best performing feeders for the reporting year (and including each feeder's ranking for that index for the previous year). Mr. Evans recommended that the reliability data be developed based on definitions established in Institute of Electrical and Electronics Engineers (IEEE) Standard 1366-2003 and that the system-wide reliability report be consistent with the reliability information PNM has historically reported annually pursuant to Regulatory Commitment 26 of the Stipulation in NMPRC Case No. 04-00315-UT.

(iv) Distribution feeder penalties

PNM states that if the Commission decides to implement penalties, PNM could agree to a performance penalty for each distribution feeder with ten or more customers that sustains a SAIDI or SAIFI value, separately, for a reporting year that is in the worst 10% of all reported distribution feeders and exceeding the average SAIDI or SAIFI value for all PNM reported feeders by 30% for three or more consecutive reporting years. The penalties for each underperforming feeder would be as follows:

-- \$8 per customer served for each reliability index that exceeds the standard for three consecutive years;

-- \$12 per customer served for each reliability index that exceeds the standard for four consecutive years; and

-- \$15 per customer served for each reliability index that exceeds the standard for five consecutive years.

Staff recommended the following penalties:

-- \$12 per customer served for each reliability index that exceeds the standard by more than 10% for two consecutive years;

-- \$18 per customer served for each reliability index that exceeds the standard by more than 10% for three consecutive years; and

-- \$24 per customer served for each reliability index that exceeds the standard by more than 10% for four or more consecutive years.

(v) Other penalty considerations

In determining the ultimate size of the penalties for system reliability failures, Mr. Fridley proposed that the Commission consider substantial steps or progress toward improving system reliability, infrastructure improvement programs, advanced controls and monitoring systems and an unusually high level of system events that are outside the control of PNM and adjust some or all of the system penalties accordingly. He said system events that are outside the control of PNM may include but not be limited to excessive weather events, accident-caused events such as line debris, hit structures or vandalism.

In determining penalties for feeder reliability performance, Mr. Fridley proposed that the Commission consider events that are outside the control of PNM, including but not limited to

excessive weather events, accidental hit poles or other equipment, cable dig-ins or vandalism, and adjust some or all of the potential penalties for individual feeders to reflect such events.

Mr. Fridley also recommended that PNM's SAIFI and SAIDI performance exclude Major Event Days in accordance with IEEE Standard 1366.

Finally, Mr. Fridley proposed that, upon recommendation by Staff, the Commission may elect to waive payment of the performance penalty in lieu of a shareholder contribution to system improvements in an equal amount.

In determining penalties for *both* system and feeder reliability performance, Staff recommended that the Commission could consider the following factors:

- (i) a feeder's operation and maintenance history;
- (ii) the cause of each interruption in a feeder's service;
- (iii) any action taken by PNM to address a feeder's performance;
- (iv) the estimated cost and benefit of remediating a feeder's performance; and
- (v) any other relevant factor as determined by the Commission.

Staff's recommended system-wide underperformance penalty for two years of exceeding either the SAIFI or SAIDI standard by more than 10% was calculated to produce a penalty approximately equal to a 10 basis point reduction to PNM's approved Return on Equity applied to the distribution rate base from the Modified Revised Stipulation and the Commission's Order in PNM's most recent rate case, Case No. 16-00276-UT. Also, the distribution feeder underperformance penalty for any feeder that is in the worst 10% for two consecutive years was calculated to produce a penalty equal to the average distribution management expenses, FERC

accounts 590 – 598, per distribution customer from the Modified Revised Stipulation and the Commission’s Order in PNM’s most recent rate case, Case No. 16-00276-UT.⁴⁴⁹

Mr. Evans recommended that PNM be required to file the distribution feeder service reliability data beginning April 1, 2022, which would provide information on SAIFI and SAIDI performance for the 2021 calendar year. As a result, any system-wide and distribution feeder underperformance penalties would begin to be assessed in 2023, based on the filing for calendar year 2022.⁴⁵⁰

Mr. Evans recommended that the combined assessment for system-wide and feeder performance penalties would be refunded to all of PNM’s retail distribution customers based upon non-fuel, base rate revenues for each class. The refund would be flowed back to customers through a separate rider that clearly identifies what caused the refund.⁴⁵¹

NM AREA supports Staff’s SAIDI and SAIFI reliability standards. NM AREA witness Michael Gorman states that it is essential to NM AREA that the Joint Applicants commit to strict reliability metrics in order for the Proposed Transaction to be in the public interest. NM AREA's intent in requiring reliability metrics is to maintain and improve system reliability and power quality, not to punish the utility. He states that NM AREA would support any compromise language worked out between the Joint Applicants and Commission Staff on these issues. If the parties are unable to come to an agreement, NM AREA supports the recommendations made by Staff with respect to reliability and service quality metrics in Mr. Evans’ April 2 testimony.⁴⁵²

⁴⁴⁹ Evans (4/2/21), at 16.

⁴⁵⁰ Evans (4/2/21), at 18.

⁴⁵¹ Evans (4/2/21), at 17.

⁴⁵² Gorman (7/16/21), at 36-37, citing Evans (4/2/21).

d. Additional NM AREA proposals

In addition to the reliability and customer service standards discussed above, NM AREA proposes further additions to Regulatory Commitment 36 that Mr. Gorman states are necessary to address the service quality problems experienced by the customers of the four Avangrid, Inc.-owned electric utilities in the Northeast. He states that the service quality failures in the Northeast go directly to the issue of Avangrid, Inc.'s fitness to be certificated by this Commission as the largest provider of electric service in New Mexico.⁴⁵³

NM AREA proposes a commitment that PNM will maintain minimum capital investments in transmission and distribution infrastructure equal to the remaining four years of PNM's current five-year budget for 2021-2025.⁴⁵⁴ NM AREA also proposes a requirement that PNM conduct power and service quality studies for large customers, i.e., 10 MW and greater, that have facilities that are negatively impacted by momentary power interruptions and voltage sags. Mr. Gorman states this of the utmost importance if the Joint Applicants hope to retain and grow high-tech jobs in New Mexico.⁴⁵⁵

Finally, NM AREA proposes commitments that post-acquisition PNM will employ a sufficient number of full-time employees and contract workers to ensure that it can promptly respond to service calls, outages, distribution line knock-downs, substation issues and similar service issues. NM AREA asks that, in each of the next three rate cases, PNM will report on the number of full-time employees and contract workers it believes are needed to fulfill this commitment and any material changes (plus or minus 10%) it may make to that number during

⁴⁵³ Gorman (7/16/21), at 32-33.

⁴⁵⁴ Gorman (7/16/21), at 34.

⁴⁵⁵ Gorman (7/16/21), at 34-35.

the time that the proposed rates will be in effect. NM AREA also asks that PNM designate one or more customer service representative(s) to provide customer support for large customers whose monthly demand is greater than 3 MW. Further, NM AREA asks that the Joint Applicants commit that there will be no material diminution in current levels of quality of customer service or system reliability for as long as Avangrid, Inc., or an affiliated interest, owns PNMR and PNM. Mr. Gorman states that this commitment is necessary in light of the finding in the Maine Audit that one of the significant contributing factors to the service quality issues at CMP was the lack of a sufficient number of customer service and field personnel to adequately address service issues as they arose.⁴⁵⁶

In their July 29 rebuttal testimony, Mr. Tarry and Mr. Fridley state that the Joint Applicants agree to the additional terms recommended by NM AREA, except for NM AREA's request that the power quality studies be performed within three months following closing of the Proposed Transaction. Mr. Fridley states that the studies should be performed within 12 months of the closing, but the Joint Applicants will work to reach agreement with customers on a shorter deadline if reasonably feasible.⁴⁵⁷

e. Recommendations

If the Commission determines that the June 4 Stipulation should be approved in some form, the Hearing Examiner recommends that the approval be conditioned upon the Signatories filing their concurrence with the following changes.

The modifications proposed by Staff and NM AREA to the reliability and customer service standards and associated penalty provisions in Regulatory Commitment 36 should be

⁴⁵⁶ Gorman (7/16/21), at 35-36, citing Maine Audit, at ES 7-ES 8.

⁴⁵⁷ Tarry (7/29/21), at 8; Fridley (7/29/21), at 29-33.

adopted as indicated in the Modified Stipulation attached to this Certification. The ultimate purpose of the modifications is not punishment, and they do not represent an unreasonable attempt to treat PNM differently from other electric utilities. This is a case in which the approval of the Proposed Transaction is governed by the public interest.⁴⁵⁸ The record indicates that the ultimate acquirer of PNM, Avangrid, Inc., owns electric utility subsidiaries that have been penalized in recent years for more than \$60 million for failures to provide reliable electric service and adequate customer service. The establishment of the standards as conditions for the approval of the Proposed Transaction is a reasonable means to incentivize the adequacy of PNM's service and to prevent the degradation of service under Avangrid, Inc.'s ownership.

The level of the penalties, or more accurately described as "incentives," is fair and reasonable, especially when compared to the \$3.5 million, \$7.0 million and \$7.0 million disallowances adopted in New York for NYSEG's failures to satisfy its reliability metrics in 2018, 2019 and 2020. A substantial incentive appears to be necessary to encourage the continuing provision of reliable service.⁴⁵⁹

The base period for measuring SAIDI and SAIFI compliance, however, should be lengthened to 2010-2020 to more accurately reflect the current level of performance against which future degradation should be measured. And, as proposed by Mr. Fridley, the Commission could elect to waive payment of the performance penalties in lieu of a shareholder contribution to system improvements in an equal amount.

⁴⁵⁸ See NMSA 1978, §62-6-12 and 13.

⁴⁵⁹ See, e.g., *Qwest Corp. v. N.M. Public Regulation Commission*, 2006-NMSC-042, at ¶¶19-31, 140 N.M. 440, 446-450.

The further modifications proposed by NM AREA to Regulatory Commitment 36 should also be adopted, except for the timing required for the power studies for large customers. The Joint Applicants' counter-proposal in Mr. Fridley's July 29 rebuttal testimony should be adopted.

The modifications recommended by the Hearing Examiner are reflected in Appendix 2 hereto.

3. Resource procurements and Avangrid, Inc. affiliates: Regulatory Commitments 34 and 35 -- Independent Evaluator and Affiliate Contracts other than Shared Services

The June 4 Stipulation contains two provisions intended to address the harm that could result from PNM potentially favoring proposals from Avangrid, Inc. affiliates when PNM issues Requests for Proposals (RFPs) for new generation resources. The provisions address the danger cited by intervenors that Avangrid, Inc.'s ownership of both PNM and Avangrid Renewables, LLC would stifle, rather than promote, the development of New Mexico's renewable energy resources. The perception (or reality) of favoritism may discourage current and potential renewable energy developers from competing with Avangrid Renewables, LLC for PNM procurements and/or avoid New Mexico entirely. The result could be a slowing of the development of renewable energy projects and higher prices for PNM customers due to the lack of competing bids for PNM procurements. The provisions seek to ensure a level playing field for renewable energy developers.

Regulatory Commitment 34 provides for an independent evaluator to review the bidding process PNM uses to procure new generating resources. Regulatory Commitment 35 establishes requirements to ensure that procurements involving Avangrid, Inc. affiliates do not unfairly favor the affiliates.

The Joint Applicants minimized the risks posed by their ownership of PNM and Avangrid Renewables, LLC and the need for an independent evaluator in their initial testimony. Mr. Kump stated in his February 26, 2021 supplemental testimony that the Joint Applicants do not believe an independent evaluator will be necessary to participate in resource acquisition activities. He said the Federal Energy Regulatory Commission (FERC) requires the review and approval of any affiliate purchase power agreement (PPA) between PNM and an affiliate within the PNM Balancing Authority to confirm that there is no favoritism, and to show that any affiliate PPA was the result of a competitive process. He also said the New Mexico Public Regulation Commission has implemented strict regulations governing transactions between utilities and affiliates. The regulations require the utility to provide notice of such transactions and to discuss how the transactions benefit the utility and ratepayers and whether the utility attempted to obtain the goods at a price lower than obtained from the affiliate. Mr. Kump said PNM will have to prove to both FERC and the PRC that any PPA was the result of a competitive process and in the interests of customers.⁴⁶⁰

The April 2 testimony filed by the Attorney General, Staff and other opponents, however, cited the potential for favoritism as a reason to oppose the proposed merger or to propose measures to prevent the exercise of favoritism. The limiting measures included a prohibition on Avangrid, Inc. affiliates bidding on PNM projects, the divestment of Avangrid Renewables, LLC's current New Mexico projects, and/or the establishment of independent evaluator requirements for PNM RFPs.

In his April 2 testimony prior to the June 4 Stipulation, Attorney General witness Scott Hempling said that “[t]o say that Iberdrola, S.A./Avangrid’s dealings with PNM will be at arm’s-

⁴⁶⁰ Kump (2/26/21), at 4.

length is to ignore the transaction's explicit purpose: to make PNM Avangrid's "platform" for carrying out its "strategic plan" -- a plan to develop and sell more renewables to companies like PNM, and including PNM."⁴⁶¹ He said Avangrid, Inc.'s very structure -- a combination of monopoly utilities and its renewable energy developer (Avangrid Renewables, LLC -- embodies the risks of non-arm's-length relations.⁴⁶²

City of Albuquerque witness, Dr. Larry Blank, an economist at New Mexico State University and an expert in industrial organization (i.e., the economic discipline addressing mergers), discussed the potential anticompetitive behavior and possible remedies at issue in the Avangrid, Inc.-PNM merger. He said the analysis required in this case is similar to the traditional antitrust analysis of a merger, but the federal and state agencies overseeing this merger are not likely to take into consideration the aggressive path toward a carbon-free electricity market necessitated by the carbon-free objectives of the Renewable Energy Act (REA) amendments of 2019.⁴⁶³

Dr. Blank said, on the one hand, Avangrid, Inc. as a corporation with experience in renewable energy development seems like a worthwhile parent that can help PNM lead New Mexico to achieve the objectives of the REA. On the other hand, the Commission must protect the development of a competitive renewable energy market without preference for any one technology or any one company. He said the market development of technological solutions and competitive alternatives is extremely important to achieve a carbon-free electric market, but the achievement of that goal is extremely difficult.⁴⁶⁴

⁴⁶¹ Hempling (4/2/21), at 45.

⁴⁶² *Id.*

⁴⁶³ Blank (4/2/21), at 6-7.

⁴⁶⁴ *Id.*, at 5-6.

He said New Mexico is at a critical stage of development in which the planning and procurement of alternative power supply is very important to the future and the potential success of attaining the zero-carbon goal required by the REA. New technologies will likely be emerging for the production and storage of renewable energy. Any favoritism toward the technology provided by an affiliate would stifle adoption of the most innovative ways to meet New Mexico's goals. He said renewable energy and storage, for example, are no longer a niche market component in New Mexico as they are in most other markets; these and other technologies will soon be the dominant source of power in the New Mexico market and now is not the time to allow competitive affiliates to potentially disrupt that development by allowing opportunities for affiliates to leverage the monopoly position of the utility in ways that monopolize an otherwise competitive market.⁴⁶⁵

Dr. Blank said, when significant amounts of money are at stake, there is a strong profit incentive to favor an affiliate over other suppliers in the market. He said the favoritism may be implemented through the choice of technologies or type of power to be procured, the design of the request for proposals, the evaluation criteria used to assess proposals, and other design details within the procurement process. There is also the concern that commercially sensitive proprietary data may be leaked from the regulated utility to the competitive affiliate.⁴⁶⁶

He said, because of the bias concern and proprietary data concern, non-affiliated suppliers, knowing that the regulated utility hosting the competitive procurement process has a competitive affiliate in the game, may be discouraged from competing at all, thereby reducing competition and causing prices to increase. Even if unaffiliated competitors continue to

⁴⁶⁵ Blank (4/2/21), at 13-14.

⁴⁶⁶ *Id.*, at 12.

participate in the bidding for PNM contracts, successful anticompetitive behavior by this merged company will, in time, reduce competition and cause market prices to increase.⁴⁶⁷

Dr. Blank said ring-fencing requirements or codes of conduct may give the appearance of protection against such undue influence, but PNM and the affiliate supplier will belong to the same corporate family and, therefore, PNM will know the corporate expectations. Furthermore, the profit incentives are too large to blindly rely on codes of conduct to prevent inappropriate, anticompetitive influence.⁴⁶⁸

Dr. Blank said there are only two ways to be assured that such anticompetitive behavior will not occur; one is to require complete divestiture of the competitive supply affiliates, and the other is to prohibit such Class I transaction sales from an affiliate to PNM. He recommended the latter remedy.⁴⁶⁹

Dr. Blank noted that, in electricity markets that have fully implemented competition, such as that within the Texas ERCOT (also known as the “Electric Reliability Council of Texas”) market, the regulated investor-owned utility monopolies are not allowed to participate in the generation of electricity whatsoever. He recognized that the ERCOT retail electric market is not comparable to New Mexico, but he found it relevant that the competitive renewable wholesale market within ERCOT has been free to develop without any interference from the regulated utility companies -- without participation by a competitor affiliated with a regulated electric utility. And Texas now ranks first in wind development within the United States.⁴⁷⁰

⁴⁶⁷ *Id.*, at 12.

⁴⁶⁸ Blank (4/2/21), at 14.

⁴⁶⁹ Blank (4/2/21), at 15.

⁴⁷⁰ Blank (4/2/21), at 16-17).

He said Avangrid, Inc. should choose whether it intends to enter the New Mexico market as a regulated electric utility or as a competitive renewable energy provider:

If its preference is to enter the New Mexico market as a competitive renewable energy provider, then their focus instead should be on that market segment. The PRC should not allow them to do both because of the anticompetitive concerns I have raised herein. Avangrid should choose one or the other. Do they want to be a regulated utility within New Mexico, or do they want to be a competitive supplier to that utility and other utilities within New Mexico? There is no need to allow them to do both and to do so may be detrimental.⁴⁷¹

Dr. Blank noted at the evidentiary hearing that the City of Albuquerque has not taken a position on the Stipulation. But when asked at the hearing whether an independent evaluator would be ineffective at preventing any anticompetitive impacts from a situation where an Avangrid, Inc. affiliate might bid on a PNM project, he said an Independent Evaluator serves to help mitigate the concern, but there are other ways in which an affiliate may be able to gain some advantage. And he provided as an example the drafting of the RFP itself. He said, under the proposal in the June 4 Stipulation, the Independent Evaluator has no role in the design of the RFP in terms of technology that they are seeking, in terms of size and other characteristics that, because of PNM's future affiliation with Avangrid, Inc., could potentially give an advantage to Avangrid, Inc..⁴⁷²

Staff witness John Reynolds recommended that Avangrid Renewables, LLC be required to refrain from bidding on future renewable energy or energy storage developments for ten years. Alternatively, he said that an independent evaluator, accountable to the Commission and paid for by Avangrid, Inc., should review every PNM competitive procurement for renewable energy or

⁴⁷¹ Blank (4/2/21), at 17.

⁴⁷² Tr. 1562.

energy storage in New Mexico where any Avangrid, Inc. subsidiary or affiliate is a bidder.⁴⁷³ He also recommended that Avangrid be required to divest its current La Joya Wind Farm project.⁴⁷⁴

ABCWUA witness Mark Garrett recommended that the Commission prohibit any future transactions for renewable energy projects with affiliates. In the alternative, he recommended that the Commission require a *lower of cost or market* standard for affiliate transactions. The *market* price would be established through a competitive bidding process with an independent monitor, and the *cost* basis would be established with a self-build bid from the utility.⁴⁷⁵

NEE witness Christopher Sandberg similarly recommended that an independent evaluator be required and paid for by PNM.⁴⁷⁶

The June 4 Stipulation at issue here included Regulatory Commitments 34 and 35 to address the parties' concerns. Regulatory Commitment 34 provides for an independent evaluator whenever PNM proposes a procurement of energy resources, power supply, energy storage, or any related utility equipment intended to become a part of utility plant in service, including whenever an affiliate expresses interest in participating in an RFP for a Class I transaction or any extension of an existing affiliate power purchase agreement through a repowering or otherwise. The purpose is to ensure a fair RFP process and that there is no favoritism in the evaluation of proposals and selection of the winning bidder.

PNM would provide the independent evaluator with the RFP and all necessary information during the RFP process within fifteen days of any required application filed by PNM for approval of such procurement. The independent evaluator would file a report with the

⁴⁷³ Reynolds (4/2/21), at 27.

⁴⁷⁴ *Id.*, at 34.

⁴⁷⁵ Mark Garrett (4/2/21), at 7, 38-41.

⁴⁷⁶ Sandberg (4/2/21), at 40-42.

Commission outlining the substance of the RFP process and providing an independent assessment of the development and implementation of the RFP process, including whether the bid proposals were evaluated on a fair, consistent, and comparable basis.

PNM would include in its Annual Report its list of qualified independent evaluator candidates from which PNM will select the independent evaluator for the following year. The independent evaluator could not have any affiliation with the owner's engineer or other consultant used by PNM in the development and implementation of the RFP process. The independent evaluator would be retained on behalf of the Commission and would report to the Commission.

PNM shareholders would pay the cost for the services provided by the independent evaluator when an affiliate participates in an RFP. If PNM retains an independent evaluator where there is not an affiliate participating in the RFP, the reasonable costs of the independent evaluator would be recoverable through PNM rates.

Regulatory Commitment 35, Affiliate Contracts Other Than Shared Services, establishes the following requirements for affiliate contracts:

- PNM will have the burden of proving that any new affiliate transactions are based on reasonable charges for services rendered and that the services received benefit ratepayers;
- No PNM affiliate could obtain a new affiliate PPA with PNM or an extension of an existing affiliate PPA without (1) winning a competitive RFP (with an independent evaluator) with evidence of direct head-to-head competition with non-Iberdrola, S.A. or non-Avangrid, Inc. affiliates, and (2) obtaining Commission approval;
- Any information that PNM provides to its affiliate with respect to any such RFP would have to be simultaneously provided to all bidders;

-- No other non-public information about a competitive RFP could be shared between PNM and affiliates at any time;

-- All executed contracts between PNM and any affiliated interest would have to be managed and enforced on an arm's-length basis as if they were contracts with a non-affiliated entity; and

-- PNM and Avangrid, Inc. would have to comply with all affiliate transaction requirements under New Mexico and federal laws and regulations.

On July 16, NM AREA witness Mr. Gorman filed testimony in which, based on further negotiations with the Joint Applicants, he recommended two changes to Regulatory Commitment 34. He recommended that the independent evaluator be chosen by the Commission from the list of candidates provided by PNM. He also recommended that the requirements in Regulatory Commitment 34 be superseded when the Commission promulgates a competitive procurement rule that establishes uniform procedures for all of the State's electric utilities.⁴⁷⁷

Bernalillo County witness Ms. Reno recommended three changes -- (1) that the independent evaluator be selected by the Commission or by an independent organization under the supervision of the Commission; (2) that the Commission establish clear and enforceable standards for competitive RFPs and ensure that there is no preference given to PNM, Avangrid, Inc. or Iberdrola, S.A. affiliates or subsidiaries; and (3) that the independent evaluator review both the process and the applications for RFPs.⁴⁷⁸

NEE witness Mr. Sandberg also recommended that the Commission choose the independent evaluator and that the independent evaluator be paid by PNM's shareholders.⁴⁷⁹

⁴⁷⁷ Gorman (7/16/21), at 31-32.

⁴⁷⁸ Reno (7/16/21), at 13.

⁴⁷⁹ Sandberg (7/16/21), at 50-52.

In his July 29, 2021 rebuttal testimony, Avangrid, Inc. witness Mr. Kump agreed to accept the NM AREA modifications.⁴⁸⁰

If the Commission decides to approve the Proposed Transaction in some form, the Hearing Examiner recommends approval of most of the changes proposed by NM AREA and accepted by the Joint Applicants. The changes would grant the Commission the right to approve an independent evaluator from the list developed by PNM. The changes would also require PNM shareholders to bear the cost when Avangrid, Inc. affiliates participate.

The Hearing Examiner, however, recommends four further changes. The first addresses the timing of PNM's filing of the qualified list of potential independent evaluators. In addition to the initial filing within thirty days after the closing of the Proposed Transaction, the Regulatory Commitment should also provide for further filings in the future with the annual reports PNM is required to file under Rule 17.3.510 NMAC.

The second change requires PNM to include in the list of independent evaluator candidates that it submits to the Commission at least three candidates proposed by parties in PNM's most recent resource procurement case. This change is based, in part, on the independent Observer process in Hawaii cited in NEE witness Mr. Sandberg's testimony.⁴⁸¹

The third change would give the Commission 90 days, instead of 60 days, to select an independent evaluator from the list of candidates submitted by PNM.

The fourth change would not adopt the language that provides for the termination of Regulatory Commitment 34 upon the Commission's approval of a competitive procurement rule.

⁴⁸⁰ Kump (7/29/21), at 5-7.

⁴⁸¹ Sandberg (4/2/21), at 41, citing *In the Matter of Instituting a Proceeding to Investigate Competitive Bidding for New Generating Capacity in Hawai'i*, Docket No. 03-0372, *Decision and Order No. 23121*, Dec. 8, 2006, at 15-16. The selection process for an Independent Observer in Hawaii involves the electric utility's identification of qualified candidates with consideration given to qualified candidates identified by the Commission and prospective participants in the competitive bidding process.

The motivation for the proposed language is to treat PNM the same as other electric utilities. But a post-merger PNM will be different from other electric utilities based upon its ownership by a holding company that has a subsidiary that develops renewable energy projects in New Mexico. That difference is the reason for the independent evaluator requirement in Regulatory Commitment 34, and it is the reason why the independent evaluator requirement should continue even after the adoption of a competitive procurement rule. The Commission has the authority upon a proper showing to issue a further order in the future eliminating Regulatory Commitment 34 at the time it adopts a competitive procurement rule or later. But, at this time, it is premature to provide for the termination of the requirement without knowing the content of the rule the Commission may ultimately adopt.

The recommended modifications are set forth below:

Independent Evaluator. Whenever PNM proposes a procurement of energy resources, power supply, energy storage, and related generation facilities intended to become a part of utility plant in service (Energy or Storage RFP), including whenever an affiliated interest expresses interest in participating in an RFP for a Class I transaction or any extension of an existing affiliated interest power purchase agreement through a repowering or otherwise, an Independent Evaluator (“IE”) will be retained for the benefit of the Commission in order to ensure a fair RFP process and that there is no favoritism in the evaluation of proposals and selection of the winning bidder(s). Within thirty days from closing of the Proposed Transaction, and thereafter in PNM’s annual reports pursuant to Rule 17.3.510 NMAC, PNM shall provide the Commission with a list of qualified entities from which an IE may be selected; provided that if the Commission has not selected an IE within 90 days of submittal of the list of qualified entities, PNM shall select an IE from the list in order to ensure an IE is available to timely review any proposed procurements. PNM shall include in its preparation of the list of qualified IE entities at least three candidates as may be proposed by parties in PNM’s most recent resource procurement case. The IE shall be retained on behalf of the Commission and the IE shall report to the Commission, and paid for by PNM. PNM shall provide the IE with the RFP and all necessary information during the RFP process, or upon selection of the IE if an RFP process is in progress, in order for the IE to file a report to the Commission within fifteen days of any required application filed by PNM for approval of such procurement. The IE Report shall outline the substance of the RFP process and provide an independent assessment of the development and implementation of the RFP

process, including whether the bid proposals were evaluated on a fair, consistent, and comparable basis. The IE shall not have any affiliation with the owner's engineer or other consultant used by PNM in the development and implementation of the RFP process. PNM shall include in its Annual Report its list of qualified IE candidates from which the Commission will select the IE for the following year. Joint Applicants agree that shareholders will pay the cost for the services provided by the IE when an affiliated interest participates in an RFP. To the extent that PNM retains an IE where there is not an affiliated interest participating in the RFP, the parties to the Stipulation agree that all of the reasonable costs of the IE are properly recoverable through PNM rates. All parties will retain rights to oppose any new projects proposed and to oppose any affiliated interest contracts proposed. ~~Upon the effective date of a utility competitive procurement rule promulgated by the Commission, this Paragraph shall be superseded by such rule and shall no longer be in force or effect.~~

Regulatory Commitment 35, Affiliate Contracts Other Than Shared Services, states that "Joint Applicants commit that PNM will implement policies with respect to existing and/or potential future affiliate contracts that would accomplish" the following:

-- PNM has the burden of proving that any new affiliate transactions are based on reasonable charges for services rendered and that the services received benefit ratepayers;

-- No PNM affiliate can obtain a new affiliate power purchase agreement ("PPA") with PNM or an extension of an existing affiliate Purchase Power Agreement (including through repowering) without winning a competitive RFP (with an Independent Evaluator) with evidence of direct head-to-head competition with non-Iberdrola or non-Avangrid affiliates, and will be subject to obtaining Commission approval;

-- Any information that PNM provides to its affiliate with respect to any such RFP (including with respect to any extension of an existing PPA, such as through a repowering) must simultaneously be provided to all bidders;

-- No other non-public information about a competitive RFP (including with respect to any extension of an existing PPA, such as through a repowering) will be shared between PNM and affiliates at any time, unless as described in this paragraph;

-- All executed contracts between PNM and any affiliated interest must be managed and enforced on an arm's length basis as if they were contracts with a non-affiliated entity; and

-- PNM and Avangrid will comply with all affiliate transaction requirements under New Mexico and federal laws and regulations.

No party has recommended changes to this commitment. If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends this provision should be adopted.

4. Four Corners Power Plant Divestiture & Regulatory Commitment 52 -- Current Tariffs and Contracts and Other Proceedings

Regulatory Commitment 52 in the June 4 Stipulation provides as follows:

52. Current Tariffs and Contracts and Other Proceedings. Joint Applicants agree to honor and support existing green tariffs and all contracts between PNM and current customers. The parties and intervenors in this case reserve all rights in all other dockets in which PNM is a party. Specifically, nothing in this Stipulation shall affect the rights or limit the positions of any party in Case No. 21-00017-UT regarding any matter or issue in that case or any future case relating to the Four Corners Power Plant. The Parties agree that until closing of the Proposed Transaction, either a non-decision or a dismissal of Case No. 21-00017-UT will not affect this merger. Events that occur after closing of the Proposed Transaction in that Case No. 21-00017-UT will not be deemed to have an impact on the merger.

This section is intended to address arguments made in the April 2 testimony of parties objecting to the requirement in the October 20, 2020 Agreement and Plan of Merger (Merger Agreement) that requires PNM to abandon its ownership interest in the Four Corners Power Plant (FCPP). The section also relates to parties' objections to the requirement in the November 1, 2020 Purchase and Sale Agreement for that interest with the Navajo Transitional Energy Company, LLC (NTEC) that forbids PNM from voting to close the plant prior to the December 31, 2014 transfer of PNM's ownership interest to NTEC.

Regulatory Commitment 52 defers the resolution of the parties' objections to the proceeding at Case No. 21-00017-UT, in which PNM seeks Commission approval to abandon its interest in the FCPP and to transfer the interest to NTEC. But three parties object to this provision and/or ask that the Commission order modifications.

Sierra Club objects to Clause 6.19 of the Merger Agreement. That section requires PNM to enter into agreements for PNM to exit its ownership interests in the FCPP and to make all applicable regulatory filings to obtain approvals from applicable governmental entities, with the objective of having the closing date for the exit occur as promptly as practicable but in any event no later than December 31, 2024.⁴⁸²

Sierra Club also objects to Section 6.1(d) of the Purchase and Sale Agreement with NTEC, which prohibits PNM from voting in favor of closing the FCPP prior to the December 31, 2024 transfer of PNM's interest to NTEC, unless NTEC consents to an early closure of the plant.⁴⁸³ Under the FCPP operating agreement, the FCPP owners other than NTEC must reach a unanimous vote in order to close the plant.⁴⁸⁴ Sierra Club states that, given that a unanimous vote is required to close Four Corners and the Purchase and Sale Agreement requires PNM to vote against closing Four Corners (unless NTEC consents), the Purchase and Sale Agreement

⁴⁸² Section 6.19 of the Merger Agreement provides as follows;

SECTION 6.19 Four Corners Divestiture. The Company acknowledges that Parent, Iridium and the Company each have stated goals relating to decarbonization and, in this regard, the Company has previously announced its intention to exit from the Four Corners Power Plant earlier than the date on which its ownership agreement currently provides. Accordingly, the Company agrees that, as soon as reasonably practicable, following the date of this Agreement, PNM shall (a) enter into definitive agreements providing for exit from all ownership interests in the Four Corners Power Plant, substantially in the form made available to Parent prior to the date of this Agreement or in such other form as is reasonably acceptable to Parent (collectively, the "Four Corners Divestiture Agreements") and (b) make all applicable regulatory filings and take all commercially reasonable actions in order to obtain required approvals from applicable Governmental Entities, all with the objective of having the closing date for such exit to occur as promptly as practicable but in any event no later than December 31, 2024.

Merger Agreement, Section 6.19, attached to Azagra Blazquez (11/23/20), at JAB Exhibit PAB-3.

⁴⁸³ Subsection (i) of Section 6.1(d) Conduct Pending Closing requires that "[PNM] shall use Commercially Reasonable efforts to tender the Acquired Interests upon Closing under circumstances that will allow continued operation and generation of the Plant under the Facilities Contracts through the duration of the Coal Supply Agreement, which efforts shall include, for the avoidance of doubt, making no affirmative vote as a Facilities Owner to reduce the production from or cease the operation of the Plant prior to the end of the Coal Supply Agreement term" Commission Exhibit No. 1, Joint Applicants Response to Bench Request No. 1, Exhibit B.

⁴⁸⁴ Tr. 822: 13-16; Fisher (6/18/21), at 11, 13, 17.

effectively eliminates the possibility of a unanimous vote before 2025 to close Four Corners. NTEC is not given a vote on whether to close the plant because NTEC is deemed to have a conflict of interest on that issue, since NTEC owns the mine that supplies coal to Four Corners.⁴⁸⁵

The Sierra Club argues that the continued operation of the plant will cause substantial environmental harm and that approval of the Proposed Transaction should be conditioned on the following modifications to the Merger Agreement, the NTEC Purchase and Sale Agreement, and the June 4 Stipulation:

1. Merger Clause 6.19 should be modified to state that PNM will not be bound by any contractual restriction on PNM's ability to vote in favor of closing the FCPP. PNM should also agree to either renegotiate the Purchase and Sale Agreement with the Navajo Transitional Energy Company (NTEC) to remove the voting restriction and/or to withdraw its application in Case No. 21-00017-UT for approval of abandonment of Four Corners and approval of the Purchase and Sale Agreement.

2. The Stipulation should add a new commitment stating that "Joint Applicants commit that they will not take any actions concerning the FCPP that result in either a net increase in greenhouse gases from the FCPP, or that prevent a net decrease in greenhouse gases from the FCPP."⁴⁸⁶

NEE argues that the abandonment of PNM's interest in the FCPP and the securitized recovery of the approximately \$300 million of PNM's undepreciated investment should be considered a cost of the Proposed Transaction. NEE argues that the \$300 million recovery

⁴⁸⁵ Fisher (6/18/21), at 18, 20.

⁴⁸⁶ Sierra Club Initial Post-Hearing Brief, at 1.

more than offsets the rate and other benefits that the Joint Applicants argue result from the transaction.⁴⁸⁷

NEE argues that, prior to PNM's 2016 rate case at Case 16-00276-UT, PNM imprudently extended its participation in FCPP and pursued life extending capital improvements without any comprehensive or contemporaneous financial analysis. NEE notes that, in Case 16-00276-UT, the Commission initially adopted the Hearing Examiners' Recommended Decision that found PNM to be imprudent in its FCPP investments and added sanctions.⁴⁸⁸ But, after PNM filed a Motion to Reconsider, the Commission scrubbed the "imprudent" finding and reserved a prudence review for a separate future hearing. NEE states that PNM filed an explicit agreement to the requirement for a future prudence review, but it has, since that time, been able to avoid it.⁴⁸⁹

NEE argues that, now, PNM takes the position that the Energy Transition Act⁴⁹⁰ supersedes PNM's prior contractual obligations and that it is entitled to full rate recovery for undepreciated investments regardless of their imprudence. NEE's witness Mr. Sandberg states that the Four Corners divestiture, as required by this merger, violates the New Mexico Supreme Court's holdings prohibiting the recovery of imprudent investments -- through the securitized cost recovery of \$300 million plus interest for 25 years in a non-bypassable charge sought in Case 21-00017-UT. NEE also argues that the recovery violates N.M. Const. Art. II §19, which forbids impairing the obligations of contracts, and N.M. Const. Art. IV §34, which forbids impairing the vested rights of parties, and prior PRC precedent.

⁴⁸⁷ NEE Post-Hearing Brief, at 65-67.

⁴⁸⁸ Case No. 16-00276-UT, *Order Partially Adopting Certification of Stipulation*, December 20, 2017.

⁴⁸⁹ Case No. 16-00276-UT, *Revised Order Partially Adopting Certification of Stipulation issued on January 10, 2018*, at 22-23 (¶¶65, 66); Revised NEE Exhibit 54, Sandberg (7/16/21), at 19.

⁴⁹⁰ NMSA 1978, §§ 62-18-1 to -23 (2019).

NEE further cites Attorney General witness Andrea Crane’s testimony that the FCPP remains an unresolved issue.⁴⁹¹ Ms. Crane said that, using a quantifiable analysis, “if we’re looking at the \$300 million [cost for FCPP] on one hand, and we’re looking at the stated and quantified conditions, like the rate credits, and the economic development, then I may very well agree with you that \$300 [million] of harm outweighs, you know, half of that in benefits or whatever.”⁴⁹²

Bernalillo County recognizes that PNM has contractual obligations for the continued operation of the FCPP. Ms. Reno states, at the same time, it is necessary to mitigate the financial impact on PNM customers and eliminate any negative health consequences to the surrounding communities from continued operation of the plant. She states that those items are relevant to the calculation of net benefits in this proceeding.⁴⁹³ Ms. Reno recommends that the Commission require the FCPP to be closed as soon as possible while minimizing the potentially extremely large cost to ratepayers and the continued environmental detriment.⁴⁹⁴

Mr. Darnell states that the proposed FCPP abandonment is relevant in this case only to the extent that the Merger Agreement includes as conditions of closing the merger transaction that (1) PNM must have in hand an executed agreement for the sale of its interest in FCPP to a third party effective no later than December 31, 2024; and (2) PNM must file an application with the Commission for abandonment of FCPP by the time of closing of the merger transaction.⁴⁹⁵ He states that the conditions have been satisfied. PNM has entered into a Purchase and Sale

⁴⁹¹ Tr. 1049.

⁴⁹² Tr. 1020-1021.

⁴⁹³ Reno (7/16/21), at 20.

⁴⁹⁴ Reno (7/16/21), at 21.

⁴⁹⁵ Darnell (7/29/21), at 28, *citing* Section 6.19 and 7.2(g) of the Merger Agreement attached as JA Exhibit PAB-3 to Azagra Direct Testimony.

Agreement with NTEC for the sale of PNM's interests in FCPP to NTEC. PNM has also filed an application for abandonment of FCPP in Case No. 21-00017-UT.⁴⁹⁶

Mr. Darnell states further that *Commission approval of the proposed abandonment* is not required for closing on the merger. He says Regulatory Commitment 52 clarifies that the outcome in Case No. 21-00017-UT will not impact the closing of the merger. It provides that the Joint Applicants and the other parties to the Stipulation "agree that until the closing of the Proposed Transaction either a non-decision or a dismissal of Case No. 21-00017-UT will not affect this merger." Further, it states that "events that occur after closing of the Proposed Transaction in that Case No. 21-00017-UT will not be deemed to have an impact on the merger."⁴⁹⁷ Mr. Darnell states that Case No. 21-00017-UT is the appropriate proceeding to challenge the terms of the FCPP abandonment and any related cost recovery issues.⁴⁹⁸

Mr. Darnell states that the timing of PNM's filing for abandonment of its interest in FCPP is not due to this proceeding. He states that PNM evaluated an early exit of FCPP in 2024 as part of the modified stipulation approved by the Commission in Case No. 16-00276-UT and that its plans to exit FCPP early were in place well before there were any merger discussions with Avangrid, Inc. and Iberdrola, S.A. He says that, even if the merger is not approved, PNM will proceed with the proposed abandonment of FCPP due to the significant customer benefits.⁴⁹⁹

He also states that denying approval of the proposed merger or PNM's application for abandonment cannot hasten the closure of FCPP. PNM has only a minority interest in the plant. Arizona Public Service Company is the majority owner and operator and must decide to close

⁴⁹⁶ Darnell (7/29/21), at 28.

⁴⁹⁷ Darnell (7/29/21), at 28-29.

⁴⁹⁸ Darnell (April 21, 2021), at 9.

⁴⁹⁹ Darnell (April 21, 2021), at 11.

the plant early, with unanimous agreement of the other owners. The other owners of FCPP have indicated their intention to continue to remain in and operate FCPP through 2031 when the current coal supply agreement expires.⁵⁰⁰

Mr. Darnell states that the terms of the Merger Agreement are not preventing an earlier closure of FCPP. The provision in the Purchase and Sale Agreement between PNM and NTEC that prohibits PNM from voting to close FCPP early was negotiated between PNM and NTEC, and neither Avangrid, Inc. nor Iberdrola, S.A. had any say with respect to the terms of the NTEC agreement.⁵⁰¹

Mr. Darnell also states that it is not appropriate to characterize the FCPP abandonment costs as costs of the Proposed Transaction. PNM's proposed abandonment of its interest in FCPP are independent of the merger transaction. PNM's obligation to explore an early exit from FCPP effective in 2024 is a term in the modified stipulation approved in Case No. 16-00276-UT and PNM initiated discussions with the other FCPP owners beginning in mid-2018, well before the discussions with Avangrid, Inc. began. PNM already had a plan for an early exit from FCPP because it would provide savings to customers.⁵⁰²

He said the amounts sought in FCPP abandonment and securitized financing proceeding under the proposed financing order are not impacted by the proposed merger with Avangrid, Inc. The proposed merger is not causing or creating any incremental costs for customers and the merger transaction costs do not change and are not dependent on an outcome in the FCPP proceeding; nor does the merger have any impact on the amounts sought for recovery under the

⁵⁰⁰ Darnell (April 21, 2021), at 12-13.

⁵⁰¹ Darnell (7/29/21), at 31.

⁵⁰² Darnell (7/29/21), at 31-32.

Energy Transition Act in the FCPP abandonment proceeding.⁵⁰³ To the extent there is a dispute about PNM's recovery of its FCPP abandonment costs, he states that the issue should be addressed in Case No. 21-00017-UT. He states that the Commission has already ruled that the issue should be addressed in that case.⁵⁰⁴

Finally, Mr. Darnell states that the County's recommendation that the Commission require FCPP to be closed as soon as possible ignores the fact that PNM is a minority owner of FCPP and has no ability to unilaterally close the plant. Neither does the Commission have the authority to require the closure of FCPP under any time frame.⁵⁰⁵ He states that PNM intends, with the proposed early abandonment of its interests in FCPP, to save customers money (an estimated \$30 million to \$300 million on a 20-year net present value basis) and to reduce PNM's carbon footprint associated with providing electricity service to customers. PNM's objectives are consistent with the County's recommendations to minimize costs to ratepayers and achieve a more environmentally sustainable generation portfolio for PNM.⁵⁰⁶

The Hearing Examiner finds that the recommendations of Sierra Club, NEE and Bernalillo County are properly addressed in Case 21-00017-UT and that a further discussion of the merits of the parties' positions should be deferred to that case. Thus, the Hearing Examiner does not recommend any changes to Regulatory Commitment 52.

5. Other protections against harm

The June 4 Stipulation contains two other broad categories of protections -- protections against ratepayers bearing the costs of the Proposed Transaction and "ring fencing" provisions

⁵⁰³ Darnell (7/29/21), at 32.

⁵⁰⁴ Darnell (7/29/21), at 33, *citing* Case No. 16- 00276-UT, *Order on Sierra Club's Motion to Re-open Docket to Implement the Revised Final Order*, ¶¶24, 25 at 7-8.

⁵⁰⁵ Darnell (7/29/21), at 34.

⁵⁰⁶ Darnell (7/29/21), at 34.

designed to ensure that PNM is not negatively impacted in its affiliated interest relationships with the Iberdrola, S.A./Avangrid, Inc. group of holding companies and subsidiaries.

No party objected or recommended modifications to the Regulatory Commitments in subsections a and b below. If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends that these commitments be approved.

a. Costs of the Proposed Transaction

Regulatory Commitment 12, Transaction and Transition Costs, in the June 4 Stipulation provides that PNM will not, directly or indirectly, seek to recover in any future rate case filing, any acquisition premium, or transaction costs, or merger transition costs resulting from the Proposed Transaction and allocated to PNM.

Regulatory Commitment 13, No New Debt From Proposed Transaction, provides that PNM and PNMR will not take on any new debt in conjunction with the Proposed Transaction.

b. Financial separation from affiliated interests (“ring fencing”)

Regulatory Commitment 23, Affiliate Lending and Borrowing, in the June 4 Stipulation provides that PNM will not lend money to or borrow money from any of its affiliates, other than as permitted by the Commission.

Regulatory Commitment 24, Affiliate Credit Facilities, provides that PNM will not share credit facilities with any affiliates other than as approved by the Commission.

Regulatory Commitment 25, Affiliate Cross-Default Provisions, provides that PNM will not include in any of its debt or credit agreements cross-default provisions relating to any of its affiliates.

Regulatory Commitment 26, Affiliate Material Asset Transfers, provides that PNM will not acquire or transfer material assets from or to any of its affiliates, except on an arm's length basis, and except with prior Commission approval, in accordance with the Commission's affiliate transaction standards and requirements.

Regulatory Commitment 27, Stand-Alone Bond Credit and Debt Ratings, requires the Joint Applicants to take the actions necessary to ensure the existence of PNM's standalone bond credit and debt ratings. PNM will, except as otherwise approved by the Commission, be registered with at least two nationally recognized statistical ratings organizations that are registered with the United States Securities and Exchange Commission, which must include two of Moody's, Fitch, or Standard and Poor's.

Regulatory Commitment 28, Restrictions on Dividends or Distributions Related to Debt Rating, provides that PNM will not pay dividends or distributions, except for contractual tax payments, at any time that PNM's debt rating is at BBB- or its equivalent with any of the credit-rating agencies with a negative watch, unless approved by the Commission in a proceeding opened for that purpose.⁵⁰⁷

⁵⁰⁷ Mr. Gorman described the purpose of the dividend restrictions as follows:

[T]hese ring-fence provisions, or financial separations, will allow PNM management and Board members to prioritize PNM's need for financial recovery in the event of difficult financial circumstances, and will also isolate PNM from financial events which may cause credit erosion and inhibit access to capital due to financial events caused outside of PNM and PNMR at other affiliated companies.

. . . [I]n the event of financial distress either at PNM or at affiliates outside of PNM, the dividend restrictions can ensure that PNM's management and Board members will have the authority to prioritize restoring PNM's financial health and/or ensure that it has the ability to fund necessary capital investments with a balanced mix of debt and equity capital.

Because PNM and PNMR's only "external" equity capital will be from Avangrid, it will no longer have access to third-party equity capital, and retaining its earnings is the only source of equity capital under the direct control of PNM and PNMR. While external equity infusions into PNMR and PNM will be coming from Avangrid, and will be controlled entirely by Iberdrola, the dividend restrictions provide assurance that PNM will be able to retain equity it needs to support its ability to fund investments and manage its capital structure.

(Cont'd on next page)

Regulatory Commitment 29, Dividend Payment Limitation, provides that PNM will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income as determined in accordance with GAAP.

Regulatory Commitment 30, Minimum Common Equity Ratio, requires PNM to maintain a minimum common equity ratio (measured using a trailing 13-month average) in compliance with the equity ratio established from time to time by the Commission for ratemaking purposes.

Regulatory Commitment 31, Affiliate Pledge Restriction, provides that PNM's assets or revenues shall not be pledged by any of its affiliates for the benefit of any entity other than PNM.

Regulatory Commitment 33, Incremental New Debt, provides that without prior approval of the Commission, neither Avangrid, Inc. nor any affiliate of Avangrid, Inc. (excluding PNM) will incur, guaranty or pledge PNM assets in respect of any incremental new debt at the closing of the Proposed Transaction or thereafter that is dependent on: (1) the revenues of PNM in more than a proportionate degree than the other revenues of Avangrid, Inc.; or (2) the stock of PNM.

Regulatory Commitment 40, Dividend Notice, requires PNM to provide at least 30 days' notice to the Commission before making any dividend payments. The notice will include the

As noted by Joint Applicants witness Darnell, in order to maintain the credit standing of PNM and PNMR, it must manage its capital structure to have a balanced amount of debt and equity to ensure that its cash flow generation relative to the total debt capital used, complies with credit metric benchmarks published by Standard & Poor's (S&P) and Moody's, and thus maintains the utility's stand-alone credit rating.

These dividend restrictions can also protect PNM and PNMR's credit rating in the event of financial consequences outside of PNM at affiliate companies. Both S&P and Moody's review the credit standing of a utility on a stand-alone basis, and then make adjustments to the stand-alone utility credit rating to reflect affiliation risk or group influence. (*Standard & Poor's Ratings Direct*®: "Criteria: Corporate Methodology," November 19, 2013.) The greater restrictions on the utility's cash flows to prioritize them for utility purposes, reduce the impact on the utility's stand-alone bond rating due to the risk of being part of a holding company structure.

Gorman (7/16/21), at 27-28.

amount of the proposed dividend, the proposed pay-out ratio, and historic pay-out ratios for the preceding three years.

Regulatory Commitment 41, Restriction on Affiliate Commingling, provides that, except insofar as the Commission may authorize PNM to participate in the Avangrid Networks, Inc. shared credit facilities or affiliate money pool, PNM shall not commingle its funds, assets, or cash flows with its affiliates.

c. Additional proposed Regulatory Commitments

(i) Ring fencing

NM AREA recommends that Regulatory Commitment 28, Restrictions on Dividends or Distributions Related to Debt Rating, be revised to require the filing of an action plan in the event that PNM's credit rating begins to slip. Mr. Gorman states that the revision will allow the Commission and the Company to work together to prevent additional credit downgrades. Credit downgrades have the potential to increase borrowing costs which are then passed on to ratepayers. He states that the proposal is intended to reduce the magnitude of these ratepayer harms resulting from any credit downgrades. He says the inclusion of PNM's total balance sheet, including short-term debt, in this action plan is important so the Commission can ensure the Joint Applicants are not over leveraged, or improperly using their short-term debt. If there are issues with PNM's total balance sheet, and those are a cause of the drop in PNM's bond rating, the sooner the Commission is aware of those problems the better.⁵⁰⁸

Mr. Gorman recommends that Regulatory Commitment 28 be rewritten to read as follows:

Joint Applicants commit that PNM will not pay dividends or distributions, except for contractual tax payments, at any time that PNM's debt rating is below BBB or

⁵⁰⁸ *Id.*, at 28-29.

its equivalent with any of the credit-rating agencies, unless approved by the Commission in a proceeding opened for that purpose. PNM shall notify the Commission within five days if PNM's credit rating falls to an investment grade credit rating below BBB (or its equivalent) with any of the credit-rating agencies. PNM's notice shall include an action plan to improve an investment grade credit rating below BBB (or its equivalent). PNM's total balance sheet debt, including short-term debt, measured using a trailing 13-month average, will be included in this action plan for informational purposes. For purposes of this paragraph, references to credit rate agencies include Moody's, Standard & Poor, and Fitch or successor firms.⁵⁰⁹

In their July 29 rebuttal testimony, the Joint Applicants agreed to NM AREA's proposed change.⁵¹⁰

NM AREA also proposes revisions to Regulatory Commitment 30, Minimum Common Equity Ratio. NM AREA proposes revisions to this commitment to provide the Commission with comprehensive information about all of PNM's borrowings, long-term as well as short-term. This information will give the Commission and the parties a fuller picture of PNM's financial condition at the time a rate case is filed.⁵¹¹ NM AREA is proposing the following language:

Minimum Common Equity Ratio. PNM shall maintain a minimum common equity ratio (measured using a trailing 13-month average) in compliance with the equity ratio established from time to time by the Commission for ratemaking purposes. In every general rate case following the approval of the Proposed Transaction, PNM will include in its rate schedules for the base and test year periods all short-term borrowings, notes payable and other agreements which are regarded as debt instruments by any of the credit rating agencies identified in Paragraph 28, above. PNM will make no payment of dividends, except for contractual tax payments, where such dividends would cause PNM to be below the Commission approved equity ratio (measured using a trailing 13-month average).⁵¹²

The Joint Applicants agree to this change.⁵¹³

⁵⁰⁹ *Id.*, at 26-27.

⁵¹⁰ Kump (7/29/21), at 3-4; Tarry (7/29/21), at 16-17.

⁵¹¹ Gorman (7/16/21), at 29.

⁵¹² *Id.* at 29-30.

⁵¹³ Kump (7/29/21), at 4-5; Tarry (7/29/21), at 16-17.

If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends that these commitments, including the NM AREA amendments, be approved.

(ii) Management audits

Regulatory Commitment 37, Maintenance of Books, Records, and Accounts, in the June 4 Stipulation requires PNM to maintain accurate, appropriate, and detailed books, financial records (including upon request, audited financials), and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.

Regulatory Commitment 38, Access to Books, Records, and Accounts and Audits, provides that the Commission and its Staff will have access to the books, records, accounts, or documents of PNM, its corporate subsidiaries, and its holding companies, including PNMR, Networks, Inc., Avangrid, Inc., and Iberdrola, S.A., pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19.

NM AREA recommends additional language to ensure that the Commission has the authority to conduct audits of PNM and its corporate subsidiaries and holding companies should the need arise. Mr. Gorman states that the Maine Audit demonstrates the potential value of such independent audits to help the Commission craft appropriate remedies should any service quality issues arise under Avangrid, Inc.'s ownership of PNM.⁵¹⁴ The recommended language authorizes PNM to create a regulatory asset for these costs, but preserves the Commission's final authority to determine the ratemaking treatment of those costs.⁵¹⁵

⁵¹⁴ Gorman (7/16/21), at 38.

⁵¹⁵ *Id.*, at 37.

NM AREA proposes the following new language for Regulatory Commitment 38:

In the event, the Commission determines it is necessary to conduct an audit of books, records, accounts, or documents of PNM, its corporate subsidiaries and its holding companies, including PNMR, Avangrid Networks, and Iberdrola, the costs of the audit shall be treated as a regulatory asset, with such carrying costs as may be set by the Commission in its order authorizing the audit and shall be recoverable in PNM's rates; provided that the costs of any audit that finds imprudent practices shall not be recovered from customers.⁵¹⁶

The Joint Applicants agree to this additional provision.⁵¹⁷

If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends that this commitment, including the NM AREA amendment be approved.

(iii) Outsourcing of PNM functions

Regulatory Commitment 21, Terminations and Reductions of Wages or Benefits, of the June 4 Stipulation provides that there will be no involuntary terminations except for cause or performance (other than those associated with the planned closure of the San Juan Generating Station) and no reductions of wages or benefits to union or non-union employees for a minimum of three years following the closing of the Proposed Transaction.

In Mr. Gorman's July 16 testimony, he recommends additional language to ensure that post-acquisition, PNM retains the personnel that are knowledgeable about its systems, its operations and its customers. He states that the additional commitment will help ensure that PNM's service remains reliable during, and after, the transfer of the company to new owners and will help prevent the service quality failures identified in the Hearing Examiner's May 11th

⁵¹⁶ *Id.*, at 38.

⁵¹⁷ Kump (7/29/21), at 4-5; Tarry (7/29/21), at 16-17.

Service Quality Order and in the July 12th Maine Audit.⁵¹⁸ Mr. Gorman states that the Audit found that many of the service quality issues were due to an insufficient number of operational personnel to meet CMP needs:

Avangrid has based continuing forecasts of earnings growth on rate base increases and aggressive management of O&M expenses. As management struggled to meet those forecasts, subsidiaries, functions, and work groups subject to continuing organization and function change experienced resource shortages, staffing reductions and limitations, and a resulting need to fill talent gaps. Networks experienced major overruns in external services costs in each year from 2017 through 2020 and smaller overruns in employee costs, despite continuous efforts to reduce employee counts and external expenses. The repetition and size of those gaps have driven decisions about resources, investments, and O&M expenditures that drive operational performance. . . .

Early 2017 witnessed the advancement of initiatives to increase efficiency and thus lower costs, improve current earnings, and create earnings growth opportunities. The initiatives of that time concentrated on reducing employees and external services. . . .

Driven by an over-focus on closing earnings gaps, the earlier staffing reductions contributed to degradation in CMP operations and customer service and reductions in efforts to maintain its system. Responding in 2019 to improve operations, management initiatives to improve performance have added resources to Maine operations, producing improvements.⁵¹⁹

Mr. Gorman states that management at CMP and its parent, Avangrid, Inc., began to reverse these trends starting in 2019 in an effort to improve CMP's service quality. But the proposed new language for this paragraph is intended to prevent the types of service quality failures seen at CMP and other Avangrid, Inc.-owned utilities before they have a chance to begin.⁵²⁰

Mr. Gorman recommends the following language:

The Joint Applicants also commit that the following jobs, that are currently located in New Mexico, will not be moved out of the State and will continue to be

⁵¹⁸ Gorman (7/16/21), at 25.

⁵¹⁹ *Id.*, at 25-26, citing Maine Audit, at ES 7-ES 8.

⁵²⁰ Gorman (7/16/21), at 26.

performed by PNM utility employees to the extent they currently are, for as long as Avangrid/Iberdrola or any affiliated interest or holding company owns PNM: regulatory matters, engineering, system planning, transmission and distribution system maintenance, call center and customer facing, and system dispatch and control. Job numbers with job descriptions will be provided to the NMPRC at the end of the three years following the merger and in the three subsequent rate cases that follow the approval of the Proposed Transaction.⁵²¹

The Joint Applicants agree to this provision.⁵²²

If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends that this commitment, including the NM AREA amendment be approved.

(iv) Controlling law

NM AREA recommends the addition of a new Regulatory Commitment to make it clear that New Mexico law is the controlling law for interpreting the provisions of the Stipulation and that any litigation will be conducted in New Mexico venues. Mr. Gorman states that, if the Proposed Transaction is approved, PNM will be directly controlled by a public utility holding company incorporated in New York and headquartered in Connecticut. It will also be indirectly controlled by Iberdrola, S.A. which is incorporated and headquartered in Spain. He states that the Commission needs to ensure that if the agreements in whatever stipulation may be approved in this case are the subject of litigation in any civil court, that court would have clear guidance regarding which law and venue the parties intended to govern the interpretation of that stipulation.⁵²³

NM AREA proposes the following language:

⁵²¹ Gorman (7/16/21), at 24.

⁵²² Tarry (7/29/21), at 8.

⁵²³ Gorman (7/16/21), at 43.

57. Controlling Law. All provisions of this document are subject to, and are governed by New Mexico law and shall be addressed in New Mexico venues.⁵²⁴

The Joint Applicants agree to this additional provision.⁵²⁵

If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends that this commitment be approved.

(v) Affiliated interests

Mr. Gorman recommends that the references to “affiliate,” “affiliated entity,” and “affiliated company” in the June 4 Stipulation be changed to track the definition of “affiliated interest” in Section 62-3-3.A of the Public Utility Act.⁵²⁶

Mr. Azagra Blazquez stated in his July 29 rebuttal testimony that the Joint Applicants do not object to Mr. Gorman’s recommendation. He said the Joint Applicants intended that all of the phrases have the same meaning.⁵²⁷

If the Commission decides that the Proposed Transaction should be approved in some form, the Hearing Examiner recommends that this change should also be approved.

d. Enforceability of Stipulated Commitments

Regulatory Commitment 54, Enforceability of Stipulated Commitments, in the June 4 Stipulation provides that the Joint Applicants and, as applicable, Iberdrola, S.A., will fulfill all merger commitments. For the five years following the closing of the Proposed Transaction, PNM will submit with its Annual Report required pursuant to 17.3.510.12 NMAC a report detailing the progress Joint Applicants have made toward meeting each Stipulated Regulatory

⁵²⁴ *Id.*, at 43.

⁵²⁵ Kump (7/29/21), at 12.

⁵²⁶ Gorman (7/16/21), at 14-15, *referring to* NMSA 1978, §62-3-3(A)..

⁵²⁷ Azagra Blazquez (7/29/21), at 2.

Commitment. Joint Applicants shall include in that Annual Report information about the capital structure of PNM and the composition of the Board of Directors of PNM (and any changes to each from the previous Annual Report). Joint Applicants acknowledge and agree that to the extent that there is any failure to meet each Stipulated Regulatory Commitment, any stakeholder or the Commission may initiate a proceeding to enforce the merger commitments and Joint Applicants will be subject to potential consequences, including the penalties provided for pursuant to NMSA 1978, Section 62-12-4.

Section 62-12-4 of the Public Utility Act states that any person who violates any provision of the Act or fails to comply with any lawful order of the Commission is subject to a penalty of not less than one hundred dollars (\$100) nor more than one hundred thousand dollars (\$100,000) for each offense. The Joint Applicants state that the Commission approves stipulations and merger transactions via final orders, such that the failure to comply with a provision in a stipulation would qualify as a failure to comply with a lawful order of the Commission, resulting in potential fines under Section 62-12-4.

The Joint Applicants also cite Regulatory Commitment 10, Diversity of PNM Management Team. The paragraph commits the Joint Applicants to improve diversity within PNM's management and provides that, if diversity decreases by more than 10%, the Joint Applicants will contribute \$250,000 to a scholarship in New Mexico. In addition, in Mr. Darnell's July 29 rebuttal testimony, he said the Joint Applicants are willing to agree that if they fail to create or bring the 150 new jobs to New Mexico, they will pay \$80,000 to PNM's Good Neighbor Fund for every job that is not created or brought to New Mexico.⁵²⁸

No party recommended any changes to this Regulatory Commitment.

⁵²⁸ Darnell (7/29/21), at 16.

NEE, however, states that many of the Regulatory Commitments promising benefits are too vague to be enforceable. Examples include the promise in Regulatory Commitment 2 to create 150 jobs in New Mexico (too difficult to confirm the Joint Applicants' responsibility for the jobs created); and the promises in Regulatory Commitments 42 and 56 to use all reasonable efforts to find or participate in the development of a viable RTO and to use good faith efforts to identify feasible options for commercially reasonable actions for the decommissioning of the San Juan Generating Station (no definition of efforts sufficient to demonstrate compliance). Suggesting that the commitments at issue are too vague to be tightened, NEE argues that the vagueness of the commitments is another reason to deny approval for the Proposed Transaction.⁵²⁹

VII. PNM'S PROPOSED 2021 GDP AND ASSOCIATED CLASS II TRANSACTION, AND THE VARIANCE TO RULE 450.10(B)(1) AND RULE 450.13(A)(2).

A. Class II transaction -- General Diversification Plan (GDP) and the formation of multiple holding companies

A Class II Transaction occurs when a public utility holding company is formed. In this case, the Joint Applicants are requesting approval for PNMR (PNM's current holding company) to merge with NM Green Holdings, Inc. (currently owned by Avangrid, Inc.), with PNMR being the surviving entity. PNMR will become a wholly owned subsidiary of Avangrid, Inc., and PNM will thus be indirectly owned by Avangrid, Inc. Avangrid, Inc. is majority-owned by Iberdrola, S.A.⁵³⁰

Promptly after the closing of the Merger, Avangrid, Inc. will transfer all its ownership in PNMR to Avangrid Networks, Inc. As a result, PNM will have three new holding companies (in

⁵²⁹ NEE Post-Hearing Brief, at 8-18.

⁵³⁰ Darnell (11/23/20), at 2.

addition to its existing holding company, PNMR): (1) Avangrid Networks, Inc., (2) Avangrid, Inc., and (3) Iberdrola, S.A.⁵³¹

Commission Rule 17.6.450.10.A requires public utilities to file and obtain written approval of a General Diversification Plan (GDP) before engaging in a Class II transaction.⁵³² A GDP has previously been approved for PNMR, and, as the result of the transactions proposed here, an updated GDP must be approved.⁵³³

Rule 17.6.450.10.B requires that a GDP include detailed information about the organizational structure of the holding company/utility relationship.⁵³⁴ Subsection C states further that the Commission shall approve the GDP if it contains the required information in detail acceptable to the Commission and if the Commission finds that such approval is in the public interest. Approval is in the public interest if the Commission finds that the level of investment appears reasonable and that it appears the utility's ability to provide reasonable and proper utility service at fair, just, and reasonable rates will not be adversely and materially affected by Class II transactions and their resulting effect. The utility must also make certain representations which the Commission must find sufficient.⁵³⁵ The Commission may also require the modification of a GDP and may attach conditions to the approval to make the plan

⁵³¹ Id.

⁵³² 17.6.450.10.A NMAC. The rule was adopted pursuant to Section 62-6-19(B)(2) of the Public Utility Act, which grants the Commission authority to investigate “Class II transactions or the resulting effect of such Class II transactions on the financial performance of the public utility to determine whether such transactions or such performance have an adverse and material effect” on the provision of utility service at fair, just and reasonable rates. NMSA 1978, §62-6-19(B)(2).

⁵³³ Darnell (11/23/20), at 2.

⁵³⁴ 17.6.450.10.B NMAC.

⁵³⁵ 17.6.450.10.C NMAC.

consistent with the public interest or to avoid material and adverse effects on the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates.⁵³⁶

The Joint Applicants submitted a proposed GDP with their Joint Application and supporting testimony.⁵³⁷ Following the filing of the Stipulation, the Joint Applicants were also instructed to file an updated GDP, which is the 2021 GDP. The 2021 GDP is included as an exhibit in the Direct Testimony in Support of Second Amended Stipulation of Ronald N. Darnell.⁵³⁸ The Joint Applicants propose that the new GDP replace and supersede the GDP that was approved as part of the formation of the utility holding company structure for PNM in Case No. 3137.⁵³⁹ However, as is discussed in the next section of this Certification, the Joint Applicants have requested a limited variance under Rule 450.19(D) from certain of the informational requirements in Rule 450.10(B).

The Joint Applicants state that PNM's 2021 GDP contains the informational requirements and confirmations set forth in Rule 450 as follows:

Rule 450.10(B)(1) requires certain basic information concerning each affiliate, corporate subsidiary, holding company or person which is the subject of the Class II transaction, including the name, home office address, and chief executive officer of each affiliate, corporate subsidiary, holding company, or person which is the subject of the Class II transaction. The Joint Applicants provided the requisite information for affiliated interests doing business in the United States.⁵⁴⁰

⁵³⁶ 17.6.450.10.E NMAC.

⁵³⁷ Darnell (11/23/20), at JA Ex. RND-2.

⁵³⁸ Darnell (6/18/21), at JA Ex. RND-1 (Stipulation).

⁵³⁹ Darnell (11/23/20), 3.

⁵⁴⁰ Darnell (6/18/21), at JA Ex. RND-1 (Stipulation), at 2-4 and Ex. GDP-1.

But they request a variance with respect to any affiliated interest that is directly or indirectly majority owned by Iberdrola, S.A., other than those doing business in the United States.

Rule 450.10(B)(2) requires a statement of the goals and effects upon the utility operation of the Class II transaction, including an analysis of the benefits, risks and costs to the public utility which could arise, including all tax effects, on the utility both on a consolidated entity basis and on a stand-alone basis. Mr. Darnell states that the 2021 GDP outlines certain financial and other benefits of the proposed merger as reflected in the Stipulation and supporting testimonies.⁵⁴¹ It confirms that following the Proposed Transaction, PNM will be a subsidiary of a financially strong, well-capitalized company focused on clean energy and regulated utility business. This financial strength will help assure that PNM has access to necessary capital for utility plant and equipment at market-based terms.

Mr. Darnell states that PNM will continue to maintain the financial reporting transparency that currently exists under PNM's ownership by PNMR, including internal auditing processing and other regulatory requirements. In addition, the finance reports and other disclosure documents routinely publicly filed by Avangrid, Inc. will facilitate the Commission's ongoing oversight of PNM's financial condition.⁵⁴² The 2021 GDP confirms that PNM will not, without prior Commission approval, pay dividends except for contractual tax payments at any time that its credit ratings are below the credit ratings established in the Regulatory Commitment unless otherwise permitted by the Commission.⁵⁴³ The 2021 GDP also confirms that following the Proposed Transaction, there will be no tax effect on PNM for ratemaking purposes as a result

⁵⁴¹ *Id.*, at 5-7.

⁵⁴² *Id.*, at 7.

⁵⁴³ *Id.*, at 7-8.

of the Proposed Transaction. PNM's payment of income taxes will continue to be based on its tax liability computed on a stand-alone basis.⁵⁴⁴

The 2021 GDP confirms that there will be no adverse and material effect on PNM's utility operations and that PNM will continue to provide reasonable and proper electric utility service at fair, just and reasonable rates. The Proposed Transaction will not alter PNM's legal status as a regulated public utility, nor will it affect the Commission's authority and supervision and regulation of PNM retail rates and service under the Public Utility Act. The Commission and Staff will have access to the books and records of PNM, PNMR, Avangrid Networks, Inc., Avangrid, Inc. and Iberdrola, S.A. pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19. The Regulatory Commitments further confirm that Avangrid, Inc. and Iberdrola, S.A. submit to New Mexico jurisdiction with respect to the enforceability of the Regulatory Commitments and services that each may provide in New Mexico to PNM.⁵⁴⁵ Finally, transaction and merger transition costs incurred by PNM or its affiliates related to the merger will not be recovered, directly or indirectly, from customers. In addition, no legal or other costs incurred in connection with obtaining the necessary regulatory approvals for the proposed merger will be recovered from customers. Nor will PNM seek to revalue any of its assets based on, or seek in any way to recover, any acquisition premium that results from the merger.⁵⁴⁶

Rule 450.10(B)(3) requires that the GDP describe the corporate structure to be used. The 2021 GDP confirms that PNM will continue to be a New Mexico corporation, registered to do business in New Mexico and certified as an electric public utility subject to the jurisdiction of the Commission. Moreover, PNM will remain a wholly owned subsidiary of PNMR. Iberdrola,

⁵⁴⁴ *Id.*, at 8.

⁵⁴⁵ *Id.*, at 8-9.

⁵⁴⁶ *Id.*, at 9.

S.A., Avangrid, Inc. and Avangrid Networks, Inc. will be indirect public utility holding companies of PNM.⁵⁴⁷

Rule 450.10(B)(4) requires a description of the corporate structure to be used, including but not limited to, amendments to corporate articles, any issuances, acquisitions, cancellations, exchanges, transfers, or conversion of securities, and the impact of such on the rights of creditors and security holders. The 2021 GDP confirms that the proposed merger will be implemented by the merger of NM Green with and into PNMR, with PNMR as the surviving business entity. Avangrid, Inc. will then transfer 100% of its interest in PNMR to Avangrid Networks, Inc. The common stock of PNMR will be cancelled and converted to a right on the part of PNMR shareholders to receive \$50.30 per share in cash, except for any stock held by Iberdrola, S.A., Avangrid, Inc., NM Green or PNMR, or any wholly owned subsidiaries of the foregoing. PNMR's stock will be delisted from the NYSE. PNM's existing long-term debt will remain in place following the close of the transaction and no new debt will be issued by PNM or PNMR to finance the proposed merger. Thus, there will be no impact to PNM's creditors. Avangrid, Inc. will extinguish all debt of PNMR following the merger and will maintain PNMR debt-free as long as Avangrid, Inc. has an indirect ownership interest, unless authorized in advance by the Commission.⁵⁴⁸

Rule 450.10(B)(5) requires that the GDP identify the capital structure for the utility, its affiliates, and the consolidated entity consisting of the utility, plus affiliates, for the next five years. The 2021 GDP confirms that PNM historically has had an equity ratio between 49% and 51% and that PNM expects its equity ratio range to remain above 50% over the next five years.

⁵⁴⁷ *Id.*, at 9-10.

⁵⁴⁸ *Id.*, at 10.

PNMR historically has had an equity ratio between 35% and 40%, and through the retirement of PNMR's debt by Avangrid, Inc., PNMR's equity ratio is expected to improve to a range of between 45% and 52%. Avangrid Networks, Inc. does not have any debt, other than the debt carried by its utilities. The utilities owned by Avangrid Networks, Inc. have equity ratios ranging between 48% and 50% and it is anticipated that these equity ratios will remain in the same range over the next five years. Avangrid Renewables, LLC and its subsidiaries have little to no debt. It is possible that Avangrid Renewables, LLC may finance or refinance some of its projects with either debt or equity, or a combination of debt and equity, depending on the applicable circumstances. Avangrid, Inc. is expected to have an equity ratio in the range of 56% to 60% over the next five years. Iberdrola, S.A. had a capital structure of 46.7% debt as of September 2020.⁵⁴⁹

Rule 450.10(B)(6) requires a GDP to include the contemplated annual and cumulative investments in each affiliated interest for the next five years. Rule 450.10(B)(7) requires an explanation of how affiliates will be financed, by whom, and the amounts of capital or indebtedness that will be used. The 2021 GDP confirms that PNM will not invest in any affiliates during the next five years, nor will PNM provide financing to any of its affiliates, other than as permitted by the Commission.⁵⁵⁰

Rule 450.10(B)(8) requires an explanation of how the utility's capital structure, costs of capital and ability to attract capital at reasonable rates will be impacted. The 2021 GDP confirms that the merger will have no effect on PNM's capital structure used for ratemaking purposes. In addition, as detailed in the 2021 GDP and supporting testimony, the Joint

⁵⁴⁹ *Id.*, at 11.

⁵⁵⁰ *Id.*, at 11-12.

Applicants state that the merger is anticipated to improve the investment grade credit rating of PNM and PNMR. Moreover, the 2021 GDP states that there are several regulatory commitments that will help assure that PNM's credit rating is maintained. As also stated in the testimony in this case, PNM anticipates improved access to the debt and capital markets at reasonable market-based rates and terms.⁵⁵¹

Rule 450.10(B)(9) requires an explanation of how the utility can assure that adequate capital will be available for the construction of necessary new utility plant at no greater cost than if the utility did not engage in the Class II transaction. The 2021 GDP states that PNM will fund construction of necessary new utility plant through a combination of internally generated funds and equity infusions from PNMR, Avangrid Networks, Inc. and Avangrid, Inc., and debt issued at the PNM level, as appropriate and as consistent with the Commission's regulatory requirements. As also detailed above, the Joint Applicants state that, as part of a financially stronger corporate family, PNM will have increased access to both debt and equity capital. As a result, adequate capital will be available for the construction of necessary new utility plant at no greater cost, and most likely at lower cost, compared to if there was no merger.⁵⁵²

Rule 450.10(B)(10) requires an explanation of how ratepayers will be protected and insulated from any risks, costs or other adverse and material effects attributable to the Class II transaction or their resulting effects. The 2021 GDP confirms that PNM will continue to be subject to the jurisdiction of the Commission and that under Section 62-6-3 and Rule 450, the Commission will retain its authority to review and investigate Class I and Class II transactions. PNM will comply with all laws and commission rules and orders governing transactions with

⁵⁵¹ *Id.*, at 12.

⁵⁵² *Id.*, at 12-13.

affiliated interest, including all reporting requirements with respect to Class I and Class II transactions.⁵⁵³ In addition, as detailed above in Section IV(C), the Regulatory Commitments that are part of the Stipulation include numerous customer protections with respect to affiliate transactions and shared services among PNM, PNMR, and any future affiliates.

Rule 450.10 (B)(11) requires certain information if a utility intends to divest a corporate subsidiary. The 2021 GDP confirms that PNM does not have any current plans to divest any of its subsidiaries.

Rule 450.10 (B)(12) provides that the GDP include information or representation that allow the Commission to make the specific findings in Rule 450.10(C). The 2021 GDP confirms the necessary representations by PNM, PNMR, Avangrid Networks, Inc., Avangrid, Inc. and Iberdrola, S.A.⁵⁵⁴ The Joint Applicants' affirmation of the necessary findings is also set forth in the Direct Testimony of Joint Applicant witness Kump.⁵⁵⁵

Since filing the 2021 GDP and Stipulation, several refinements and enhancements have been agreed to with respect to Regulatory Commitments. The Joint Applicants agree that any final GDP approved by the Commission should reflect the substance of the additional enhancements and requirements as applicable.⁵⁵⁶

Furthermore, the 2021 GDP contains the following representations of the Joint Applicants:

(1) The books and records of PNM will be kept separate from those of nonregulated business and in accordance with the Uniform System of Accounts;

⁵⁵³ *Id.*, at 13.

⁵⁵⁴ *Id.*, at 14-16.

⁵⁵⁵ Kump (11/23/20), at 21.

⁵⁵⁶ Darnell (11/23/20), at 3.

(2) The Commission and its staff will have access to the books, records, accounts, or documents of PNM, its corporate subsidiaries and its holding companies, including PNMR, Avangrid Networks, Inc., Avangrid, Inc., and Iberdrola, S.A. pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19;

(3) The supervision and regulation of PNM pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated;

(4) PNM will not pay excessive dividends to its holding company, and the holding company will not take any action which will have an adverse and material effect on the utility's ability to provide reasonable and proper service at fair, just, and reasonable rates;

(5) PNM will not without prior approval of the Commission loan its funds or securities or transfer similar assets to any affiliated interest, purchase debt instruments of any affiliated interests, or guarantee or assume liabilities of such affiliated interests;

(6) PNM has complied with, or will comply with, all applicable federal and state statutes, rules, or regulations;

(7) When required by the Commission, PNM will have an allocation study (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission; and

(8) When required by the Commission, PNM will have a management audit (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission to determine whether there are any adverse effects of Class II transactions upon the utility.⁵⁵⁷

⁵⁵⁷ Darnell (11/23/20), at 8.

No party has objected to the sufficiency of the information contained in the 2021 GDP. Staff witness John Reynolds states that PNM's 2021 GDP appears to comply with the content requirements in Rule 17.6.450.10(B) NMAC and appears to satisfy the necessary conditions associated with the Class II Transaction, i.e. the Proposed Transaction, which is at issue in this case.⁵⁵⁸

In the event the Commission approves the Proposed Transaction, the Hearing Examiner recommends that the 2021 GDP be approved, subject to a further filing by the Joint Applicants that incorporates the amendments to the June 4 Stipulation made in the Modified Stipulation.

B. Request for Variance

The Joint Applicants are requesting a variance from the requirements of Rule 450.10(B)(1) and 450.13(A)(2). Rule 450.10(B)(1) states that the GDP shall include "to the extent known the name, home office address, and chief executive officer of each affiliate, corporate subsidiary, holding company, or person which is the subject of the Class II transaction." Rule 450.13(A)(2)(a) and (b) require that PNM file notification with the Commission "of all new or expanded lines of business or ventures entered into by [PNM] or any affiliate . . . ," and annual reports detailing all affiliates and their relationship to one another. The Joint Applicants are requesting a limited variance in accordance with Rule 450.19(D) regarding certain informational requirements for Iberdrola, S.A.⁵⁵⁹

The Joint Applicants state that Iberdrola, S.A. is a global energy company that owns hundreds of direct and indirect subsidiaries operating across four continents. Iberdrola, S.A. generally manages its companies by establishing what it calls country-level holding companies.

⁵⁵⁸ Reynolds (4/2/21), at 33.

⁵⁵⁹ Darnell (11/23/20), at 4.

These companies in turn create, unwind, or transfer dozens of entities in Europe, North America, South America, and Australia every year. Many of these entities are single-purpose entities without employees or independent management, and instead are managed at the country-level holding company. Additionally, the vast majority of Iberdrola, S.A.'s holdings do not operate in the United States and are entirely remote from PNM and PNMR.⁵⁶⁰

The Joint Applicants believe there is little value to the Commission and stakeholders in obtaining a list with basic contact information of hundreds of entities operating completely outside of the United States. Nor would there be value in annual filings associated with indirect affiliates operating completely outside of the United States that have no contact with PNM. The Joint Applicants state it would be burdensome to compile and update this information, and burdensome on the Commission's staff to attempt to track this information. They state that the information provided for Avangrid Networks, Inc., Avangrid Renewables, LLC, Avangrid, Inc., and Iberdrola, S.A., as well as the protection/ring fencing commitments made by the Joint Applicants, are sufficient to achieve the objectives of Rule 450.⁵⁶¹

Therefore, the Joint Applicants are respectfully requesting variances from: Rule 450.10(A) for any affiliated interest that is directly or indirectly majority owned by Iberdrola, S.A., other than those entities doing business in the United States; and Rule 450.13(A)(2)(a) and (b) for any affiliated interest that is directly or indirectly majority owned by Iberdrola, S.A., other than those entities doing business in the United States. If the Joint Applicants' variance is granted, the reporting requirements would continue to apply to all of Avangrid, Inc.'s directly

⁵⁶⁰ *Id.*, at 4.

⁵⁶¹ *Id.*, at 5.

and indirectly owned subsidiaries, including PNMR and its subsidiaries, as well as Iberdrola, S.A. and all Iberdrola, S.A. affiliates operating in the United States.⁵⁶²

The Joint Applicants also state, in support of their request, that, in the Commission's most recent public utility acquisition case involving Sun Jupiter's acquisition of El Paso Electric Company, Case No. 19-00234-UT, the Commission granted a similar variance request made by EPE in relation to the companies owned by its ultimate parent, IIF US 2.⁵⁶³

The Joint Applicants also note that no party has challenged or questioned the requested variance and the Joint Applicants have demonstrated good cause for why the variance should be granted.

The Signatories state in Paragraph 6 of the June 4 Stipulation that a variance is appropriate as such information is of limited value to stakeholders and the Commission, and would likely be burdensome on the Commission's staff to track. No party opposes the variance.

In the event the Commission approves the Proposed Transaction, the Hearing Examiner recommends that the variance requested by the Joint Applicants be approved.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Statement of the Case, Discussion and all findings and conclusions therein, whether or not separately stated, numbered or designated as findings and conclusions, are incorporated by reference herein as findings and conclusions. Based on the foregoing Statement of the Case and Discussion, the Hearing Examiner also recommends that the Commission make the following further Findings of Fact and Conclusions of Law:

⁵⁶² *Id.*, at 5.

⁵⁶³ *Id.*, at 6.

1. The Commission has jurisdiction over the parties to this case and the subject matter thereof.
2. PNM is a public utility as defined by Section 62-3-3(G) of the Public Utility Act, and is subject to the jurisdiction and authority of the Commission.
3. Due and proper notice of this case has been given.
4. The June 4 Stipulation cannot be approved, because the Signatories are no longer in agreement on its terms.
5. The potential harms resulting from the Proposed Transaction outweigh its benefits.
6. If the Commission finds that the potential harms resulting from the Proposed Transaction may, with sufficient conditions, be outweighed by its benefits, the Commission should consider asking the Signatories to the June 4 Stipulation to agree to the modifications in Appendix 2 as the basis for the Commission's approval.

IX. DECRETAL PARAGRAPHS

Based upon the record, the Findings of Fact and Conclusions of Law set forth herein and, or the reasons stated above, the Hearing Examiner recommends that the Commission ORDER as follows:

- A. The findings, conclusions and the ordering paragraphs herein are adopted, approved, and ordered by the Commission.
- B. The June 4 Stipulation is not approved, as filed.
- C. The Joint Applicants shall have the option to request further Commission proceedings regarding their November 23, 2020 Application.

D. Alternatively, if the Commission finds that the potential harms of the Proposed Transaction can be outweighed by its benefits with sufficient protective conditions, the Commission may approve some or all of the modifications to the June 4 Stipulation in Appendix 2. If the Commission selects this option and the Signatories to the June 4 Stipulation agree to the modifications, the Modified Stipulation may be approved. The Commission may require the Signatories to file their consent to the Modified Stipulation within seven days after the issuance of this Final Order.

E. The 2021 GDP is approved, subject to a further filing by the Joint Applicants within ten days after the issuance of the Final Order that incorporates the amendments to the June 4 Stipulation made in the Modified Stipulation. Unless any party files an objection to the further 2021 GDP filing within ten days after the filing, the approval shall become final.

F. The limited variance to Rules 450.10(B)(1) and 450.13(A)(2) NMAC requested by the Joint Applicants is approved.

G. NEE's Motion for Sanctions is granted with respect to Avangrid, Inc. Avangrid, Inc. is hereby ordered to reimburse NEE's attorney fees for the time expended on NEE's efforts to resolve the discovery dispute regarding NEE 4-55, including the bringing of the NEE Motion, paid for by shareholder funds (not to be reimbursed by ratepayers).

H. This Order is effective immediately.

I. A copy of this Order shall be served on all parties listed on the official service list.

ISSUED at Santa Fe, New Mexico this 1st day of November 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Ashley C. Schannauer

Ashley C. Schannauer
Hearing Examiner

Appendices:

- 1 June 4 Stipulation
- 2 June 4 Stipulation with Hearing Examiner modifications
- 3 General Diversification Plan
- 4 CONFIDENTIAL: Spanish court orders and Public Prosecutor reports (included only in the Confidential version of the Certification and distributed only to the Commissioners, Commission assistants, Office of General Counsel and Commission technical advisors)

Appendix 1

June 4 Stipulation

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

**AVANGRID, INC., AVANGRID NETWORKS, INC.,)
NM GREEN HOLDINGS, INC., PUBLIC SERVICE)
COMPANY OF NEW MEXICO AND PNM)
RESOURCES, INC.,)**

JOINT APPLICANTS.)

NOTICE OF FILING SECOND AMENDED STIPULATION

Public Service Company of New Mexico (“PNM”), in accordance with 1.2.2.20 NMAC, hereby gives notice of the filing of a Second Amended Stipulation entered into between PNM, PNM Resources, Inc., Avangrid, Inc., Avangrid Networks, Inc., NM Green Holdings, Inc., the Attorney General of the State of New Mexico, Western Resource Advocates, the International Brotherhood of Electrical Workers Local 611, Dine Citizens Against Ruining Our Environment, Nava Education Project, San Juan Citizens Alliance, To Nizhoni Ani, and the Coalition for Clean Affordable Energy, Interwest Energy Alliance, Walmart, Inc., Onward Energy Holdings, LLC, and M-S-R Public Power Agency, and the Incorporated County of Los Alamos resolving the substantive issues in this proceeding among these parties. The copy of the signed Second Amended Stipulation among the stipulating parties is attached hereto as Exhibit 1.

Respectfully submitted this 4th day of June, 2021.

PUBLIC SERVICE COMPANY OF NEW MEXICO AND
PNM RESOURCES, INC.

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GCG#528289

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

**AVANGRID, INC., AVANGRID NETWORKS, INC.,)
NM GREEN HOLDINGS, INC., PUBLIC SERVICE)
COMPANY OF NEW MEXICO AND PNM)
RESOURCES, INC.,)**

JOINT APPLICANTS.)

SECOND AMENDED STIPULATION

Public Service Company of New Mexico (“PNM”), PNM Resources, Inc. (“PNMR”), Avangrid, Inc. (“Avangrid”), Avangrid Networks, Inc. (“Networks”), NM Green Holdings, Inc. (“NM Green”),¹ the Office of the Attorney General of the State of New Mexico, Western Resource Advocates, International Brotherhood of Electrical Workers Local 611, Dine Citizens Against Ruining Our Environment, Nava Education Project, San Juan Citizens Alliance, To Nizhoni Ani, the Coalition for Clean Affordable Energy, Interwest Energy Alliance, Walmart, Inc., Onward Energy Holdings, LLC, M-S-R Public Power Agency, and the Incorporated County of Los Alamos (collectively, the “Signatories”, each a “Signatory”), and subject to the approval of by the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”), through their

¹ PNM, PNMR, Avangrid, Networks, and NM Green are collectively referred to as “Join Applicants.”

undersigned authorized representatives, have reached agreement on substantive issues that would cause them to support the proposed merger. The Signatories agree and stipulate as follows:

INTRODUCTION

A. In the Joint Application filed on November 23, 2020, Joint Applicants requested the Commission approve: (1) the merger of NM Green with and into PNMR, under NMSA 1978, Sections 62-6-12 and 62-6-13, following which PNMR will be the surviving corporation and will be a wholly-owned subsidiary of Avangrid (“Merger”); (2) Avangrid’s transfer of 100% ownership in PNMR to Networks subsequent to the Merger (together with the Merger, the “Proposed Transaction”); (3) PNM’s 2021 General Diversification Plan (“2021 GDP”), which replaces any previous diversification plans and is filed in connection with the Class II transaction contemplated by the Proposed Transaction pursuant to 17.6.450 NMAC (“Rule 450”); and (4) such other and further approvals, consents, authorizations, and relief that may be required under the New Mexico Public Utility Act (the “PUA”), including a limited variance to information required to be provided by Rule 450.10(B)(1) and Rule 450.13(A)(2), to consummate and implement the Proposed Transaction.

B. Staff and Intervenors filed direct testimony on April 2, 2021, raising various concerns and objections to the Joint Application.

C. On April 21, 2021, certain of the Signatories entered into an Initial Stipulation.

D. On April 23, 2021, certain of the Signatories entered into an Amended Stipulation, which replaced in whole the Initial Stipulation.

E. On April 25, 2021, the Hearing Examiner entered his Order Vacating Prehearing Conference and Procedural Schedule and Providing for Settlement Discussions, ordering the Joint

Applicants to meet with all parties to this proceeding to discuss and negotiate in good faith a potential stipulation.

F. On May 7, 2021, through the meetings ordered by the Hearing Examiner, certain of the Signatories entered into the Stipulation.

G. Through continued negotiations, the Signatories were able to arrive at this Second Amended Stipulation, which replaces the Initial Stipulation, the Stipulation, and the Amended Stipulation. The Signatories believe the Second Amended Stipulation: a) is fair, just and reasonable; b) meets the statutory test for approval pursuant to Sections 62-6-12 and 62-6-13 that the proposed merger of NM Green with PNMR, and the subsequent transfer of PNMR's stock to Networks, is neither unlawful nor inconsistent with the public interest; and, c) meets the requirements of Rule 450.10, including that the level of investment appears reasonable and that PNM's ability to provide reasonable and proper utility service at fair, just and reasonable rates will not be adversely and materially affected by the merger of NM Green with PNMR or the transfer of PNMR's stock to Networks.

H. The agreements set forth in this Second Amended Stipulation reflect good faith negotiations, with reasonable "give and take" on issues by the Signatories and result in a bargained-for resolution to this proceeding.

I. Through this Second Amended Stipulation, the Signatories intend to resolve all issues they have raised in this proceeding and agree that the Commission should approve the Proposed Transaction, PNM's proposed 2021 GDP and associated Class II transaction, and the variance to Rule 450.10(B)(1) and Rule 450.13(A)(2).

STIPULATION

1. The Signatories agree that the Joint Application should be approved, and all approvals and authorizations sought by Joint Applicants should be granted.

2. In support of the Second Amended Stipulation, the Signatories have agreed to the Stipulated Regulatory Commitments contained in Exhibit A. The Stipulated Regulatory Commitments supersede and replace the Regulatory Commitments included with the Joint Application and all Regulatory Commitments included in prior stipulations in this case. The Stipulated Regulatory Commitments are hereby incorporated into this Second Amended Stipulation by reference.

3. The Signatories agree that the Joint Application combined with the Stipulated Regulatory Commitments constitute a benefit to PNM's customers, preserve the Commission's jurisdiction, ensure the quality of PNM's service will not be diminished, will not result in improper subsidization of non-utility activities, and provide adequate protections against harm to customers.

4. The Signatories further agree that Avangrid, Networks, and Iberdrola S.A. are qualified and financially healthy public utility holding companies.

5. The Signatories agree that Joint Applicants and Iberdrola S.A. have made all of the affirmations and other requirements of Rule 450.10 for approval of a Class II transaction and the 2021 GDP.

6. The Signatories concur in granting the variance to Rule 450.10 and Rule 450.13 allowing PNM to exclude reporting information related to Iberdrola, S.A.'s subsidiaries which: 1) operate completely outside of the United States and 2) have no contact with PNM. The Signatories agree that a variance is appropriate as such information is of limited value to stakeholders and the Commission, and would likely be burdensome on the Commission's staff to track.

EXHIBIT 1

7. The Signatories agree that this Second Amended Stipulation is made and filed solely in connection with the settlement among the Signatories with respect to the matters in this proceeding only, and is unique to the circumstances presented in this proceeding.

8. Except as specifically stated in the language of this Second Amended Stipulation, the provisions of this Second Amended Stipulation have no precedential effect and the Signatories do not waive rights they may have in any other pending or future proceeding and will not be deemed to have approved, accepted, agreed to or consented to the application of any concept, principle, theory or method in any future proceeding. In accordance with 1.2.2.20(D) NMAC, by approving this Second Amended Stipulation the Commission will be neither granting any approval nor creating any precedent regarding any principle or issue in this or any other proceeding, except as provided in the Final Order.

9. The Second Amended Stipulation contains the full intent, understanding, and the entire agreement of the Signatories and no implication should be drawn on any matter not addressed in the Second Amended Stipulation. There are not and have not been any representations, warranties, or agreements other than those specifically set in this Second Amended Stipulation.

10. This Second Amended Stipulation reflects a negotiated settlement. The Signatories agree that they will use their best efforts to obtain expeditious approval of this Second Amended Stipulation by appropriate final order of the Commission in this proceeding. If the Second Amended Stipulation is not adopted in its entirety by the Commission, without modification, the Second Amended Stipulation will be voidable by any Signatory. In order to void the Second Amended Stipulation and the agreements made in this Second Amended Stipulation, a Signatory must file a formal statement with the Commission rejecting one or more of the Commission's

EXHIBIT 1

modifications and stating that the Signatory intends to void the Second Amended Stipulation if the Commission does not withdraw the rejected modification. The formal statement shall be filed within the time allotted by the Commission for filing amendments to the Second Amended Stipulation or, if no time is specified by the Commission, no later than fifteen days after the Commission's order. Any statement made or positions taken by the Signatories during the course of negotiations regarding this Second Amended Stipulation will not be admissible before any regulatory agency or court.

11. The Signatories agree that this Second Amended Stipulation in its entirety represents a fair, just, and reasonable resolution of the issues presented in this proceeding.

12. This Second Amended Stipulation may be executed through one or more counterparts or separate signatures, including, but not limited to, electronic signature, each of which will be deemed to be an original and all of which will constitute one of the same agreement.

Dated as of June 3, 2021

PUBLIC SERVICE COMPANY OF NEW MEXICO AND
PNM RESOURCES, INC.

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SAN JUAN CITIZENS ALLIANCE
DINE CITIZENS AGAINST RUINING OUR
ENVIRONMENT
TO NIZHONI ANI
NAVA EDUCATION PROJECT

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M-S-R PUBLIC POWER AGENCY AND THE
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GCG#528290

STIPULATED REGULATORY COMMITMENTS

1. **Rate Benefits.** Joint Applicants¹ commit to provide a total of \$73 million in rate benefits, deployed in the following manner:
 - \$50 million in rate credits to PNM’s customers over a three-year period following the closing of the Proposed Transaction;
 - \$6 million for residential customer arrearages forgiveness within 90 days from closing of the Proposed Transaction;
 - \$2 million in funds for assisting in providing electricity to new customers in remote areas (as described in Section 11 below); and
 - \$15 million for low-income energy efficiency (as described in Section 8 below).
2. **Economic Development.** Joint Applicants make the following commitments regarding economic development:
 - Joint Applicants will create or bring an additional 150 full-time jobs in total to New Mexico over the three-year period following the closing of the Proposed Transaction, and would not include costs of any of those jobs in rates without New Mexico Regulation Commission (“NMPRC” or the “Commission”) review and approval. The 150 new jobs will remain for no less than five years thereafter. Joint Applicants commit to file an annual compliance report in this merger proceeding showing the number of full-time jobs created or brought to New Mexico, identifying the employer, salary, description of benefits and whether the job is performed remotely or in an office location. No more than 20 of these jobs will be

¹ Public Service Company of New Mexico (“PNM”), PNM Resources, Inc. (“PNMR”), NM Green Holdings, Inc., Avangrid Networks, Inc. (“Networks”), and Avangrid, Inc. (“Avangrid”) are collectively referred to as Joint Applicants.

at PNM. Joint Applicants will target 20 of these jobs to be electric service business unit craftsmen at PNM, and will prioritize hiring personnel that have been or will be displaced as a result of San Juan Generating Station closure for those positions.

- Joint Applicants commit that they will make contributions to economic development projects or programs in New Mexico, at shareholder expense, totaling \$7.5 million over the three years following the closing of the Proposed Transaction. The Joint Applicants commit that these economic development funds will not be used for fossil fuel use or related projects. The \$7.5 million commitment to promote economic development in New Mexico will be disbursed through an independent fund (“Fund”) to which shareholders will contribute \$2.5 million per year for a period of 3 years. The Fund will be administered independent of Joint Applicants.
- Additionally, within 90 days of closing of the Proposed Transaction, Joint Applicants will allocate at shareholder expense \$2.5 million each year for five years following closing, for a total of \$12.5 million, for the benefit of impacted indigenous community groups in the Four Corners region, as designated by intervening Community Groups. This amount is not related in any way to, and will not impact, the amounts required to be transferred to the energy transition funds pursuant to NMSA 1978, Section 62-18-16(J) in relation to the abandonment of any coal-fired generation facility in New Mexico. The Joint Applicants commit to engage in periodic meetings, at least twice annually, with impacted community stakeholders in the Four Corners region and the Office of the Attorney General for the State of New Mexico (“NM AG”) to discuss community interests regarding

Joint Applicants operations and renewable energy and storage development in the Four Corners region.

- The New Mexico Energy Transition Act (“ETA”) requires that 3.35% of the amount securitized from the closure of the San Juan Generating Station be provided to an “energy transition displaced worker assistance fund” run by NM Workforce Solutions. Joint Applicants commit to work with PNM to ensure that this program provides the maximum possible employment opportunities for displaced workers, and will look for opportunities to improve that program. Joint Applicants commit to provide progress reports on the effectiveness of the program each six months following execution of this Stipulation to the NM AG and other stakeholders that are signatories to this Stipulation until three years following closing of the Proposed Transaction.
- PNM will provide local government entities access to PNM-owned wooden streetlighting poles within 1/2 mile of public schools and government-owned or authorized low-income facilities for the purpose of enabling the installation by the governmental entity of equipment to provide wireless internet access to students and residents of such facilities. Access will be provided pursuant to written agreements identifying the streetlighting poles eligible for attachments and on PNM’s standard pole attachment or other applicable terms and conditions, except that annual pole rental fees will not be charged for a period of 3 years from November 1, 2021. All standard charges under PNM’s streetlighting rates and tariffs, and for make-ready and other PNM services associated with such access will apply].

3. **Albuquerque Streetlighting.** Joint Applicants agree to work with the City of Albuquerque to provide park streetlighting. Joint Applicants agree that if there is any failure with respect to that streetlighting, if PNM does not fix it within 24 hours, the City of Albuquerque can contract to fix the streetlighting and submit an invoice to PNM for the repairs.
4. **Albuquerque Airport Substation.** Joint Applicants commit to work with the City of Albuquerque to complete by July 1, 2022 the construction of a PNM-owned substation that will be a part of PNM's distribution system serving the southeast area of Albuquerque, including the Albuquerque International Sunport, as well as existing privately owned residences, businesses, and projected private development in this quadrant consistent with Joint Applicants' general obligations to prevent major interruptions of service as set out in 17.9.560 NMAC (2020).
5. **Charitable Contributions.** Joint Applicants commit that PNM and PNMR's charitable contributions in New Mexico will be maintained at historical levels identified in the Joint Applicants' direct testimony for a minimum of five years following closing of the Proposed Transaction, with a similar expectation for the PNM Resources Foundation's separate charitable activities.
6. **Minority- and Woman-Owned Business Procurement Program.** Joint Applicants commit to work closely with the NM AG to arrive at and initiate an effective Minority- and Woman-Owned Business Procurement Program within six months following closing of the Proposed Transaction. The goal of this program will be to increase the contract opportunities for minority- and woman-owned businesses in New Mexico in conjunction with PNM contracts to procure goods and services. The program will have three

components: (i) Early Outreach (to maximize participation of minority- and woman-owned businesses in requests for proposals (“RFPs”)); (ii) RFP Weighting (to strongly consider the benefits of contracting with a minority- or woman-owned New Mexico business, along with price, experience, capability, timing and other factors); and (iii) Annual Review (to evaluate the success of the program) for a minimum of five years following closing of the Proposed Transaction. Each year for at least five years following such closing, the Joint Applicants commit to provide data from its Annual Review to the NM AG and to other stakeholders that are signatories to this Stipulation and will modify the program as needed based upon input from and discussions with the NM AG and other stakeholders that are signatories to this Stipulation.

7. **Low-Income Customer Assistance Programs.** Joint Applicants commit that PNM will maintain its existing low-income customer assistance programs, including the Good Neighbor Fund, for a minimum of five years following the closing of the Proposed Transaction.
8. **Low-Income Energy Efficiency Program.** Joint Applicants commit to evaluate PNM’s current low-income energy efficiency program. Within six months following closing of the Proposed Transaction, Joint Applicants will work with the NM AG and other stakeholders that are signatories to this Stipulation to propose improvements to the program, to result in their passing the Utility Cost Test, which PNM will then incorporate in its next Energy Efficiency program filing with the Commission. Joint Applicants will have PNM commit to propose increased spending on all cost-effective low-income energy efficiency and weatherization programs up to the statutory limit on energy efficiency spending, so long as such spending does not cause the overall energy efficiency plan to fail

the Utility Cost Test. In addition, Applicants will commit \$15 million in total over a five-year period in shareholder expense to increase cost-effective low-income energy efficiency and weatherization (\$5 million in first year, and \$2.5 million in each of the next four years), with any remaining unspent amounts to be applied in the sixth year.

9. **Local Energy Efficiency Procurement.** Joint Applicants commit to work closely with stakeholders to have local New Mexico businesses manage PNM's energy efficiency programs. The Joint Applicants commit that within six months following closing of the Proposed Transaction, PNM will include in its RFPs for managing its energy efficiency programs weighting that considers the benefits of contracting with local New Mexican businesses, as well as price, experience, capability, and other relevant factors to maximize the participation of local businesses in the provision of these services.
10. **Diversity of PNM Management Team.** Joint Applicants commit that within six months following closing of the Proposed Transaction, they will implement a new program for PNM in consultation with the NM AG and the other stakeholders that are signatories to this Stipulation to increase diversity on the PNM management team (Executives, Vice-Presidents, and Directors). Among other considerations such as qualifications, capabilities, and credentials, the Joint Applicants commit that diversity (gender, race, ethnicity, etc.) will be a key priority for management hiring efforts at PNM. Joint Applicants commit to report annually on the progress and success of this program for five years. During the five-year reporting period, in any given year in which management diversity is reduced by more than 10% from the prior year, the Joint Applicants commit to contribute \$250,000 to designated scholarship(s).

11. **“Electrification for All” Program.** Joint Applicants will work with NMPRC Utility Division Staff (“Staff”) and the NM AG to propose a low-income “Electrification for All” program to improve the access that low-income New Mexicans have to electricity, particularly in remote areas. Joint Applicants commit to report on the results of the program annually to signatories to the Stipulation for three years from closing of the Proposed Transaction to evaluate its success and to entertain modifications to improve effectiveness. The low-income electrification fund as described above in Section 1 will remain open for three years from such closing or until fully deployed, whichever occurs first; in the event that the low-income electrification fund is not fully deployed at the end of the three-year period, Joint Applicants will work with the NM AG and other stakeholders that are signatories to this Stipulation to determine how to deploy any residual funding that has not been utilized. Joint Applicants will fund the program with \$2 million that will not be passed through in rates to customers and will count toward the rate benefits described above. As needed, Joint Applicants commit to work toward electrification during this three-year period for up to \$2 million of electrification.
12. **Transaction and Transition Costs.** Joint Applicants commit that PNM will not, directly or indirectly, seek to recover in any future rate case filing, any acquisition premium, or transaction costs, or merger transition costs resulting from the Proposed Transaction and allocated to PNM.
- a. Neither PNM nor any affiliate or subsidiary of PNM, Avangrid, or Iberdrola, S.A. (“Iberdrola”), will seek recovery of transaction costs in PNM’s rates. None of the transaction costs will be borne by PNM’s customers, nor will PNM seek to include transaction costs in its rates. Transaction costs are those incremental costs paid to

advance or consummate the transaction. Transaction costs do not include PNM and shared services employee time but must include any form of incentive compensation associated with the Proposed Transaction, regardless of whether Avangrid, PNMR, or their affiliates and subsidiaries internally refer to it as incentive compensation.

- b. Any goodwill associated with the transaction will not be included in rates, rate base, cost of capital, or operating expenses in future PNM ratemaking proceedings. Write-downs or write-offs of goodwill associated with the transaction will not be included in the calculation of net income for dividend payment purposes.
- c. No time and expenses, third party costs, fees, expenses, or costs of the transition (transition costs) incurred by any party to the Transaction (including Avangrid and its subsidiaries and PNMR and its subsidiaries) will be borne by PNM's customers, nor will PNM seek to include transition costs in rates. Transition costs are those costs necessary to integrate PNM into the holdings of Avangrid Networks, whether incurred before or after closing of the Proposed Transaction, including one-time transition costs being incurred whether directly or indirectly through affiliate charges, to integrate PNM's operations and systems with those of Avangrid Networks. Provided, however, that transition costs do not include PNM and shared services employee time, or costs that reflect reasonable and necessary costs in providing service to the public.
- d. Neither PNM nor any of its affiliates will elect to apply pushdown accounting for the transaction (i.e., the transaction will have no accounting impact on PNM's

assets). Any incremental goodwill will not be allocated to, nor recognized within, PNM's financial statements.

- e. Joint Applicants commit to file with the Commission a comprehensive compliance report about actual acquisition premium, transaction costs, and/or merger transition costs allocated to PNM not later than six months following the publication of PNMR's audited financial statements for the fiscal year during which the Proposed Transaction closes.

13. No New Debt From Proposed Transaction. Joint Applicants commit that PNM and PNMR will not take on any new debt in conjunction with the Proposed Transaction.

14. Avangrid Controlling Ownership Interest. Joint Applicants commit that Avangrid will maintain an indirect controlling ownership interest in PNM for not less than ten years following the closing of the Proposed Transaction.

15. Commission Jurisdiction. The Commission jurisdiction over PNM remains and will not be adversely affected in any manner by the Proposed Transaction, as PNM will continue to abide and to be bound by existing applicable NMPRC rules, regulations, and orders. Additionally, Avangrid agrees, and Iberdrola authorizes Avangrid to represent that Iberdrola agrees, to submit to New Mexico jurisdiction with respect to the enforceability of these regulatory commitments and the services each may provide in New Mexico and to PNM.

16. Commitment Duration. Joint Applicants commit that PNM will continue to abide and be bound by the commitments set forth in all stipulations that are currently in effect until the commitments expire on their own accord or the Commission enters any order that supersede such commitments.

17. Management. In recognition of the importance of having a utility board that has a significant local voice, Joint Applicants make the following commitments to local management:

- PNM’s Board of Directors will have decision-making authority over PNM dividend policy, issuance of dividends (except for contractual tax payments), debt issuance, capital expenditures, management and services fees, PNM director and officer compensation and benefits, and operation and maintenance expenditures;
- PNM’s Board of Directors will be comprised entirely of New Mexico residents, at least 40% of whom (e.g., 2 of 5 or 3 of 7 directors) shall qualify as “independent” as defined in the rules and regulations of the New York Stock Exchange and “disinterested” as defined as follows: A disinterested director will qualify as independent in all material respects in accordance with the rules and regulations of the New York Stock Exchange (NYSE) (which are set forth in section 303A of the NYSE listed company manual) from Avangrid, and its subsidiaries or affiliated entities and any entity with a direct or indirect ownership interest in PNM, will have no material relationship with Avangrid or Iberdrola or their subsidiaries or affiliated entities or any entity with a direct or indirect ownership interest in PNM, currently or within the previous five years, and will have no ownership interest, including shares (over which they have control to buy or sell), in PNM, Avangrid, Iberdrola, NM GREEN HOLDINGS, Inc. or any affiliated company and/or subsidiary of any of the aforementioned companies or their parent companies or any company or holding company that is created after the acquisition;

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- Local management will continue to have day-to-day control over PNM's operations;
- PNM's Board of Directors meetings will be held in New Mexico or virtually;
- Other than in conformance with all applicable rules, regulations and orders of the Commission based upon a Commission-approved cost allocation methodology, Avangrid, Iberdrola and any other intermediary holding companies do not intend to charge PNM for a share of executive, management or administrative costs;
- PNM's day-to-day operations will be conducted by PNM's local management and employees, and PNM's local management will continue to establish company priorities and respond to local conditions;
- PNM's Board of Directors, including the affirmative vote of a majority of independent and disinterested directors, will have the sole right to determine dividends, except for contractual tax payments;
- Any amendments or changes to the dividend policy must be approved by a majority vote of the directors, including the affirmative vote of a majority of independent and disinterested directors;
- The independent and disinterested directors, acting by majority vote (*i.e.*, if there are only two independent and disinterested directors, both must agree for a vote to constitute a "majority"), shall have the authority to prevent PNM from making any dividend, except for contractual tax payments, if they determine that it is in the best interest of PNM to retain such amounts to meet expected future requirements of PNM;

EXHIBIT A

- The Compensation Committee of the PNM Board of Directors shall have sole responsibility to set the compensation and benefits for all directors and officers of PNM, in accordance with the provisions of this Stipulation. The Compensation Committee will be made up exclusively of the three independent and disinterested directors;
- PNM's headquarters will remain in Albuquerque, New Mexico for so long as Avangrid owns PNM; and
- This provision in the Stipulated Regulatory Commitments shall not be construed as agreement by any Party to the Stipulation concerning the prudence of any costs associated with the Board.

18. **Authorized Purpose of PNM.** The sole authorized purpose of PNM shall be the provision of electric utility service and the performance of activities reasonably necessary and appropriate thereto.

19. **Best Interests of PNM and Customers.** The Board of Directors and officers of PNM are obligated to act in the best interests of PNM and its customers, consistent with the terms of this settlement and order.

20. **Extinguishment of Debt.** Avangrid will extinguish all debt at PNMR, reducing it to zero within 90 days following the closing of the Proposed Transaction and maintaining it at zero going forward for as long as Avangrid has an indirect ownership interest in PNMR unless authorized in advance by the Commission.

21. **Terminations and Reductions of Wages or Benefits.** Joint Applicants commit that there will be no involuntary terminations except for cause or performance (other than those associated with the planned closure of the San Juan Generating Station) and no reductions

of wages or benefits to union or non-union employees for a minimum of three years following the closing of the Proposed Transaction.

22. Collective Bargaining Agreement and Pension. Joint Applicants will honor PNM's current collective bargaining agreement and will use good faith in any future collective bargaining agreement negotiation. Within six (6) months following closing of the Proposed Transaction, PNM will study the pension for union employees to evaluate whether the pension is fully funded, and will work with the union to ensure that the pension remains fully funded.

23. Affiliate Lending and Borrowing. Joint Applicants commit that PNM will not lend money to or borrow money from any of its affiliates, other than as permitted by the Commission.

24. Affiliate Credit Facilities. Joint Applicants commit that PNM will not share credit facilities with any affiliates other than as approved by the Commission.

25. Affiliate Cross-Default Provisions. Joint Applicants commit that PNM will not include in any of its debt or credit agreements cross-default provisions relating to any of its affiliates. Under no circumstances will any debt of PNM become due and payable or otherwise be rendered in default because of any cross-default, financial covenants, rating agency triggers or similar provisions of any debt or other agreement of any of its affiliates.

26. Affiliate Material Asset Transfers. Joint Applicants commit that PNM will not acquire or transfer material assets from or to any of its affiliates, except on an arm's length basis, and except with prior Commission approval, in accordance with the Commission's affiliate transaction standards and requirements.

- 27. Stand-Alone Bond Credit and Debt Ratings.** Joint Applicants commit to take the actions necessary to ensure the existence of PNM's standalone bond credit and debt ratings. PNM will, except as otherwise approved by the Commission, be registered with at least two nationally recognized statistical ratings organizations that are registered with the United States Securities and Exchange Commission, which must include two of Moody's, Fitch, or Standard and Poor's. The Joint Applicants shall take the actions necessary to ensure that PNM's credit ratings reflect the ring-fence provisions adopted in this order such that the credit rating agencies provide PNM with a standalone credit rating. These credit rating agencies are specifically identified for the purposes of this paragraph as Moody's, Standard & Poor's, and Fitch.
- 28. Restrictions on Dividends or Distributions Related to Debt Rating.** Joint Applicants commit that PNM will not pay dividends or distributions, except for contractual tax payments, at any time that PNM's debt rating is at BBB- or its equivalent with any of the credit-rating agencies with a negative watch, unless approved by the Commission in a proceeding opened for that purpose. PNM shall promptly notify the Commission if PNM's credit rating falls to an investment grade credit rating of BBB- with a negative watch (or its equivalent) with any of the credit-rating agencies.
- 29. Dividend Payment Limitation.** PNM will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income as determined in accordance with GAAP. PNM, however, shall be permitted to rollover under-utilized dividending capacity to subsequent periods for payment for the number of years the Commission allows for rollovers.

- 30. Minimum Common Equity Ratio.** PNM shall maintain a minimum common equity ratio (measured using a trailing 13-month average) in compliance with the equity ratio established from time to time by the Commission for ratemaking purposes. The equity ratio shall be calculated in the same manner as used by the Commission in PNM's most recent rate case. The minimum equity ratio will start with the Commission approved ratemaking equity ratio set by the Commission in PNM's most recent rate case. PNM will make no payment of dividends, except for contractual tax payments, where such dividends would cause PNM to be below the Commission approved equity ratio (measured using a trailing 13-month average).
- 31. Affiliate Pledge Restriction.** Joint Applicants commit that PNM's assets, or revenues shall not be pledged by any of its affiliates for the benefit of any entity other than PNM.
- 32. Shared Services.** In Class I transactions involving shared services provided by any Avangrid/Iberdrola affiliate to PNM or through PNMR to PNM, PNM shall file for the PRC's approval of such shared services and the Cost Allocation Manual for each such affiliate. PNM's request for approval of shared services from Avangrid/Iberdrola affiliates shall include the requested accounting requirements for such shared services, consistent with the Federal Energy Regulatory Commission's ("FERC") uniform system of accounts, including applicable restrictions on the exchange of competitively sensitive, proprietary data.
- 33. Incremental New Debt.** Without prior approval of the Commission, neither Avangrid nor any affiliate of Avangrid (excluding PNM) will incur, guaranty, or pledge PNM assets in respect of any incremental new debt at the closing of the Proposed Transaction or thereafter

that is dependent on: (1) the revenues of PNM in more than a proportionate degree than the other revenues of Avangrid; or (2) the stock of PNM.

34. Independent Evaluator. Whenever PNM proposes a procurement of energy resources, power supply, energy storage, or any related utility equipment intended to become a part of utility plant in service (Energy or Storage RFP), including whenever an affiliate expresses interest in participating in an RFP for a Class I transaction or any extension of an existing affiliate power purchase agreement through a repowering or otherwise, PNM will choose and retain an Independent Evaluator (“IE”) in order to ensure a fair RFP process and that there is no favoritism in the evaluation of proposals and selection of the winning bidder(s). The IE shall be retained on behalf of the Commission and shall report to the Commission. PNM shall provide the IE with the RFP and all necessary information during the RFP process in order for the IE to file a report to the Commission within fifteen days of any required application filed by PNM for approval of such procurement. The IE Report shall outline the substance of the RFP process and provides an independent assessment of the development and implementation of the RFP process, including whether the bid proposals were evaluated on a fair, consistent, and comparable basis. The IE shall not have any affiliation with the owner’s engineer or other consultant used by PNM in the development and implementation of the RFP process. PNM shall include in its Annual Report its list of qualified IE candidates from which PNM will select the IE for the following year. Joint Applicants agree that shareholders will pay the cost for the services provided by the IE when an affiliate participates in an RFP. To the extent that PNM retains an Independent Evaluator where there is not an affiliate participating in the RFP, the parties to the Stipulation agree that all of the reasonable costs of the Independent Evaluator are

properly recoverable through PNM rates. All parties will retain rights to oppose any new projects proposed and to oppose any affiliate contracts proposed.

35. Affiliate Contracts Other Than Shared Services. Joint Applicants commit that PNM will implement policies with respect to existing and/or potential future affiliate contracts that would accomplish the following:

- PNM has the burden of proving that any new affiliate transactions are based on reasonable charges for services rendered and that the services received benefit ratepayers;
- No PNM affiliate can obtain a new affiliate power purchase agreement (“PPA”) with PNM or an extension of an existing affiliate Purchase Power Agreement (including through repowering) without winning a competitive RFP (with an Independent Evaluator) with evidence of direct head-to-head competition with non-Iberdrola or non-Avangrid affiliates, and will be subject to obtaining Commission approval;
- Any information that PNM provides to its affiliate with respect to any such RFP (including with respect to any extension of an existing PPA, such as through a repowering) must simultaneously be provided to all bidders;
- No other non-public information about a competitive RFP (including with respect to any extension of an existing PPA, such as through a repowering) will be shared between PNM and affiliates at any time, unless as described in this paragraph;
- All executed contracts between PNM and any affiliated interest must be managed and enforced on an arm’s length basis as if they were contracts with a non-affiliated entity; and

- PNM and Avangrid will comply with all affiliate transaction requirements under New Mexico and federal laws and regulations.

36. Reliability and Safety. Joint Applicants commit that:

- PNM will invest in its system to ensure reliability and safety;
- The Joint Applicants commit that PNM will file a detailed report with the Commission by April 1 of each year identifying the system-wide SAIDI and SAIFI performance and identifying the SAIDI and SAIFI performance for each feeder that serves 10 or more customers. PNM will provide information by feeder for SAIFI and SAIDI separately. PNM will provide the information by feeder by rank order from worst performing to best performing feeders for the reporting year and will include each feeder's ranking for that index for the previous year.
- The system-wide standards will be the average SAIDI and SAIFI based on the five-calendar year period for 2016-2020, identified as the base period. Within 180 days of submitting its annual service reliability report, PNM will develop and submit a plan to address the service reliability issues for any distribution feeders that have SAIFI or SAIDI indices that are in the worst 10% of reported feeders for four or more consecutive years. The plan shall provide the estimated cost and benefit or remediating a feeder's performance and shall also include a feeder performance improvement plan for any distribution feeder with ten or more customers that sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.
- Any person, including the Utility Division Staff, may petition the Commission for appropriate enforcement action regarding the stipulated reliability performance

standards, including proposed fines or penalties, taking into consideration a distribution feeder's operation and maintenance history, causes of service interruptions, PNM's responsive actions, and any other relevant factors.

- PNM will meet with representatives from the Commission's Consumer Relations Division and Utility Division Staff to establish a list of other appropriate customer service quality indices and reliability standards and file a report with the Commission as part of its Rule 17.3.510 NMAC annual report that reflects its performance based on these measures. Joint Applicants also commit to work with Staff to support the initiation of a Commission rulemaking proceeding to create customer service quality standards and reliability standards based upon the average SAIDI and SAIFI with appropriate enforcement provisions for under-performance.
- PNM agrees that, for as long as Avangrid or any affiliate owns PNM, it will retain a sufficient number of dedicated operations and maintenance employees to ensure that it can promptly respond to service calls, outages, distribution line knock-downs, substation issues, and similar service issues.

37. Maintenance of Books, Records, and Accounts. Joint Applicants commit that PNM will maintain accurate, appropriate, and detailed books, financial records (including upon request, audited financials), and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.

38. Access to Books, Records, and Accounts and Audits. Joint Applicants commit that the Commission and its Staff will have access to the books, records, accounts, or documents

of PNM, its corporate subsidiaries, and its holding companies, including PNMR, Networks, Avangrid, and Iberdrola, pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19.

39. **Name and Logo.** PNM will maintain a separate name and logo from Avangrid, Iberdrola, and all other Avangrid and Iberdrola subsidiaries and affiliates, but may also include the same Avangrid name and logo for branding (*e.g.*, “an Avangrid company”).
40. **Dividend Notice.** PNM will provide at least 30 days’ notice to the Commission before making any dividend payments. The notice will include the amount of the proposed dividend, the proposed pay-out ratio, and historic pay-out ratios for the preceding three years.
41. **Restriction on Affiliate Commingling.** Except insofar as the Commission may authorize PNM to participate in the Avangrid Networks shared credit facilities or affiliate money pool, PNM shall not commingle its funds, assets, or cash flows with its affiliates.
42. **Regional Transmission Organization.** In recognition of the potential benefits to New Mexico and PNM's customers of PNM joining a Regional Transmission Organization or Independent System Operator (“RTO”), including the implementation of open and competitive electric generation markets, elimination of barriers to market entry and preclusion of control of bottleneck electric transmission facilities in the provision of retail and wholesale electric service, Joint Applicants shall use all reasonable efforts to find or participate in the development of a viable RTO that it can join by January 1, 2030, or as soon thereafter as possible, subject to Commission review and approval. As soon as possible following the completion of the merger, but not later than January 1, 2022, PNM will organize and convene an RTO stakeholder initiative, to include representatives of interested organizations, to develop and initiate the process by which PNM will explore

and participate in the development of an RTO. PNM will communicate the progress of its exploration and development activities on a regular basis to the members of the stakeholder initiative and the Utility Division Staff. PNM will also participate in and report on any other organized efforts to form an RTO that it could potentially join. PNM will work with stakeholders, including the NM AG, to determine if joining the RTO is in the best interests of customers and the State. The Commission shall make the final determination as to whether joining an RTO is in the public interest, including the interests of customers and the State. Participation in the Western EIM, EDAM, or other similar market would not constitute participation in an RTO.

43. **Carbon Reduction Task Force.** In recognition of the importance of meeting PNM's carbon reduction goals, the Joint Applicants will create a task force within one month following closing of the Proposed Transaction to include stakeholder representatives of environmental interests, clean energy industry representatives, consumer interests and state agencies (NMED, EMNRD, NM AG, NMPRC) ("PNM Carbon Reduction Task Force") to ensure that PNM will not only meet but exceed its zero carbon goals by achieving net zero emissions by or before 2040, and if feasible and otherwise in the public interest, 2035. PNM shall seek opportunities and apply for all available and feasible federal and private funding and grants to leverage outside funding sources to achieve carbon reduction goals, and report to the Carbon Reduction Task Force at each meeting. PNM shall have a dedicated full-time employee who will identify and with the assistance and support of PNM, apply for third party funding opportunities. Within 6 months following the creation of the PNM Carbon Reduction Task Force, and each six-month period thereafter until 2040 (or earlier depending upon when zero carbon goals are achieved), the Joint Applicants will

cause PNM to present a workable step-by-step plan to exceed its carbon reduction goals (“Plan”) to the PNM Carbon Reduction Task Force. The PNM Carbon Reduction Task Force will provide comments and suggestions to PNM with respect to its Plan and Joint Applicants will cause PNM to address each and every comment and suggestion and use all reasonable efforts to improve its Plan. In addition, PNM will work with stakeholders to craft reasonable and appropriate New Mexico legislation in 2022 that would create a market-based credit program to achieve reasonable and consistent progress in reducing emissions to meet the ETA’s 2045 decarbonization requirements. The signatories reserve all positions on all such legislation. PNM will also report to the stakeholders the reduction in emissions resulting from the seasonal operations agreement by the joint owners of the Four Corners Power Plant for so long as PNM remains a joint owner.

- 44. Compensation and Carbon Reduction Targets.** The Joint Applicants agree that the carbon reduction goals set forth above are of preeminent importance. Accordingly the incentive compensation for all relevant PNM executives will include goals related to the achievement of PNM’s 2040 carbon reduction targets (or earlier depending upon when zero carbon goals are achieved), including the PNM President, and senior executive officers (including Chief Financial Officer and Chief Operating Officer to the extent applicable) responsible for operations, planning, and procurement for power generation, and environmental compliance, as well as other executives that PNM’s Board of Directors determine will have a reasonable and achievable impact on carbon reduction. All parties reserve all rights with respect to the prudence of any additional expenditures in conjunction with this provision.

- 45. Contract Impacts On Emissions.** For the five calendar years following closing of the Proposed Transaction, the Joint Applicants commit that PNM will file a report with the Commission identifying any material emissions impact resulting from any new contracts signed by PNM during each such calendar year. Each such report will be filed as part of PNM's Rule 17.3.510 Annual Report.
- 46. Transportation Electrification.** Joint Applicants commit that PNM will triple its proposed transportation electrification plan budget that would be included in its next transportation electrification plan that will be filed with the Commission, subject to Commission review and approval. The dedicated PNM employee responsible for seeking third-party funding referenced in Section 43 above will also be responsible for seeking grants and funds for transportation electrification to assist PNM in the build-out of transportation electrification, including low-income offerings, which will reduce amounts that PNM may seek to reflect in rates. All parties to this stipulation reserve the right to challenge the increase of this proposed transportation electrification plan budget in PNM's transportation electrification plan filing.
- 47. Renewable Resources Development.** Avangrid commits to have one or more affiliates (other than PNM) work with the Navajo Nation toward the development of one or more renewable energy and/or energy storage projects on Navajo Nation land of no less than 200 MW within 2 years of the closing of the Proposed Transaction. Nothing in this section is intended to modify or interfere with any existing PNM request for proposal. Nothing in this section is intended to establish a preference by PNM for the selection of any such projects in any existing or future PNM competitive RFP process that requests resources to replace any existing PNM resources relied on by PNM to provide retail service to its New

Mexico customers or to otherwise meet PNM's retail service needs or any preference by the Commission to approve any such projects if proposed in response to a competitive PNM RFP process.

- 48. PNM Environmental Studies.** Within one year following closing of the Proposed Transaction, PNM will submit to the Commission and stakeholders the following studies regarding: (a) the infrastructure requirements resulting from projected electric vehicle demands; (b) efforts needed to decarbonize commercial buildings in its service territory by 2040; and (c) efforts needed to reach 1.5% annual incremental energy efficiency savings in its service territory. PNM will not request rate recovery from ratepayers for the cost of the studies.
- 49. Chief Environmental Officer.** By no later than December 1, 2022, PNM will name a Chief Environmental Officer with significant environmental and climate change experience responsible for meeting PNM's carbon reduction goals. The Chief Environmental Officer will report directly to the PNM President and will present (no less than once each year) to the PNM Board of Directors on PNM's carbon reduction plans and progress. All parties reserve all rights with respect to the prudence of any executive compensation with respect to this new position.
- 50. Transmission Plan.** Within one year following closing of the Proposed Transaction, PNM shall develop and complete a 20-year long-term transmission plan for PNM's transmission system, which PNM will subsequently update and shall include in all future Integrated Resource Plans (IRPs) filed with the Commission. Based on the most recently available forecasted future system conditions, the long-term transmission plan will identify the expected material transmission needs of PNM to support the Most Cost Effective

Portfolio(s) of its IRP and the year in which PNM projects the transmission need might be most cost-effectively met. It will also identify each reasonable alternative available to PNM to meet transmission needs including transmission projects that reasonably could be pursued by PNM itself, and publicly identifiable transmission projects known to PNM that could be pursued with other electric utilities in the region or merchant project developers. The plan will identify the most cost effective group of transmission projects that may reasonably meet PNM's transmission needs for reliability and renewable generation integration. In each IRP, PNM shall update the Transmission Plan, and shall include the results of any feasible scenario modeling requested by the Carbon Reduction Task Force with each updated Transmission Plan. As part of each IRP reviewed with public advisory participants and filed with the Commission, PNM shall include the following in its Transmission Plan: (a) PNM shall report its publicly disclosable existing transmission capabilities, and projected future needs during the planning period, for facilities of 115 kilovolts and above, including associated substations and terminal facilities. PNM shall generally identify the location and extent, to the extent publicly disclosable, of transfer capability limitations on its transmission network that may affect the future siting of resources; (b) With respect to future needs, PNM shall submit a description of all new transmission lines and related facilities that are reasonably projected to be placed into service during the action plan period; (c) For each such transmission line and related facility identified, PNM shall include a description of the transmission line's length and location, estimated in-service date, injection capacity, estimated costs, terminal points, and voltage and MW rating; and (d) PNM shall include a report on coordination with other utilities within and outside of New Mexico regarding transmission planning.

- 51. Solar Direct Program.** The Joint Applicants commit that, within six months following the closing of the Proposed Transaction, they will work with stakeholders, including large users and governmental customers to develop a second renewable energy resource and participation tranche for the Solar Direct program to be filed within one year of closing.
- 52. Current Tariffs and Contracts and Other Proceedings.** Joint Applicants agree to honor and support existing green tariffs and all contracts between PNM and current customers. The parties and intervenors in this case reserve all rights in all other dockets in which PNM is a party. Specifically, nothing in this Stipulation shall affect the rights or limit the positions of any party in Case No. 21-00017-UT regarding any matter or issue in that case or any future case relating to the Four Corners Power Plant. The Parties agree that until closing of the Proposed Transaction, either a non-decision or a dismissal of Case No. 21-00017-UT will not affect this merger. Events that occur after closing of the Proposed Transaction in that Case No. 21-00017-UT will not be deemed to have an impact on the merger.
- 53. PNM's 2020-2039 Integrated Resource Planning and Case No. 21-00083-UT Resource Modeling Information.** PNM will supplement its 2020 IRP filed in Case No. 21-00033-UT at least ten business days prior to the deadline for submittal of public comments on that IRP, as currently filed with the Commission in that docket to i) clarify that feasible new resource technology options PNM will consider to meet the resource adequacy requirements and reliability criteria and satisfy PNM's goal of a carbon-free portfolio by 2040 described in that IRP include heavy frame combustion turbines, including such resources currently available to PNM under existing power purchase agreements with PNM that expire prior to December 31, 2039, with or without modifications that would provide

such resources with fast-start capacity, that would not be relied on by PNM for retail service after December 31, 2039 unless modified to be fueled thereafter by a non-CO₂ emitting fuel; and 2) provide portfolios in its Appendices that include modeling of an existing heavy frame combustion turbine located in PNM's northern New Mexico load center, with and without fast-start capacity, that would operate only until December 31, 2039, based on the owner's proposals, including firm pricing, submitted to PNM in response to its June 25, 2020 RFP, that relies on the same cost and other inputs relied on by PNM in that IRP to model its other feasible resource options. Through the discovery process in Case No. 21-00083-UT, PNM agrees to produce, upon request by any party, modeling runs of resource portfolios that include modeling of an existing heavy frame combustion turbine located in PNM's northern New Mexico load center, with and without fast-start capacity, that would not operate after December 31, 2039, based on the owner's proposals, including firm pricing, submitted to PNM in response to its June 25, 2020 RFP that relies on the same cost and other inputs relied on by PNM to model its other feasible resource options to meet its service needs. To the extent such PNM modeling runs disclose specific bidder pricing or other competitively-sensitive information, PNM will only disclose such information to persons who execute and file a confidentiality agreement as required by the protective order issued by the Commission in that case. Nothing in this section shall obligate PNM or other Signatories to endorse or propose any of the above-described informational bids, proposals, resource portfolios or model runs in any pending or future PNM resource planning or procurement cases, nor prevent PNM, other Signatories, or other parties from presenting their own positions to the Commission with regard to that information in those cases. Moreover, nothing in this section shall be interpreted to impair or conflict with Joint

Applicants' sections 43 and 44 commitments for PNM to achieve net-zero emissions by or before 2040, and by 2035 if feasible and otherwise in the public interest.

54. Enforceability of Stipulated Commitments. Joint Applicants and, as applicable, Iberdrola, will fulfill all merger commitments. For the five years following the closing of the Proposed Transaction, PNM will submit with its Annual Report² a report detailing the progress Joint Applicants have made toward meeting each Stipulated Regulatory Commitment. Joint Applicants shall include in that Annual Report information about the capital structure of PNM and the composition of the Board of Directors of PNM (and any changes to each from the previous Annual Report). Joint Applicants acknowledge and agree that to the extent that there is any failure to meet each Stipulated Regulatory Commitment, any stakeholder or the Commission may initiate a proceeding to enforce the merger commitments and Joint Applicants will be subject to potential consequences, including the penalties provided for pursuant to NMSA 1978, Section 62-12-4.

55. Effectiveness, Amendments and Modifications. These regulatory commitments will become effective upon Commission approval. Any amendments or modifications to these regulatory commitments will require prior Commission approval.

56. San Juan Decommissioning. PNM will use its good faith efforts to work with the San Juan Generating Station ("SJGS") owners and former SJGS owners who have an obligation to participate in decommissioning the SJGS to identify and present feasible options for commercially reasonable actions, available under the terms of the SJGS contracts and consistent with the established decommissioning agreement, that would allow decommissioning options, including decommissioning, demolition and site restoration of

² 17.3.510.12 NMAC.

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the SJGS site to standards applicable to ongoing economic development, commercial and industrial uses of the SJGS plant site, at a cost comparable to the lowest reasonable cost alternative identified in the owners' most recent decommissioning study that applies a whole-life cost analysis

GCG#528291

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION)
OF AVANGRID, 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) Case No. 20-00222-UT
OTHER AUTHORIZATIONS AND APPROVALS)
REQUIRED TO CONSUMMATE AND IMPLEMENT)
THIS TRANSACTION)
)
AVANGRID, INC., NM GREEN HOLDINGS, INC., PUBLIC)
SERVICE COMPANY OF NEW MEXICO AND PNM)
RESOURCES, INC.,)
)
JOINT APPLICANTS.)
_____)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Second Amended Stipulation** was emailed to the parties listed below on June 4, 2021:

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Dated this 4th day of June, 2021.

By: /s/Carey Salaz
 Carey Salaz, Director
 PNM Regulatory Policy & Case Management
 Public Service Company of New Mexico

Appendix 2

**June 4 Stipulation
with Hearing Examiner modifications**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF)	
IBERDROLA, S.A., AVANGRID, INC., AVANGRID)	
NETWORKS, INC., NM GREEN HOLDINGS, INC.,)	
PUBLIC SERVICE COMPANY OF NEW MEXICO AND)	
PNM RESOURCES, INC. FOR APPROVAL OF THE)	
MERGER OF NM GREEN HOLDINGS, INC. WITH PNM)	
RESOURCES INC.; APPROVAL OF A GENERAL)	Case No. 20-00222-UT
DIVERSIFICATION PLAN; AND ALL OTHER)	
AUTHORIZATIONS AND APPROVALS REQUIRED TO)	
CONSUMMATE AND IMPLEMENT THIS TRANSACTION)	
)	
IBERDROLA, S.A., AVANGRID, INC., AVANGRID)	
NETWORKS, INC., NM GREEN HOLDINGS, INC.,)	
PUBLIC SERVICE COMPANY OF NEW MEXICO AND)	
PNM RESOURCES, INC.,)	
)	
JOINT APPLICANTS.)	
)	

MODIFIED SECOND AMENDED STIPULATION

Public Service Company of New Mexico (“PNM”), PNM Resources, Inc. (“PNMR”), Iberdrola, S.A. (“Iberdrola”), Avangrid, Inc. (“Avangrid”), Avangrid Networks, Inc. (“Networks”), NM Green Holdings, Inc. (“NM Green”),¹ the Office of the Attorney General of the State of New Mexico, Western Resource Advocates, International Brotherhood of Electrical Workers Local 611, Dine Citizens Against Ruining Our Environment, Nava Education Project, San Juan Citizens Alliance, To Nizhoni Ani, the Coalition for Clean Affordable Energy, Interwest Energy Alliance, Walmart, Inc., Onward Energy Holdings, LLC, M-S-R Public Power Agency, and the Incorporated County of Los Alamos (collectively, the “Signatories”, each a “Signatory”), and subject to the approval of by the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”), through their undersigned authorized representatives, have reached agreement

¹ PNM, PNMR, Iberdrola, Avangrid, Networks, and NM Green are collectively referred to as “Joint Applicants.”

on substantive issues that would cause them to support the proposed merger. The Signatories agree and stipulate as follows:

INTRODUCTION

A. In the Joint Application filed on November 23, 2020, Joint Applicants requested the Commission approve: (1) the merger of NM Green with and into PNMR, under NMSA 1978, Sections 62-6-12 and 62-6-13, following which PNMR will be the surviving corporation and will be a wholly-owned subsidiary of Avangrid (“Merger”); (2) Avangrid’s transfer of 100% ownership in PNMR to Networks subsequent to the Merger (together with the Merger, the “Proposed Transaction”); (3) PNM’s 2021 General Diversification Plan (“2021 GDP”), which replaces any previous diversification plans and is filed in connection with the Class II transaction contemplated by the Proposed Transaction pursuant to 17.6.450 NMAC (“Rule 450”); and (4) such other and further approvals, consents, authorizations, and relief that may be required under the New Mexico Public Utility Act (the “PUA”), including a limited variance to information required to be provided by Rule 450.10(B)(1) and Rule 450.13(A)(2), to consummate and implement the Proposed Transaction.

B. Staff and Intervenors filed direct testimony on April 2, 2021, raising various concerns and objections to the Joint Application.

C. On April 21, 2021, certain of the Signatories entered into an Initial Stipulation.

D. On April 23, 2021, certain of the Signatories entered into an Amended Stipulation, which replaced in whole the Initial Stipulation.

E. On April 25, 2021, the Hearing Examiner entered his Order Vacating Prehearing Conference and Procedural Schedule and Providing for Settlement Discussions, ordering the Joint

Applicants to meet with all parties to this proceeding to discuss and negotiate in good faith a potential stipulation.

F. On May 7, 2021, through the meetings ordered by the Hearing Examiner, certain of the Signatories entered into the Stipulation.

G. On June 4, 2021, the Signatories entered into the Second Amended Stipulation, which replaced the Initial Stipulation, the Amended Stipulation and the May 7, 2021 Stipulation. This Modified Stipulation replaces the Second Amended Stipulation.

H. ~~Through continued negotiations, the Signatories were able to arrive at this the Second Amended Stipulation, which replaces the Initial Stipulation, the Stipulation, and the Amended Stipulation.~~ The Signatories believe this Modified ~~Second Amended~~ Stipulation: a) is fair, just and reasonable; b) meets the statutory test for approval pursuant to Sections 62-6-12 and 62-6-13 that the proposed merger of NM Green with PNMR, and the subsequent transfer of PNMR's stock to Networks, is neither unlawful nor inconsistent with the public interest; and, c) meets the requirements of Rule 450.10, including that the level of investment appears reasonable and that PNM's ability to provide reasonable and proper utility service at fair, just and reasonable rates will not be adversely and materially affected by the merger of NM Green with PNMR or the transfer of PNMR's stock to Networks.

I. The agreements set forth in this Modified ~~Second Amended~~ Stipulation reflect good faith negotiations, with reasonable "give and take" on issues by the Signatories and result in a bargained-for resolution to this proceeding.

J. Through this Modified ~~Second Amended~~ Stipulation, the Signatories intend to resolve all issues they have raised in this proceeding and agree that the Commission should

approve the Proposed Transaction, PNM's proposed 2021 GDP and associated Class II transaction, and the variance to Rule 450.10(B)(1) and Rule 450.13(A)(2).

STIPULATION

1. The Signatories agree that the Joint Application should be approved, and all approvals and authorizations sought by Joint Applicants should be granted.

2. In support of the Modified ~~Second Amended~~ Stipulation, the Signatories have agreed to the Stipulated Regulatory Commitments contained in Exhibit A. The Stipulated Regulatory Commitments supersede and replace the Regulatory Commitments included with the Joint Application and all Regulatory Commitments included in prior stipulations in this case. The Stipulated Regulatory Commitments are hereby incorporated into this Modified ~~Second Amended~~ Stipulation by reference.

3. The Signatories agree that the Joint Application combined with the Stipulated Regulatory Commitments constitute a benefit to PNM's customers, preserve the Commission's jurisdiction, ensure the quality of PNM's service will not be diminished, will not result in improper subsidization of non-utility activities, and provide adequate protections against harm to customers.

4. The Signatories further agree that Avangrid, Networks, and Iberdrola S.A. are qualified and financially healthy public utility holding companies.

5. The Signatories agree that Joint Applicants and Iberdrola S.A. have made all of the affirmations and other requirements of Rule 450.10 for approval of a Class II transaction and the 2021 GDP.

6. The Signatories concur in granting the variance to Rule 450.10 and Rule 450.13 allowing PNM to exclude reporting information related to Iberdrola, S.A.'s subsidiaries which: 1) operate completely outside of the United States and 2) have no contact with PNM. The Signatories

agree that a variance is appropriate as such information is of limited value to stakeholders and the Commission, and would likely be burdensome on the Commission's staff to track.

7. The Signatories agree that this Modified~~Second Amended~~ Stipulation is made and filed solely in connection with the settlement among the Signatories with respect to the matters in this proceeding only, and is unique to the circumstances presented in this proceeding.

8. Except as specifically stated in the language of this Modified~~Second Amended~~, the provisions of this Modified~~Second Amended~~ Stipulation have no precedential effect and the Signatories do not waive rights they may have in any other pending or future proceeding and will not be deemed to have approved, accepted, agreed to or consented to the application of any concept, principle, theory or method in any future proceeding. In accordance with 1.2.2.20(D) NMAC, by approving this Modified~~Second Amended~~ Stipulation the Commission will be neither granting any approval nor creating any precedent regarding any principle or issue in this or any other proceeding, except as provided in the Final Order.

9. The Modified~~Second Amended~~ Stipulation contains the full intent, understanding, and the entire agreement of the Signatories and no implication should be drawn on any matter not addressed in the Modified~~Second Amended~~ Stipulation. There are not and have not been any representations, warranties, or agreements other than those specifically set in this Modified~~Second Amended~~ Stipulation.

10. This Modified~~Second Amended~~ Stipulation reflects a negotiated settlement. The Signatories agree that they will use their best efforts to obtain expeditious approval of this Modified~~Second Amended~~ Stipulation by appropriate final order of the Commission in this proceeding. If the Modified Second Amended Stipulation is not adopted in its entirety by the Commission, without modification, the Modified~~Second Amended~~ Stipulation will be voidable

by any Signatory. In order to void the Modified-Second-Amended Stipulation and the agreements made in this Modified-Second-Amended Stipulation, a Signatory must file a formal statement with the Commission rejecting one or more of the Commission's modifications and stating that the Signatory intends to void the Modified-Second-Amended Stipulation if the Commission does not withdraw the rejected modification. The formal statement shall be filed within the time allotted by the Commission for filing amendments to the Modified-Second-Amended Stipulation or, if no time is specified by the Commission, no later than fifteen days after the Commission's order. Any statement made or positions taken by the Signatories during the course of negotiations regarding this Modified-Second-Amended Stipulation will not be admissible before any regulatory agency or court.

11. The Signatories agree that this Modified-Second-Amended Stipulation in its entirety represents a fair, just, and reasonable resolution of the issues presented in this proceeding.

12. This Modified-Second-Amended Stipulation may be executed through one or more counterparts or separate signatures, including, but not limited to, electronic signature, each of which will be deemed to be an original and all of which will constitute one of the same agreement.

Dated as of _____

PUBLIC SERVICE COMPANY OF NEW MEXICO AND
PNM RESOURCES, INC.

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SAN JUAN CITIZENS ALLIANCE
DINE CITIZENS AGAINST RUINING OUR
ENVIRONMENT
TO NIZHONI ANI
NAVA EDUCATION PROJECT

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STIPULATED REGULATORY COMMITMENTS

1. **Rate Benefits.** Joint Applicants¹ commit to provide a total of \$73 million in rate benefits, deployed in the following manner:
 - ~~\$67~~ ~~\$50~~ million in rate credits to PNM's customers over a three-year period following the closing of the Proposed Transaction. The rate credits shall be allocated to PNM's customers on a per customer basis.
 - ~~\$10~~ ~~\$6~~ million for residential customer arrearages forgiveness within 90 days from closing of the Proposed Transaction. The Joint Applicants shall file their plan for apportioning the arrearage relief with the Commission for its approval.
 - \$2 million in funds for assisting in providing electricity to new customers in remote areas (as described in Section 11 below); and
 - \$15 million for low-income energy efficiency (as described in Section 8 below).
 - PNM will not file a new general rate case before December 1, 2022, to allow for a transition period under the merger terms and recovery from COVID-19 impact on consumers.
2. **Economic Development.** Joint Applicants make the following commitments regarding economic development:
 - Joint Applicants will create or bring an additional 150 full-time jobs in total to New Mexico over the three-year period following the closing of the Proposed Transaction. At least 130 of the full-time jobs shall be created or brought to New Mexico by the Joint Applicants (other than PNM). At least 100 of the 130 full-time

¹ Public Service Company of New Mexico ("PNM"), PNM Resources, Inc. ("PNMR"), NM Green Holdings, Inc., Avangrid Networks, Inc. ("Networks"), and Avangrid, Inc. ("Avangrid") are collectively referred to as Joint Applicants.

jobs shall be created within the Albuquerque-Bernalillo County metropolitan area.
and would not include costs of any of the those jobs in rates without New Mexico
Regulation Commission (“NMPRC” or the “Commission”) review and approval.
The 150 new jobs will remain for no less than five years thereafter. Joint Applicants
commit to file an annual compliance report in this merger proceeding showing the
number of full-time jobs created or brought to New Mexico, identifying the
employer, job title, annual salary, location (city or county), date of hire, any period
of time during which the job was vacant, a description of benefits and whether the
job is performed remotely or in an office location. No more than 20 of these jobs
will be at PNM. PNM will create at least 20 new full-time jobs for electric service
craftsmen. ~~Joint Applicants will target 20 of these jobs to be electric service~~
~~business unit craftsmen at PNM, and~~ PNM will prioritize hiring personnel that have
been or will be displaced as a result of San Juan Generating Station closure for
those positions. PNM shall not include costs of any of the those jobs in rates
without New Mexico Regulation Commission (“NMPRC” or the “Commission”)
review and approval. If the Joint Applicants fail to create 150 new full-time jobs
in New Mexico within three years after the closing of the Proposed Transaction,
they shall pay \$80,000 per job shortfall to the PNM Good Neighbor Fund (at
shareholder expense). A job shortfall shall exist if the job was not created or if it
has remained vacant for more than six months. To count toward the 150 job
requirement, a job must be created as an employee of Avangrid, Inc or its affiliated
interests and the wages must average at least \$88,000 per year.

- Joint Applicants commit that they will make contributions to economic development projects or programs in New Mexico, at shareholder expense, totaling \$15 ~~\$7.5~~ million over the five ~~three~~ years following the closing of the Proposed Transaction. The Joint Applicants commit that these economic development funds will not be used for fossil fuel use or related projects. The \$15 ~~\$7.5~~ million commitment to promote economic development in New Mexico will be disbursed through an independent fund (“Fund”) to which shareholders will contribute \$3 ~~\$2.5~~ million per year for a period of 5 ~~3~~ years. The Fund will be administered independent of Joint Applicants. The funds shall be disbursed through a competitive grant program, and the grants shall be disbursed only to nonprofits proposing economic development projects or conducting economic development programs in areas served by PNM.
- Additionally, within 90 days of closing of the Proposed Transaction, Joint Applicants will allocate at shareholder expense \$2.5 million each year for five years following closing, for a total of \$12.5 million, for the benefit of impacted indigenous community groups in the Four Corners region, as designated by intervening Community Groups. This amount is not related in any way to, and will not impact, the amounts required to be transferred to the energy transition funds pursuant to NMSA 1978, Section 62-18-16(J) in relation to the abandonment of any coal-fired generation facility in New Mexico. The Joint Applicants commit to engage in periodic meetings, at least twice annually, with impacted community stakeholders in the Four Corners region, with the NMPRC Utility Division Staff (“Staff”), and the Office of the Attorney General for the State of New Mexico (“NM

AG”) to discuss community interests regarding Joint Applicants operations and renewable energy and storage development in the Four Corners region.

- The New Mexico Energy Transition Act (“ETA”) requires that 3.35% of the amount securitized from the closure of the San Juan Generating Station be provided to an “energy transition displaced worker assistance fund” run by NM Workforce Solutions. Joint Applicants commit to work with PNM to ensure that this program provides the maximum possible employment opportunities for displaced workers, and will look for opportunities to improve that program. Joint Applicants commit to provide progress reports on the effectiveness of the program each six months following execution of this Stipulation to Staff, the NM AG and other stakeholders that are signatories to this Stipulation until three years following closing of the Proposed Transaction. The Joint Applicants shall file the progress reports with the Commission.
- The Joint Applicants shall make a \$1 million contribution to create a supplemental scholarship program dedicated to science, technology, engineering and math education in the Albuquerque/Bernalillo County metropolitan area and a \$1 million contribution to create or enhance apprenticeships in local high schools and colleges. With respect to the scholarship program, the Joint Applicants shall contribute the \$1 million over a two-year period following the closing of the Proposed Transaction. This contribution shall be in addition to any existing contributions committed to by the Joint Applicants and shall not be recoverable in rates. With respect to the \$1 million to create or enhance apprenticeships for technical and professional positions for students in local high schools and colleges, the Joint

Applicants shall use commercially reasonable efforts to ensure that such programs are made available to high schools in an equitable manner. The contribution shall be in addition to any existing contributions committed to by the Joint Applicants and shall not be recoverable in rates.

- PNM will provide local government entities access to PNM-owned wooden streetlighting poles within 1/2 mile of public schools and government-owned or authorized low-income facilities for the purpose of enabling the installation by the governmental entity of equipment to provide wireless internet access to students and residents of such facilities. Access will be provided pursuant to written agreements identifying the streetlighting poles eligible for attachments and on PNM's standard pole attachment or other applicable terms and conditions, except that annual pole rental fees will not be charged for a period of 3 years from November 1, 2021. All standard charges under PNM's streetlighting rates and tariffs, and for make-ready and other PNM services associated with such access will apply].

3. **Albuquerque Streetlighting.** Joint Applicants agree to work with the City of Albuquerque to provide park streetlighting. Joint Applicants agree that if there is any failure with respect to that streetlighting, if PNM does not fix it within 24 hours, the City of Albuquerque can contract to fix the streetlighting and submit an invoice to PNM for the repairs.
4. **Albuquerque Airport Substation.** Joint Applicants commit to work with the City of Albuquerque to complete by July 1, 2022 the construction of a PNM-owned substation that will be a part of PNM's distribution system serving the southeast area of Albuquerque,

including the Albuquerque International Sunport, as well as existing privately owned residences, businesses, and projected private development in this quadrant consistent with Joint Applicants' general obligations to prevent major interruptions of service as set out in 17.9.560 NMAC (2020).

5. **Charitable Contributions.** Joint Applicants commit that PNM and PNMR's charitable contributions in New Mexico will be maintained at historical levels identified in the Joint Applicants' direct testimony for a minimum of five years following closing of the Proposed Transaction, with a similar expectation for the PNM Resources Foundation's separate charitable activities.
6. **Minority- and Woman-Owned Business Procurement Program.** Joint Applicants commit to work closely with the NM AG and Staff to arrive at and initiate an effective Minority- and Woman-Owned Business Procurement Program within six months following closing of the Proposed Transaction. The goal of this program will be to increase the contract opportunities for minority- and woman-owned businesses in New Mexico in conjunction with PNM contracts to procure goods and services. The program will have three components: (i) Early Outreach (to maximize participation of minority- and woman-owned businesses in requests for proposals ("RFPs")); (ii) RFP Weighting (to strongly consider the benefits of contracting with a minority- or woman-owned New Mexico business, along with price, experience, capability, timing and other factors); and (iii) Annual Review (to evaluate the success of the program) for a minimum of five years following closing of the Proposed Transaction. Each year for at least five years following such closing, the Joint Applicants commit to provide data from its Annual Review to the NM AG, to Staff and to other stakeholders that are signatories to this Stipulation and will

modify the program as needed based upon input from and discussions with Staff, the NM AG and other stakeholders that are signatories to this Stipulation. The data from the Annual Review shall be filed with the Commission.

7. **Low-Income Customer Assistance Programs.** Joint Applicants commit that PNM will maintain its existing low-income customer assistance programs, including the Good Neighbor Fund, for a minimum of five years following the closing of the Proposed Transaction.
8. **Low-Income Energy Efficiency Program.** Joint Applicants commit to evaluate PNM's current low-income energy efficiency program. Within six months following closing of the Proposed Transaction, Joint Applicants will work with Staff, the NM AG and other stakeholders that are signatories to this Stipulation to propose improvements to the program, to result in their passing the Utility Cost Test, which PNM will then incorporate in its next Energy Efficiency program filing with the Commission. Joint Applicants will have PNM commit to propose increased spending on all cost-effective low-income energy efficiency and weatherization programs up to the statutory limit on energy efficiency spending, so long as such spending does not cause the overall energy efficiency plan to fail the Utility Cost Test. In addition, Applicants will commit \$15 million in total over a five-year period in shareholder expense to increase cost-effective low-income energy efficiency and weatherization (\$5 million in first year, and \$2.5 million in each of the next four years), with any remaining unspent amounts to be applied in the sixth year.
9. **Local Energy Efficiency Procurement.** Joint Applicants commit to work closely with stakeholders to have local New Mexico businesses manage PNM's energy efficiency programs. The Joint Applicants commit that within six months following closing of the

Proposed Transaction, PNM will include in its RFPs for managing its energy efficiency programs weighting that considers the benefits of contracting with local New Mexican businesses, as well as price, experience, capability, and other relevant factors to maximize the participation of local businesses in the provision of these services.

10. Diversity of PNM Management Team. Joint Applicants commit that within six months following closing of the Proposed Transaction, they will implement a new program for PNM in consultation with Staff, the NM AG and the other stakeholders that are signatories to this Stipulation to increase diversity on the PNM management team (Executives, Vice-Presidents, and Directors). Among other considerations such as qualifications, capabilities, and credentials, the Joint Applicants commit that diversity (gender, race, ethnicity, etc.) will be a key priority for management hiring efforts at PNM. Joint Applicants commit to report annually on the progress and success of this program for five years. During the five-year reporting period, in any given year in which management diversity is reduced by more than 10% from the prior year, the Joint Applicants commit to contribute \$250,000 to designated scholarship(s).

11. “Electrification for All” Program. Joint Applicants will work with Staff and the NM AG to propose a low-income “Electrification for All” program to improve the access that low-income New Mexicans have to electricity, particularly in remote areas. Joint Applicants commit to report on the results of the program annually to signatories to the Stipulation for three years from closing of the Proposed Transaction to evaluate its success and to entertain modifications to improve effectiveness. The low-income electrification fund as described above in Section 1 will remain open for three years from such closing or until fully deployed, whichever occurs first; in the event that the low-income electrification

fund is not fully deployed at the end of the three-year period, Joint Applicants will work with Staff, the NM AG and other stakeholders that are signatories to this Stipulation to determine how to deploy any residual funding that has not been utilized. Joint Applicants will fund the program with \$2 million that will not be passed through in rates to customers and will count toward the rate benefits described above. As needed, Joint Applicants commit to work toward electrification during this three-year period for up to \$2 million of electrification.

12. Transaction and Transition Costs. Joint Applicants commit that PNM will not, directly or indirectly, seek to recover in any future rate case filing, any acquisition premium, or transaction costs, or merger transition costs resulting from the Proposed Transaction and allocated to PNM.

- a. Neither PNM nor any ~~affiliate~~ affiliated interest or subsidiary of PNM, Avangrid, or Iberdrola, S.A. (“Iberdrola”), will seek recovery of transaction costs in PNM’s rates. None of the transaction costs will be borne by PNM’s customers, nor will PNM seek to include transaction costs in its rates. Transaction costs are those incremental costs paid to advance or consummate the transaction. Transaction costs do not include PNM and shared services employee time but must include any form of incentive compensation associated with the Proposed Transaction, regardless of whether Avangrid, PNMR, or their ~~affiliates~~ affiliated interests and subsidiaries internally refer to it as incentive compensation.
- b. Any goodwill associated with the transaction will not be included in rates, rate base, cost of capital, or operating expenses in future PNM ratemaking proceedings.

Write-downs or write-offs of goodwill associated with the transaction will not be included in the calculation of net income for dividend payment purposes.

- c. No time and expenses, third party costs, fees, expenses, or costs of the transition (transition costs) incurred by any party to the Transaction (including Avangrid and its subsidiaries and PNMR and its subsidiaries) will be borne by PNM's customers, nor will PNM seek to include transition costs in rates. Transition costs are those costs necessary to integrate PNM into the holdings of Avangrid Networks, whether incurred before or after closing of the Proposed Transaction, including one-time transition costs being incurred whether directly or indirectly through ~~affiliate~~ affiliated interest charges, to integrate PNM's operations and systems with those of Avangrid Networks. Provided, however, that transition costs do not include PNM and shared services employee time, or costs that reflect reasonable and necessary costs in providing service to the public.
- d. Neither PNM nor any of its ~~affiliates~~ affiliated interests will elect to apply pushdown accounting for the transaction (i.e., the transaction will have no accounting impact on PNM's assets). Any incremental goodwill will not be allocated to, nor recognized within, PNM's financial statements.
- e. Joint Applicants commit to file with the Commission a comprehensive compliance report about actual acquisition premium, transaction costs, and/or merger transition costs allocated to PNM not later than six months following the publication of PNMR's audited financial statements for the fiscal year during which the Proposed Transaction closes.

13. **No New Debt From Proposed Transaction.** Joint Applicants commit that PNM and PNMR will not take on any new debt in conjunction with the Proposed Transaction.
14. **Avangrid Controlling Ownership Interest.** Joint Applicants commit that Avangrid will maintain an indirect controlling ownership interest in PNM for not less than ten years following the closing of the Proposed Transaction.
15. **Commission Jurisdiction.** The Commission jurisdiction over PNM remains and will not be adversely affected in any manner by the Proposed Transaction, as PNM will continue to abide and to be bound by existing applicable NMPRC rules, regulations, and orders. Additionally, ~~Avangrid agrees, and Iberdrola authorizes Avangrid to represent that~~ Iberdrola, Avangrid, Inc. and their affiliated interests agree to submit to New Mexico jurisdiction with respect to the enforceability of these regulatory commitments and the services each may provide in New Mexico and to PNM. The Commission's jurisdiction includes, but is not limited to, the Commission's ability to subpoena, and require the attendance of any employee or agent of Iberdrola, Avangrid, Inc. and their affiliated interests, at any proceeding before the Commission.
16. **Commitment Duration.** Joint Applicants commit that PNM will continue to abide and be bound by the commitments set forth in all stipulations that are currently in effect until the commitments expire on their own accord or the Commission enters any order that supersede such commitments.
17. **Management.** In recognition of the importance of having a utility board that has a significant local voice, Joint Applicants make the following commitments to local management:

- PNM’s Board of Directors will have decision-making authority over PNM dividend policy, issuance of dividends (except for contractual tax payments), debt issuance, capital expenditures, management and services fees, and operation and maintenance expenditures;
- Within 30 days following closing of the Proposed Transaction, PNM will file with the Commission a Delegation of Authority from the Avangrid, Inc. board of directors, specifying that the PNM Board has this authority. After review and approval by the Commission, the Delegation of Authority will be adopted by the PNM Board as a corporate resolution of PNM;
- PNM’s Board of Directors will be comprised of seven directors, all of whom shall be New Mexico residents. At least four ~~Three~~ of the directors shall be “independent” as that term is defined in the rules and regulations of the NYSE and “disinterested” as defined as follows: “A disinterested Director will qualify as independent in all material respects in accordance with the rules and regulations of the NYSE (which are set forth in section 303A of the NYSE listed company manual) from Avangrid, its holding company(ies) and its subsidiaries or affiliated interests and any entity with a direct or indirect ownership interest in PNM, PNMR and/or TNMP, and also will have no material relationship with Avangrid or Iberdrola or their subsidiaries or affiliated interests or any entity with a direct or indirect ownership interest in PNM, currently or within the previous five years, or on a going-forward basis. No independent or disinterested Director sitting on PNM’s Board shall sit on any other boards of companies or affiliated

interests owned by Avangrid, Iberdrola, or their subsidiaries, or have any financial relation with PNM or its parent/holding companies, other than receiving compensation directly related to their duties as PNM Board members. No independent disinterested director shall have an ownership interest, including shares (over which they have direct or indirect control, e.g. through a broker, to buy or sell), in PNM, Avangrid, Iberdrola, NM GREEN HOLDINGS, any holding company or any affiliated interest company and/or subsidiary of any of the aforementioned companies or their parent companies or any company or holding company that is created after the acquisition. ~~Notwithstanding any contrary provision contained herein, the matters directly under the control of PNM are subject to and are understood to be in compliance with all applicable requirements of any order of the NMPRC, including, specifically, any commitments made by PNM in connection with any such order.~~

- Board decisions will be by a simple majority vote of the directors, with the exception of dividend matters. A super majority of the Board (which means a majority of the Board that also includes a majority of independent and disinterested members) is required for dividend policy matters and the issuance of dividend payments. The independent and disinterested directors, acting by majority vote shall have the authority to prevent PNM from making any dividend, except for contractual tax payments, if they determine that it is in the best interest of PNM to retain such amounts to meet expected future requirements of PNM.

- PNM's CEO and senior management will continue to have day-to-day control over PNM's operations, and contact with local stakeholders and intervenors will be through local management and employees for all regulatory, operational and community engagement matters. This operational authority includes the sole authority by PNM to settle any proceeding at the NMPRC if in the sole discretion of senior management (subject to general oversight of the PNM Board) it is in the best interests of the Utility to do so.
- PNM's Board of Directors meetings will be held in New Mexico or virtually so long as New Mexico's or national COVID or other similar travel restrictions are in effect.
- Other than in conformance with all applicable rules, regulations and orders of the Commission based upon a Commission-approved cost allocation methodology, Avangrid, Iberdrola and any other intermediary holding companies will not charge PNM for a share of executive, management or administrative costs;
- PNM's day-to-day operations will be conducted by PNM's local management and employees, and PNM's local management will continue to establish company priorities and respond to local conditions;
- No PNM employees including PNM's President and senior management will simultaneously hold positions with any upstream affiliated interest.

- Any amendments or changes to the dividend policy must be approved by a majority vote of the directors that also includes the affirmative vote of a majority of independent and disinterested directors;
- The Compensation Committee of the PNM Board of Directors shall have sole responsibility to set the compensation and benefits for all directors and officers of PNM, in accordance with the provisions of this Stipulation. The Compensation Committee will be made up exclusively of the three independent and disinterested directors;
- Joint Applicants will establish a Lead Independent Director position, designated and elected solely by the independent board members. The position of Lead Independent Director will be designed to promote strong, independent oversight of the Company's management and affairs. The Lead Independent Director will:
 - jointly establish meeting schedules with the Chair to ensure sufficient time for discussion of all agenda items;
 - chair all meetings of the independent directors, including the independent directors' compensation committee, and preside at all meetings of the Board in the absence of the Chair;
 - in consultation with the Board, retain independent advisors and consultants on behalf of the Board;
 - facilitate the annual self-evaluation of the Board and Board committees;

-- serve as a liaison for communications between (1) management and the independent directors, and (2) the Board and other interested parties; and

-- perform such other duties as the Board may from time to time delegate.

- PNM's headquarters will remain in Albuquerque, New Mexico for so long as Avangrid, Iberdrola or any parent company or any affiliated interest owns PNM.
- This provision shall not be construed as agreement by any Party concerning the prudence of any costs associated with the Board of Directors.
- After closing of the Proposed Transaction, the Commission may initiate a management audit of PNM, to be performed by a consulting firm chosen by and under the direction of the Commission to review the impacts of the merger's Class II Transactions upon PNM's local management of the utility, including the conduct of PNM's day-to-day operations and establishment of company priorities in response to local conditions, consistent with the Commission's regulations governing the General Diversification Plan (17.6.450.10(C)(8) NMAC). The costs of this audit will be borne by PNM shareholders and not recoverable from ratepayers.
- For the formation of any holding company, PNM will not pay excessive dividends to the holding company, and the holding company will take no action that will have an adverse and material effect on the public utility's

service and rates. The public utility will obtain prior Commission approval for any PNM investment in an affiliated interest.²

- ~~○ PNM's Board of Directors will have decision-making authority over PNM dividend policy, issuance of dividends (except for contractual tax payments), debt issuance, capital expenditures, management and services fees, PNM director and officer compensation and benefits, and operation and maintenance expenditures;~~
- ~~○ PNM's Board of Directors will be comprised entirely of New Mexico residents, at least 40% of whom (e.g., 2 of 5 or 3 of 7 directors) shall qualify as "independent" as defined in the rules and regulations of the New York Stock Exchange and "disinterested" as defined as follows: A disinterested director will qualify as independent in all material respects in accordance with the rules and regulations of the New York Stock Exchange (NYSE) (which are set forth in section 303A of the NYSE-listed company manual) from Avangrid, and its subsidiaries or affiliated entities and any entity with a direct or indirect ownership interest in PNM, will have no material relationship with Avangrid or Iberdrola or their subsidiaries or affiliated entities or any entity with a direct or indirect ownership interest in PNM, currently or within the previous five years, and will have no ownership interest, including shares (over which they have control to buy or sell), in PNM, Avangrid, Iberdrola, NM GREEN HOLDINGS, Inc. or any affiliated company and/or subsidiary of any~~

² The amendments to Regulatory Commitment 17 above are adopted from the recommendations in Mr. Gorman's July 16 testimony in addition to changes recommended in Section VI.G.2 of the Certification.

~~of the aforementioned companies or their parent companies or any company or holding company that is created after the acquisition;~~

- ~~○ Local management will continue to have day-to-day control over PNM's operations;~~
- ~~○ PNM's Board of Directors meetings will be held in New Mexico or virtually;~~
- ~~○ Other than in conformance with all applicable rules, regulations and orders of the Commission based upon a Commission approved cost allocation methodology, Avangrid, Iberdrola and any other intermediary holding companies do not intend to charge PNM for a share of executive, management or administrative costs;~~
- ~~○ PNM's day-to-day operations will be conducted by PNM's local management and employees, and PNM's local management will continue to establish company priorities and respond to local conditions;~~
- ~~○ PNM's Board of Directors, including the affirmative vote of a majority of independent and disinterested directors, will have the sole right to determine dividends, except for contractual tax payments;~~
- ~~○ Any amendments or changes to the dividend policy must be approved by a majority vote of the directors, including the affirmative vote of a majority of independent and disinterested directors;~~
- ~~○ The independent and disinterested directors, acting by majority vote (i.e., if there are only two independent and disinterested directors, both must agree for a vote to constitute a "majority"), shall have the authority to prevent PNM from making any dividend, except for contractual tax payments, if they determine that it is in the best~~

~~interest of PNM to retain such amounts to meet expected future requirements of PNM;~~

~~○ The Compensation Committee of the PNM Board of Directors shall have sole responsibility to set the compensation and benefits for all directors and officers of PNM, in accordance with the provisions of this Stipulation. The Compensation Committee will be made up exclusively of the three independent and disinterested directors;~~

~~○ PNM's headquarters will remain in Albuquerque, New Mexico for so long as Avangrid owns PNM; and~~

~~○ This provision in the Stipulated Regulatory Commitments shall not be construed as agreement by any Party to the Stipulation concerning the prudence of any costs associated with the Board.~~

18. Authorized Purpose of PNM. The sole authorized purpose of PNM shall be the provision of electric utility service and the performance of activities reasonably necessary and appropriate thereto.

19. Best Interests of PNM and Customers. The Board of Directors and officers of PNM are obligated to act in the best interests of PNM and its customers, consistent with the terms of this settlement and order.

20. Extinguishment of Debt. Avangrid will extinguish all debt at PNMR, reducing it to zero within 90 days following the closing of the Proposed Transaction and maintaining it at zero going forward for as long as Avangrid has an indirect ownership interest in PNMR unless authorized in advance by the Commission.

21. **Terminations and Reductions of Wages or Benefits.** Joint Applicants commit that there will be no involuntary terminations except for cause or performance (other than those associated with the planned closure of the San Juan Generating Station) and no reductions of wages or benefits to union or non-union employees for a minimum of three years following the closing of the Proposed Transaction. The Joint Applicants also commit that the following jobs, that are currently located in New Mexico, will not be moved out of the State and will continue to be performed by PNM utility employees to the extent they currently are, for as long as Avangrid/Iberdrola or any affiliated interest or holding company owns PNM: regulatory matters, engineering, system planning, transmission and distribution system maintenance, call center and customer facing, and system dispatch and control. Job numbers with job descriptions will be provided to the NMPRC at the end of the three years following the merger and in the three subsequent rate cases that follow the approval of the Proposed Transaction.
22. **Collective Bargaining Agreement and Pension.** Joint Applicants will honor PNM's current collective bargaining agreement and will use good faith in any future collective bargaining agreement negotiation. Within six (6) months following closing of the Proposed Transaction, PNM will study the pension for union employees to evaluate whether the pension is fully funded, and will work with the union to ensure that the pension remains fully funded.
23. **~~Affiliate~~ Affiliated Interest Lending and Borrowing.** Joint Applicants commit that PNM will not lend money to or borrow money from any of its ~~affiliates~~ affiliated interests, other than as permitted by the Commission.

24. **~~Affiliate~~ Affiliated Interest Credit Facilities.** Joint Applicants commit that PNM will not share credit facilities with any ~~affiliates~~ affiliated interests other than as approved by the Commission.
25. **~~Affiliate~~ Affiliated Interest Cross-Default Provisions.** Joint Applicants commit that PNM will not include in any of its debt or credit agreements cross-default provisions relating to any of its ~~affiliates~~ affiliated interests. Under no circumstances will any debt of PNM become due and payable or otherwise be rendered in default because of any cross-default, financial covenants, rating agency triggers or similar provisions of any debt or other agreement of any of its ~~affiliates~~ affiliated interests.
26. **~~Affiliate~~ Affiliated Interest Material Asset Transfers.** Joint Applicants commit that PNM will not acquire or transfer material assets from or to any of its ~~affiliates~~ affiliated interests, except on an arm's length basis, and except with prior Commission approval, in accordance with the Commission's ~~affiliate~~ affiliated interest transaction standards and requirements.
27. **Stand-Alone Bond Credit and Debt Ratings.** Joint Applicants commit to take the actions necessary to ensure the existence of PNM's standalone bond credit and debt ratings. PNM will, except as otherwise approved by the Commission, be registered with at least two nationally recognized statistical ratings organizations that are registered with the United States Securities and Exchange Commission, which must include two of Moody's, Fitch, or Standard and Poor's. The Joint Applicants shall take the actions necessary to ensure that PNM's credit ratings reflect the ring-fence provisions adopted in this order such that the credit rating agencies provide PNM with a standalone credit rating. These credit rating

agencies are specifically identified for the purposes of this paragraph as Moody's, Standard & Poor's, and Fitch.

28. Restrictions on Dividends or Distributions Related to Debt Rating. Joint Applicants

commit that PNM will not pay dividends or distributions, except for contractual tax payments, at any time that PNM's debt rating is below BBB or its equivalent with any of the credit-rating agencies, unless approved by the Commission in a proceeding opened for that purpose. PNM shall notify the Commission within five days if PNM's credit rating falls to an investment grade credit rating below BBB (or its equivalent) with any of the credit-rating agencies. PNM's notice shall include an action plan to improve an investment grade credit rating below BBB (or its equivalent). PNM's total balance sheet debt, including short-term debt, measured using a trailing 13-month average, will be included in this action plan for informational purposes. For purposes of this paragraph, references to credit rate agencies include Moody's, Standard & Poor, and Fitch or successor firms. ~~Joint Applicants commit that PNM will not pay dividends or distributions, except for contractual tax payments, at any time that PNM's debt rating is at BBB or its equivalent with any of the credit-rating agencies with a negative watch, unless approved by the Commission in a proceeding opened for that purpose. PNM shall promptly notify the Commission if PNM's credit rating falls to an investment grade credit rating of BBB with a negative watch (or its equivalent) with any of the credit-rating agencies.~~

29. Dividend Payment Limitation. PNM will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income as determined in accordance with GAAP. PNM, however, shall be permitted to rollover under-utilized

dividend capacity to subsequent periods for payment for the number of years the Commission allows for rollovers.

30. **Minimum Common Equity Ratio.** PNM shall maintain a minimum common equity ratio (measured using a trailing 13-month average) in compliance with the equity ratio established from time to time by the Commission for ratemaking purposes. In every general rate case following the approval of the Proposed Transaction, PNM will include in its rate schedules for the base and test year periods all short-term borrowings, notes payable and other agreements which are regarded as debt instruments by any of the credit rating agencies identified in Paragraph 28, above. PNM will make no payment of dividends, except for contractual tax payments, where such dividends would cause PNM to be below the Commission approved equity ratio (measured using a trailing 13-month average). ~~PNM shall maintain a minimum common equity ratio (measured using a trailing 13-month average) in compliance with the equity ratio established from time to time by the Commission for ratemaking purposes. The equity ratio shall be calculated in the same manner as used by the Commission in PNM's most recent rate case. The minimum equity ratio will start with the Commission approved ratemaking equity ratio set by the Commission in PNM's most recent rate case. PNM will make no payment of dividends, except for contractual tax payments, where such dividends would cause PNM to be below the Commission approved equity ratio (measured using a trailing 13-month average).~~

31. **Affiliate Affiliated Interest Pledge Restriction.** Joint Applicants commit that PNM's assets, or revenues shall not be pledged by any of its ~~affiliates~~ affiliated interests for the benefit of any entity other than PNM.

32. **Shared Services.** In Class I transactions involving shared services provided by any Avangrid/Iberdrola ~~affiliate~~ affiliated interest to PNM or through PNMR to PNM, PNM shall file for the PRC's approval of such shared services and the Cost Allocation Manual for each such ~~affiliate~~ affiliated interest. PNM's request for approval of shared services from Avangrid/Iberdrola ~~affiliates~~ affiliated interests shall include the requested accounting requirements for such shared services, consistent with the Federal Energy Regulatory Commission's ("FERC") uniform system of accounts, including applicable restrictions on the exchange of competitively sensitive, proprietary data.
33. **Incremental New Debt.** Without prior approval of the Commission, neither Avangrid nor any ~~affiliate~~ affiliated interest of Avangrid (excluding PNM) will incur, guaranty, or pledge PNM assets in respect of any incremental new debt at the closing of the Proposed Transaction or thereafter that is dependent on: (1) the revenues of PNM in more than a proportionate degree than the other revenues of Avangrid; or (2) the stock of PNM.
34. **Independent Evaluator.** Whenever PNM proposes a procurement of energy resources, power supply, energy storage, and related generation facilities intended to become a part of utility plant in service (Energy or Storage RFP), including whenever an affiliated interest expresses interest in participating in an RFP for a Class I transaction or any extension of an existing affiliated interest power purchase agreement through a repowering or otherwise, an Independent Evaluator ("IE") will be retained for the benefit of the Commission in order to ensure a fair RFP process and that there is no favoritism in the evaluation of proposals and selection of the winning bidder(s). Within thirty days from closing of the Proposed Transaction, and thereafter in PNM's annual reports pursuant to Rule 17.3.510 NMAC, PNM shall provide the Commission with a list of qualified entities

from which an IE may be selected; provided that if the Commission has not selected an IE within 90 days of submittal of the list of qualified entities, PNM shall select an IE from the list in order to ensure an IE is available to timely review any proposed procurements. PNM shall include in its preparation of the list of qualified IE entities at least three candidates as may be proposed by parties in PNM's most recent resource procurement case. The IE shall be retained on behalf of the Commission and the IE shall report to the Commission, and paid for by PNM. PNM shall provide the IE with the RFP and all necessary information during the RFP process, or upon selection of the IE if an RFP process is in progress, in order for the IE to file a report to the Commission within fifteen days of any required application filed by PNM for approval of such procurement. The IE Report shall outline the substance of the RFP process and provide an independent assessment of the development and implementation of the RFP process, including whether the bid proposals were evaluated on a fair, consistent, and comparable basis. The IE shall not have any affiliation with the owner's engineer or other consultant used by PNM in the development and implementation of the RFP process. PNM shall include in its Annual Report its list of qualified IE candidates from which the Commission will select the IE for the following year. Joint Applicants agree that shareholders will pay the cost for the services provided by the IE when an affiliated interest participates in an RFP. To the extent that PNM retains an IE where there is not an affiliated interest participating in the RFP, the parties to the Stipulation agree that all of the reasonable costs of the IE are properly recoverable through PNM rates. All parties will retain rights to oppose any new projects proposed and to oppose any affiliated interest contracts proposed. ~~Upon the effective date of a utility competitive~~

~~procurement rule promulgated by the Commission, this Paragraph shall be superseded by such rule and shall no longer be in force or effect.~~

~~Whenever PNM proposes a procurement of energy resources, power supply, energy storage, or any related utility equipment intended to become a part of utility plant in service (Energy or Storage RFP), including whenever an affiliate expresses interest in participating in an RFP for a Class I transaction or any extension of an existing affiliate power purchase agreement through a repowering or otherwise, PNM will choose and retain an Independent Evaluator ("IE") in order to ensure a fair RFP process and that there is no favoritism in the evaluation of proposals and selection of the winning bidder(s). The IE shall be retained on behalf of the Commission and shall report to the Commission. PNM shall provide the IE with the RFP and all necessary information during the RFP process in order for the IE to file a report to the Commission within fifteen days of any required application filed by PNM for approval of such procurement. The IE Report shall outline the substance of the RFP process and provides an independent assessment of the development and implementation of the RFP process, including whether the bid proposals were evaluated on a fair, consistent, and comparable basis. The IE shall not have any affiliation with the owner's engineer or other consultant used by PNM in the development and implementation of the RFP process. PNM shall include in its Annual Report its list of qualified IE candidates from which PNM will select the IE for the following year. Joint Applicants agree that shareholders will pay the cost for the services provided by the IE when an affiliate participates in an RFP. To the extent that PNM retains an Independent Evaluator where there is not an affiliate participating in the RFP, the parties to the Stipulation agree~~

~~that all of the reasonable costs of the Independent Evaluator are properly recoverable through PNM rates. All parties will retain rights to oppose any new projects proposed and to oppose any affiliate contracts proposed.~~

35. **~~Affiliate~~ Affiliated interest Contracts Other Than Shared Services.** Joint Applicants commit that PNM will implement policies with respect to existing and/or potential future ~~affiliate~~ affiliated interest contracts that would accomplish the following:

- PNM has the burden of proving that any new ~~affiliate~~ affiliated interest transactions are based on reasonable charges for services rendered and that the services received benefit ratepayers;
- No PNM ~~affiliate~~ affiliated interest can obtain a new ~~affiliate~~ affiliated interest power purchase agreement (“PPA”) with PNM or an extension of an existing ~~affiliate~~ affiliated interest Purchase Power Agreement (including through repowering) without winning a competitive RFP (with an Independent Evaluator) with evidence of direct head-to-head competition with non-Iberdrola or non-Avangrid ~~affiliates~~ affiliated interests, and will be subject to obtaining Commission approval;
- Any information that PNM provides to its ~~affiliate~~ affiliated interest with respect to any such RFP (including with respect to any extension of an existing PPA, such as through a repowering) must simultaneously be provided to all bidders;
- No other non-public information about a competitive RFP (including with respect to any extension of an existing PPA, such as through a repowering) will be shared between PNM and ~~affiliates~~ affiliated interests at any time, unless as described in this paragraph;

- All executed contracts between PNM and any affiliated interest must be managed and enforced on an arm's length basis as if they were contracts with a non-affiliated interest entity; and
- PNM and Avangrid will comply with all ~~affiliate~~ affiliated interest transaction requirements under New Mexico and federal laws and regulations.

36. Reliability and Safety. Joint Applicants commit that:

- PNM will invest in its system to ensure reliability and safety;
- The Service Reliability Standards, Reporting Requirements and Penalties in Attachment 1 are hereby incorporated into this Stipulation.
- PNM will continue to invest in its transmission and distribution system to ensure standards of utility service to customers are consistent with industry established metrics for reliability and safety. PNM will maintain minimum capital investments in transmission and distribution infrastructure equal to the remaining four years of PNM's current five-year budget for 2021-2025, subject to adjustments necessary for new service related to economic development projects, transmission and distribution interconnection projects and any general economic conditions that affect new service needs; and provided that recovery of such investments shall be subject to Commission approval in ratemaking proceedings.
- Joint Applicants agree to do a power quality and service quality study for customers 10 MW and larger within twelve months from the final order in this case, or as agreed to with customers, and share the results of that study with the customers. After the results of the power and service quality study are analyzed, Joint

Applicants agree to work with customers to resolve the power and service quality issues.

- In each of the next three rate case subsequent to the approval of the Proposed Transaction, PNM will report on the number of full time employees and contract workers it believes are needed to fulfill this commitment and any material changes (plus or minus 10%) may make to that number during the time that the proposed rates will be in effect. PNM shall designate one or more customer service representative(s) to provide customer support for large customers whose monthly demand is greater than 3 MW and shall identify for large customers their assigned customer representative. The designated customer service representative(s) shall assist the large customers assigned to them in addressing service reliability issues, service quality studies, and other technical matters relating to those customers' accounts.
- The Joint Applicants commit that they will ensure that there will be no material diminution in current levels of quality of customer service or system reliability for as long as Avangrid, or an affiliated interest, owns PNMR and PNM.
- ~~The Joint Applicants commit that PNM will file a detailed report with the Commission by April 1 of each year identifying the system-wide SAIDI and SAIFI performance and identifying the SAIDI and SAIFI performance for each feeder that serves 10 or more customers. PNM will provide information by feeder for SAIFI and SAIDI separately. PNM will provide the information by feeder by rank order from worst performing to best performing feeders for the reporting year and will include each feeder's ranking for that index for the previous year.~~

- ~~○ The system-wide standards will be the average SAIDI and SAIFI based on the five-calendar year period for 2016-2020, identified as the base period. Within 180 days of submitting its annual service reliability report, PNM will develop and submit a plan to address the service reliability issues for any distribution feeders that have SAIFI or SAIDI indices that are in the worst 10% of reported feeders for four or more consecutive years. The plan shall provide the estimated cost and benefit or remediating a feeder's performance and shall also include a feeder performance improvement plan for any distribution feeder with ten or more customers that sustains a SAIDI or SAIFI value for a reporting year that is more than 300% greater than the system average of all feeders during any two consecutive reporting years.~~
- In addition to the enforcement measures in Attachment 1, any person, including the ~~Utility Division~~ Staff, may petition the Commission for appropriate enforcement action regarding the stipulated reliability performance standards, including proposed fines or penalties, taking into consideration a distribution feeder's operation and maintenance history, causes of service interruptions, PNM's responsive actions, and any other relevant factors.
- PNM will meet with representatives from the Commission's Consumer Relations Division and Utility Division Staff to establish a list of other appropriate customer service quality indices and reliability standards and file a report with the Commission as part of its Rule 17.3.510 NMAC annual report that reflects its performance based on these measures. Joint Applicants also commit to work with Staff to support the initiation of a Commission rulemaking proceeding to create

customer service quality standards and reliability standards based upon the average SAIDI and SAIFI with appropriate enforcement provisions for under-performance.

- PNM agrees that, for as long as Avangrid or any ~~affiliate~~ affiliated interest owns PNM, it will retain a sufficient number of dedicated operations and maintenance employees to ensure that it can promptly respond to service calls, outages, distribution line knock-downs, substation issues, and similar service issues.

37. Maintenance of Books, Records, and Accounts. Joint Applicants commit that PNM will maintain accurate, appropriate, and detailed books, financial records (including upon request, audited financials), and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.

38. Access to Books, Records, and Accounts and Audits. Joint Applicants commit that the Commission and its Staff will have access to the books, records, accounts, or documents of PNM, its corporate subsidiaries, and its holding companies, including PNMR, Networks, Avangrid, and Iberdrola, pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19. In the event the Commission determines it is necessary to conduct an audit of books, records, accounts, or documents of PNM, its corporate subsidiaries and its holding companies, including PNMR, Avangrid Networks, and Iberdrola, the costs of the audit shall be treated as a regulatory asset, with such carrying costs as may be set by the Commission in its order authorizing the audit and shall be recoverable in PNM's rates; provided that the costs of any audit that finds imprudent practices shall not be recovered from customers.

39. Name and Logo. PNM will maintain a separate name and logo from Avangrid, Iberdrola, and all other Avangrid and Iberdrola subsidiaries and ~~affiliates~~ affiliated interests, but may

also include the same Avangrid name and logo for branding (e.g., “an Avangrid company”).

40. **Dividend Notice.** PNM will provide at least 30 days’ notice to the Commission before making any dividend payments. The notice will include the amount of the proposed dividend, the proposed pay-out ratio, and historic pay-out ratios for the preceding three years.

41. **Restriction on ~~Affiliate~~ Affiliated Interest Commingling.** Except insofar as the Commission may authorize PNM to participate in the Avangrid Networks shared credit facilities or ~~affiliate~~ affiliate interest money pool, PNM shall not commingle its funds, assets, or cash flows with its ~~affiliates~~ affiliate interests.

42. **Regional Transmission Organization.** In recognition of the potential benefits to New Mexico and PNM's customers of PNM joining a Regional Transmission Organization or Independent System Operator (“RTO”), including the implementation of open and competitive electric generation markets, elimination of barriers to market entry and preclusion of control of bottleneck electric transmission facilities in the provision of retail and wholesale electric service, Joint Applicants shall use all reasonable efforts to find or participate in the development of a viable RTO that it can join by January 1, 2030, or as soon thereafter as possible, subject to Commission review and approval. As soon as possible following the completion of the merger, but not later than January 1, 2022, PNM will organize and convene an RTO stakeholder initiative, to include representatives of Staff, the Attorney General and interested organizations, to develop and initiate the process by which PNM will explore and participate in the development of an RTO. PNM will communicate the progress of its exploration and development activities on a regular basis

to the members of the stakeholder initiative and the ~~Utility Division~~ Staff. PNM will also participate in and report on any other organized efforts to form an RTO that it could potentially join. PNM will work with stakeholders, including Staff, the NM AG, to determine if joining the RTO is in the best interests of customers and the State. The Commission shall make the final determination as to whether joining an RTO is in the public interest, including the interests of customers and the State. Participation in the Western EIM, EDAM, or other similar market would not constitute participation in an RTO. Any party may support or oppose PNM jointing an RTO, and their failure to participate in the RTO planning process will not foreclose any party's position on the issue in the future.

43. **Carbon Reduction Task Force.** In recognition of the importance of meeting PNM's carbon reduction goals, the Joint Applicants will create a task force within one month following closing of the Proposed Transaction to include stakeholder representatives of environmental interests, clean energy industry representatives, consumer interests and state agencies (NMED, EMNRD, NM AG, NMPRC) ("PNM Carbon Reduction Task Force") to ensure that PNM will not only meet but exceed its zero carbon goals by achieving net zero emissions by or before 2040, and if feasible and otherwise in the public interest, 2035. PNM shall seek opportunities and apply for all available and feasible federal and private funding and grants to leverage outside funding sources to achieve carbon reduction goals, and report to the Carbon Reduction Task Force at each meeting. PNM shall have a dedicated full-time employee who will identify and with the assistance and support of PNM, apply for third party funding opportunities. Within 6 months following the creation of the PNM Carbon Reduction Task Force, and each six-month period thereafter until 2040

(or earlier depending upon when zero carbon goals are achieved), the Joint Applicants will cause PNM to present a workable step-by-step plan to exceed its carbon reduction goals (“Plan”) to the PNM Carbon Reduction Task Force. The PNM Carbon Reduction Task Force will provide comments and suggestions to PNM with respect to its Plan and Joint Applicants will cause PNM to address each and every comment and suggestion and use all reasonable efforts to improve its Plan. The PNM Plan, the Task Force’s comments and suggestions and PNM’s response shall also be filed with the Commission. *In addition, PNM will work with stakeholders to craft reasonable and appropriate New Mexico legislation in 2022 that would create a market-based credit program to achieve reasonable and consistent progress in reducing emissions to meet the ETA’s 2045 decarbonization requirements.** The signatories reserve all positions on all such legislation, and acknowledge that this paragraph does not constitute regulatory endorsement of stakeholder actions and that any party may take an independent position including opposition to any legislation that might be proposed. PNM will also report annually to the stakeholders and file with the Commission the reduction in emissions resulting from the seasonal operations agreement by the joint owners of the Four Corners Power Plant for so long as PNM remains a joint owner. **[*The Hearing Examiner leaves the italicized language for the**

Commission’s review]

44. **Compensation and Carbon Reduction Targets.** ~~The Joint Applicants agree that the carbon reduction goals set forth above are of preeminent importance. Accordingly~~ In recognition of the importance of meeting PNM’s carbon reduction goals, the incentive compensation for all relevant PNM executives will include goals related to the achievement of PNM’s 2040 carbon reduction targets (or earlier depending upon when zero carbon goals

are achieved), including the PNM President, and senior executive officers (including Chief Financial Officer and Chief Operating Officer to the extent applicable) responsible for operations, planning, and procurement for power generation, and environmental compliance, as well as other executives that PNM's Board of Directors determine will have a reasonable and achievable impact on carbon reduction. The carbon reduction goals shall also include the maximization of efforts to avoid emission leakage and ensure net reductions in GHG emissions to the atmosphere, by, for example, avoiding merely selling or transferring its interests in carbon-emitting resources as a means of reducing PNM's own emissions (unless the sale or transfer would result in a net decrease of GHG emissions into the atmosphere). The incentive compensation shall be borne by shareholders and will not be included in the PNM's cost of service. All parties reserve all rights with respect to the prudence of any additional expenditures in conjunction with this provision.

- 45. Contract Impacts On Emissions.** For the five calendar years following closing of the Proposed Transaction, the Joint Applicants commit that PNM will file a report with the Commission identifying any material emissions impact resulting from any new contracts signed by PNM during each such calendar year. Each such report will be filed as part of PNM's Rule 17.3.510 Annual Report.
- 46. Transportation Electrification.** Joint Applicants commit that PNM will triple its proposed transportation electrification plan budget that would be included in its next transportation electrification plan that will be filed with the Commission, subject to Commission review and approval. The dedicated PNM employee responsible for seeking third-party funding referenced in Section 43 above will also be responsible for seeking

grants and funds for transportation electrification to assist PNM in the build-out of transportation electrification, including low-income offerings, which will reduce amounts that PNM may seek to reflect in rates. All parties to this stipulation reserve the right to challenge the increase of this proposed transportation electrification plan budget in PNM's transportation electrification plan filing. Regulatory Commitment 46 will be subject to any individual rate cap for TEP programs set by the Commission.

47. Renewable Resources Development. Avangrid commits to have one or more ~~affiliates~~ affiliate interests (other than PNM) work with the Navajo Nation toward the development of one or more renewable energy and/or energy storage projects on Navajo Nation land of no less than 200 MW within 2 years of the closing of the Proposed Transaction. Nothing in this section is intended to modify or interfere with any existing PNM request for proposal. Nothing in this section is intended to establish a preference by PNM for the selection of any such projects in any existing or future PNM competitive RFP process that requests resources to replace any existing PNM resources relied on by PNM to provide retail service to its New Mexico customers or to otherwise meet PNM's retail service needs or any preference by the Commission to approve any such projects if proposed in response to a competitive PNM RFP process.

48. PNM Environmental Studies. Within one year following closing of the Proposed Transaction, PNM will submit to the Commission and stakeholders the following studies regarding: (a) the infrastructure requirements resulting from projected electric vehicle demands; (b) efforts needed to decarbonize commercial buildings in its service territory by 2040; and (c) efforts needed to reach 1.5% annual incremental energy efficiency savings

in its service territory. PNM will not request rate recovery from ratepayers for the cost of the studies.

49. Chief Environmental Officer. By no later than December 1, 2022, PNM will name a Chief Environmental Officer with significant environmental and climate change experience responsible for meeting PNM's carbon reduction goals. The Chief Environmental Officer will report directly to the PNM President and will present (no less than once each year) to the PNM Board of Directors on PNM's carbon reduction plans and progress. All parties reserve all rights with respect to the prudence of any executive compensation with respect to this new position.

50. Transmission Plan. Within one year following closing of the Proposed Transaction, PNM shall develop and complete a 20-year long-term transmission plan for PNM's transmission system, which PNM will subsequently update and shall include in all future Integrated Resource Plans (IRPs) filed with the Commission. Based on the most recently available forecasted future system conditions, the long-term transmission plan will identify the expected material transmission needs of PNM to support the Most Cost Effective Portfolio(s) of its IRP and the year in which PNM projects the transmission need might be most cost-effectively met. It will also identify each reasonable alternative available to PNM to meet transmission needs including transmission projects that reasonably could be pursued by PNM itself, and publicly identifiable transmission projects known to PNM that could be pursued with other electric utilities in the region or merchant project developers. The plan will identify the most cost effective group of transmission projects that may reasonably meet PNM's transmission needs for reliability and renewable generation integration. In each IRP, PNM shall update the Transmission Plan. PNM shall also

include, and separately identify, ~~and shall include~~ the results of any feasible scenario modeling requested by the Carbon Reduction Task Force with each updated Transmission Plan. As part of each IRP reviewed with public advisory participants and filed with the Commission, PNM shall include the following in its Transmission Plan: (a) PNM shall report its publicly disclosable existing transmission capabilities, and projected future needs during the planning period, for facilities of 115 kilovolts and above, including associated substations and terminal facilities. PNM shall generally identify the location and extent, to the extent publicly disclosable, of transfer capability limitations on its transmission network that may affect the future siting of resources; (b) With respect to future needs, PNM shall submit a description of all new transmission lines and related facilities that are reasonably projected to be placed into service during the action plan period; (c) For each such transmission line and related facility identified, PNM shall include a description of the transmission line's length and location, estimated in-service date, injection capacity, estimated costs, terminal points, and voltage and MW rating; and (d) PNM shall include a report on coordination with other utilities within and outside of New Mexico regarding transmission planning.

51. **Solar Direct Program.** The Joint Applicants commit that, within six months following the closing of the Proposed Transaction, they will work with stakeholders, including large users and governmental customers to develop a second renewable energy resource and participation tranche for the Solar Direct program to be filed within one year of closing. The Joint Applicants also commit to expand voluntary renewable energy programs and green tariffs, subject to Commission approval, as a means of promoting economic development.

52. Current Tariffs and Contracts and Other Proceedings. Joint Applicants agree to honor and support existing green tariffs and all contracts between PNM and current customers. The parties and intervenors in this case reserve all rights in all other dockets in which PNM is a party. Specifically, nothing in this Stipulation shall affect the rights or limit the positions of any party in Case No. 21-00017-UT regarding any matter or issue in that case or any future case relating to the Four Corners Power Plant. The Parties agree that until closing of the Proposed Transaction, either a non-decision or a dismissal of Case No. 21-00017-UT will not affect this merger. Events that occur after closing of the Proposed Transaction in that Case No. 21-00017-UT will not be deemed to have an impact on the merger.

53. PNM's 2020-2039 Integrated Resource Planning and Case No. 21-00083-UT Resource Modeling Information. PNM will supplement its 2020 IRP filed in Case No. 21-00033-UT at least ten business days prior to the deadline for submittal of public comments on that IRP, as currently filed with the Commission in that docket to i) clarify that feasible new resource technology options PNM will consider to meet the resource adequacy requirements and reliability criteria and satisfy PNM's goal of a carbon-free portfolio by 2040 described in that IRP include heavy frame combustion turbines, including such resources currently available to PNM under existing power purchase agreements with PNM that expire prior to December 31, 2039, with or without modifications that would provide such resources with fast-start capacity, that would not be relied on by PNM for retail service after December 31, 2039 unless modified to be fueled thereafter by a non-CO₂ emitting fuel; and 2) provide portfolios in its Appendices that include modeling of an existing heavy frame combustion turbine located in PNM's northern New Mexico load center, with and

without fast-start capacity, that would operate only until December 31, 2039, based on the owner's proposals, including firm pricing, submitted to PNM in response to its June 25, 2020 RFP, that relies on the same cost and other inputs relied on by PNM in that IRP to model its other feasible resource options. Through the discovery process in Case No. 21-00083-UT, PNM agrees to produce, upon request by any party, modeling runs of resource portfolios that include modeling of an existing heavy frame combustion turbine located in PNM's northern New Mexico load center, with and without fast-start capacity, that would not operate after December 31, 2039, based on the owner's proposals, including firm pricing, submitted to PNM in response to its June 25, 2020 RFP that relies on the same cost and other inputs relied on by PNM to model its other feasible resource options to meet its service needs. To the extent such PNM modeling runs disclose specific bidder pricing or other competitively-sensitive information, PNM will only disclose such information to persons who execute and file a confidentiality agreement as required by the protective order issued by the Commission in that case. Nothing in this section shall obligate PNM or other Signatories to endorse or propose any of the above-described informational bids, proposals, resource portfolios or model runs in any pending or future PNM resource planning or procurement cases, nor prevent PNM, other Signatories, or other parties from presenting their own positions to the Commission with regard to that information in those cases. Moreover, nothing in this section shall be interpreted to impair or conflict with Joint Applicants' sections 43 and 44 commitments for PNM to achieve net-zero emissions by or before 2040, and by 2035 if feasible and otherwise in the public interest.

54. Enforceability of Stipulated Commitments. Joint Applicants and, as applicable, Iberdrola, will fulfill all merger commitments. For the five years following the closing of

the Proposed Transaction, PNM will submit with its Annual Report³ a report detailing the progress Joint Applicants have made toward meeting each Stipulated Regulatory Commitment. Joint Applicants shall include in that Annual Report information about the capital structure of PNM and the composition of the Board of Directors of PNM (and any changes to each from the previous Annual Report). Joint Applicants acknowledge and agree that to the extent that there is any failure to meet each Stipulated Regulatory Commitment, any stakeholder or the Commission may initiate a proceeding to enforce the merger commitments and Joint Applicants will be subject to potential consequences, including the penalties provided for pursuant to NMSA 1978, Section 62-12-4.

55. Effectiveness, Amendments and Modifications. These regulatory commitments will become effective upon Commission approval. Any amendments or modifications to these regulatory commitments will require prior Commission approval.

56. San Juan Decommissioning. PNM will use its good faith efforts to work with the San Juan Generating Station (“SJGS”) owners and former SJGS owners who have an obligation to participate in decommissioning the SJGS to identify and present feasible options for commercially reasonable actions, available under the terms of the SJGS contracts and consistent with the established decommissioning agreement, that would allow decommissioning options, including decommissioning, demolition and site restoration of the SJGS site to standards applicable to ongoing economic development, commercial and industrial uses of the SJGS plant site, at a cost comparable to the lowest reasonable cost alternative identified in the owners’ most recent decommissioning study that applies a whole-life cost analysis

³ 17.3.510.12 NMAC.

57. **Controlling Law.** All provisions of this document are subject to, and are governed by New Mexico law and shall be addressed in New Mexico venues.

ATTACHMENT 1

Service Reliability Reporting Requirements and Penalties for Public Service of New Mexico

Service Reliability Standards, Reporting Requirements and Penalties

(a) General.

- (1) Public Service Company of New Mexico ("PNM") shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, PNM shall re-establish service within the shortest possible time.
- (2) PNM shall make reasonable provisions to manage emergencies resulting from failure of service and shall instruct its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.
- (3) PNM shall maintain adequately trained and experienced personnel throughout its service area so that PNM is able to comply with these service reliability standards fully and adequately.

(b) Reliability Indices Monitored.

- (1) System Average Interruption Frequency Index (SAIFI) - The number of times that an average customer experiences a sustained outage over a one-year period. SAIFI is calculated by summing the number of customers interrupted for each event and dividing by the total number of customers on the system being indexed. A lower SAIFI value represents a higher level of service reliability.
- (2) System Average Interruption Duration Index (SAIDI) - The total duration of interruptions for the average customer during a one-year period. SAIDI is calculated by summing the restoration time in minutes for each interruption event times the number of customers interrupted for each event, and dividing by the total number of customers. A lower SAIDI value represents a higher level of service reliability.

(c) Record of Interruptions. PNM shall keep complete records of sustained interruptions of all classifications. Where possible, PNM shall keep a complete record of all momentary interruptions. These records shall show the type of interruption, the cause for the interruption, the date and time of the interruption, the duration of the interruption, the number of customers interrupted, the substation identifier, and the transmission line or distribution feeder identifier. In cases of emergency interruptions, the remedy and steps taken to prevent recurrence shall also be recorded. PNM shall retain records of interruptions for five years.

(d) System Reliability. A "reporting year" is the 12-month period beginning January 1 and ending December 31 of each year.

- (1) PNM shall file a report with the Commission by April 1 of each calendar year identifying the system-wide SAIDI and SAIFI performance and identifying the SAIDI and SAIFI performance for each feeder that serves 10 or more customers.

PNM will provide information by feeder for SAIFI and SAIDI separately. PNM will provide the information by feeder by rank order from worst performing to best performing feeders for the reporting year and will include the feeders' ranking for that index for the previous year. Reliability data reported will be developed based on definitions established in Institute of Electrical and Electronics Engineers ("IEEE") Standard 1366-2003. The system-wide reliability report will be consistent with the reliability information PNM has historically reported annually pursuant to Paragraph 26 of the Stipulation in NMPRC Case No. 04-00315-UT.

(2) System-wide performance standards. The standards will be PNM's average system SAIFI and SAIDI performance from the base period comprised of the reporting years 2010 through 2020 ~~2013 through 2017~~. Furthermore,

(A) PNM shall maintain and operate its electric distribution system so that its SAIFI value does not exceed its system-wide SAIFI standard by more than 10.0%.

(B) PNM shall maintain and operate its electric distribution system so that its SAIDI value does not exceed its system-wide SAIDI standard by more than 10.0%.

(C) PNM can petition the Commission to modify the base period to a more current five-year period, (i) if PNM can demonstrate the weather in the base period is no longer representative or (ii) if PNM implements ~~for~~ improvements in data acquisition systems and PNM is able to demonstrate the new system significantly impacts its reported reliability performance.

(3) Distribution feeder performance standards. The Commission will evaluate the performance of distribution feeders with ten or more customers after each reporting year. PNM shall maintain and operate its distribution system so that no distribution feeder with ten or more customers ~~has~~ produces an annual SAIDI or SAIFI value, separately, that is in the worst 10% of all reported distribution feeders for any two or more consecutive reporting years.

(4) Enforcement Provisions. The Commission shall take appropriate enforcement action and assess penalties against PNM if the system and feeder performance is not operated and maintained in accordance with the performance standards defined in subparts (2) and (3) of this section.

(A) System-wide Performance Penalties – PNM will incur a performance penalty if its system SAIFI or SAIDI indices, separately, exceed the system-wide standard by 10% or more for two or more consecutive years. The penalties will be as follows:

(i) A penalty of \$340,000 for each reliability index that exceeds the

standard by more than 10% for two consecutive years. The penalty will increase by \$34,000 for each additional percentage above 10%;

(ii) A penalty of \$510,000 for each reliability index that exceeds the standard by more than 10% for three consecutive years. The penalty will increase by \$51,000 for each additional percentage above 10%; and

(iii) The penalty for each reliability index that exceeds the standard by more than 10% for four or more consecutive years will increase by \$170,000 each consecutive year. The penalties will also increase by \$17,000 each consecutive year for each additional percentage above 10%.

(B) Distribution Feeder Penalties – PNM will incur a performance penalty for each distribution feeder with ten or more customers that sustains a SAIDI or SAIFI value, separately, for a reporting year that is in the worst 10% of all reported distribution feeders during any two or more consecutive reporting years. The penalties for each underperforming feeder will be as follows:

(i) A penalty of \$12 per customer served for each reliability index that exceeds the standard by more than 10% for two consecutive years;

(ii) A penalty of \$18 per customer served for each reliability index that exceeds the standard by more than 10% for three consecutive years; and

(iii) A penalty of \$24 per customer served for each reliability index that exceeds the standard by more than 10% for four or more consecutive years.

(C) Within 90 days of submitting its annual service reliability report, PNM must develop and file a plan to correct the service reliability issues for any distribution feeders that have SAIFI or SAIDI indices that are in the worst 10% of reported feeders for four or more consecutive years.

(D) In determining the appropriate enforcement action, the Commission may consider:

- (i) a feeder's operation and maintenance history;
- (ii) the cause of each interruption in a feeder's service;
- (iii) any action taken by PNM to address a feeder's performance;
- (iv) the estimated cost and benefit of remediating a feeder's

performance; and

(v) any other relevant factor as determined by the Commission.

(E) The combined assessment for system-wide and feeder performance penalties will be credited ~~refunded~~ to all of PNM's retail distribution customers. Upon recommendation by Staff, the Commission may elect to waive payment of the performance penalty in lieu of a shareholder contribution to system improvements in an equal amount.

Appendix 3

Joint Applicants' General Diversification Plan (as proposed on June 18, 2021)

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

PUBLIC SERVICE COMPANY OF NEW MEXICO'S
2021 GENERAL DIVERSIFICATION PLAN
(Redline Update as of 6-18-2021)

In accordance with 17.6.450 NMAC (“Rule 450”), Public Service Company of New Mexico (“PNM”) submits its 2021 General Diversification Plan (“2021 GDP”) in connection with the proposed change in holding company structure for PNM. A previous General Diversification Plan was approved by the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) on June 28, 2001 in NMPRC Case No. 3137, as amended by order issued December 18, 2001, and as thereafter revised in Case Nos. 04-00315-UT (collectively, the “Case 3137 GDP”). The Case 3137 GDP was approved in furtherance of the formation of a public utility holding company structure with PNM Resources, Inc. as the parent holding company. This 2021 GDP is intended to replace and supersede the previous Case 3137 GDP. The 2021 GDP describes the steps that will result in PNM having additional public utility holding companies and provides the information and representations required by Rule 450.10(B).

2021 GENERAL DIVERSIFICATION PLAN EXHIBITS

- | | |
|----------------|---|
| Exhibit GDP-1: | List of Affiliates, Home Office Addresses, and Chief Executive Officers |
| Exhibit GDP-2: | Organizational Chart – Avangrid, Inc. and Subsidiaries |
| Exhibit GDP-3: | Organizational Chart – Iberdrola, S.A. and Country Subholding Companies
and Key Subsidiaries |
| Exhibit GDP-4 | Organizational Chart –PNM Resources, Inc. and Subsidiaries |

PROPOSED CLASS II TRANSACTION

PNM is a New Mexico corporation and a wholly-owned subsidiary of PNM Resources, Inc. (“PNMR”), a New Mexico corporation, whose common stock is currently traded on the New York Stock Exchange (“NYSE”). PNMR has entered into an Agreement and Plan of Merger (“Merger Agreement”) dated October 20, 2020, among PNMR, Avangrid, Inc. (“Avangrid”), a New York corporation, and NM Green Holdings, Inc. (“NM Green”) (a wholly-owned subsidiary of Avangrid), a New Mexico corporation. Pursuant to the Merger Agreement, PNMR will merge with and into NM Green, with PNMR continuing as the surviving corporation (“Merger”). As a result of the Merger, PNMR will become a wholly-owned subsidiary of Avangrid.

Promptly after the Merger, Avangrid will transfer 100% ownership of PNMR to Avangrid Networks, Inc. (“Networks”) (a wholly-owned subsidiary of Avangrid), a Maine corporation (with the Merger, the “Proposed Transaction”).

Avangrid is publicly traded on the NYSE and is 81.5% owned by Iberdrola, S.A. (“Iberdrola”). Iberdrola is a corporation (*Sociedad Anónima*) organized under the Laws of the Kingdom of Spain.

The result of the Proposed Transaction is that Networks, Avangrid, and Iberdrola will each become indirect public utility holding companies of PNM. PNM will remain a New Mexico corporation and a certificated electric public utility subject to the jurisdiction of the Commission.

- I. TO THE EXTENT KNOWN THE NAME, HOME OFFICE ADDRESS, AND CHIEF EXECUTIVE OFFICER OF EACH AFFILIATE, CORPORATE SUBSIDIARY, HOLDING COMPANY, OR PERSON WHICH IS THE SUBJECT OF THE CLASS II TRANSACTION. (17.6.450.10(B)(1) NMAC)**

The primary entities which are the subject of the proposed Class II transaction are PNM, PNMR, NM Green, Networks, Avangrid, and Iberdrola. A list of the direct and indirect current and proposed holding companies of PNM, including Avangrid and Iberdrola, and the subsidiaries of Avangrid and the subsidiaries of Iberdrola in the United States, together with their home office addresses and chief executive officers, is contained in Exhibit GDP-1.

Avangrid is a leading, sustainable energy company with operations in 24 states in the United States. Avangrid has two primary lines of business: Networks and Avangrid Renewables Holdings, Inc. (“Avangrid Renewables”). Networks owns eight electric and natural gas utilities, serving more than 3.3 million customers in New York and New England. The utilities are: Berkshire Gas Company, Central Maine Power, Connecticut Natural Gas, New York State Electric & Gas, Rochester Gas and Electric, Maine Natural Gas, Southern Connecticut Gas, and The United Illuminating Company. Avangrid Renewables owns and operates a portfolio of renewable energy generation facilities across the United States, including in New Mexico and Texas. A current organizational chart of Avangrid and its subsidiaries is attached as Exhibit GDP-2. Avangrid and its subsidiaries employ approximately 6,600 employees.

Iberdrola, Avangrid’s ultimate parent, is a corporation (*Sociedad Anónima*) organized under the Laws of the Kingdom of Spain. Iberdrola’s shares are publicly traded on the Madrid Stock Exchange. Iberdrola’s headquarters is located in Bilbao, Spain. Iberdrola is a global utility that has over 170 years of experience in the electricity and gas business, including experience as a provider of electric transmission and distribution services. It is one of the largest energy companies in the world with a market capitalization of over \$85 billion. Iberdrola and its subsidiaries provide regulated utility services in the United States, Spain, the United Kingdom, Brazil, and Mexico. The Iberdrola companies provide utility services to approximately 32 million

points of supply world-wide. A current organizational chart showing Iberdrola and its country subholding companies with key subsidiaries is provided as Exhibit GDP-3.

NM Green is a direct and wholly owned subsidiary of Avangrid. NM Green was formed for the sole purpose of entering into the Merger Agreement and for completing the Merger.

PNMR owns two regulated utility subsidiaries providing electricity and electric utility service in New Mexico and Texas: PNM and Texas-New Mexico Power Company, a Texas corporation (“TNMP”). PNMR was approved by the Commission as the public utility holding company for PNM in Case No. 3731 in 2001. TNMP is a wholly owned subsidiary of TNP Enterprises, Inc., a Texas corporation, which is a wholly owned subsidiary of PNMR. PNMR Services Company (“PNMR Services”) is a wholly owned subsidiary of PNMR and provides shared services to PNMR and its active subsidiaries, including PNM. A current organizational chart for PNMR and its affiliates is attached as Exhibit GDP-4.

PNM is a wholly-owned subsidiary of PNMR and is an authorized public utility under the PUA. PNM serves 530,000 New Mexico customers in Greater Albuquerque, Rio Rancho, Los Lunas, Belen, Santa Fe, Las Vegas, Alamogordo, Ruidoso, Silver City, Deming, Bayard, Lordsburg and Clayton, as well as the tribal communities of Tesuque, Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, Isleta and Laguna Pueblo.

II. A STATEMENT OF THE GOALS AND EFFECTS UPON THE UTILITY OPERATION OF THE CLASS II TRANSACTION, INCLUDING AN ANALYSIS OF THE BENEFITS, RISKS, AND COSTS TO THE PUBLIC UTILITY WHICH COULD ARISE, AND INCLUDING ALL TAX EFFECTS ON THE UTILITY BOTH ON A CONSOLIDATED ENTITY BASIS AND ON A STAND-ALONE BASIS. (17.6.450.10(B)(2) NMAC)

The Proposed Transaction is consistent with Avangrid's goal of growing its regulated utility businesses in the United States while relying upon and strengthening local management and having no adverse effects on utility operations.

PNM is currently owned by PNMR, a public utility holding company. The proposed Class II transaction will not disturb the existing holding company structure, except to add three additional indirect public utility holding companies of PNM above PNMR. Although there will be a new ultimate parent company, PNM will remain a public utility providing regulated public utility electric service to customers in New Mexico pursuant to its existing Certificate of Public Convenience and Necessity. To ensure benefits and protections to customers, approval of the Proposed Transaction is subject to numerous substantive Regulatory Commitments, as may be approved by the Commission. Among the benefits and protections contained in the Regulatory Commitments are the following:

Financial and Other Benefits of the Transaction

The proposed Class II transaction is consistent with Avangrid's goal of growing its regulated utility businesses through acquiring well-run utilities and achieving geographical diversity for its enterprises. Given Avangrid's position as a clean energy leader in the United States, PNM will not only maintain or improve its strong business and financial risk profile upon completion of the Proposed Transaction, but also have strong support for its clean energy transition in New Mexico in accordance with the New Mexico Energy Transition Act. The integration of PNM and PNMR into Avangrid will support the sharing of clean energy and electric utility best practices among affiliates, to the ultimate benefit of PNM's customers. Avangrid's commitment to the maintenance of local control of operations benefits customers by having continued local accountability for the utility service PNM provides.

The Proposed Transaction will also provide the following benefits:

- ~~To ensure PNM is locally operated and accountable, the PNM Board of Directors will include at least two New Mexico residents.~~ PNM's day-to-day operations will be conducted by PNM's local management and employees, and PNM's local management will continue to establish company priorities and respond to local conditions.
- PNM's Board of Directors will have decision-making authority over PNM dividend policy, issuance of dividends (except for contractual tax payments), debt issuance, capital expenditures, management and services fees, PNM director and officer compensation and benefits, and operation and maintenance expenditures. Further, PNM's Board of Directors will be comprised of New Mexico residents, at least 40% of whom will qualify as "independent" and "disinterested" members as defined by the Regulatory Commitments approved by the Commission.
- There will be no involuntary terminations except for cause or performance (other than reductions associated with the planned closure of the San Juan Generating Station in 2022) for a minimum of ~~tw~~three years following the closing of the Proposed Transaction.
- There will be no reductions with respect to the wages, terms and conditions of non-union employment that were in effect prior to the Proposed Transaction for a minimum of ~~tw~~three years following the closing of the Proposed Transaction. The current collective bargaining agreement will also be honored.
- Under Avangrid's ownership, PNMR and PNM will continue to maintain commitments to charitable contributions at historical levels in New Mexico and

will continue the support of the Good Neighbor Fund for a minimum of ~~three~~five years following the closing of the Proposed Transaction. This commitment includes the continued existence and operation of the PNM Resources Foundation.

Improved Financial Strength and Continued Financial Transparency

Following the Proposed Transaction, PNM will be a subsidiary of a financially strong, well-capitalized, holding company focused on clean energy and regulated utility businesses. Avangrid is a publicly-traded company whose stock is listed on the NYSE and its financial results are reported quarterly through public reports filed with the Securities and Exchange Commission (“SEC”). Avangrid reports its financial results in accordance with the generally accepted accounting principles codified by the Financial Accounting Standards Board or any successor institute. As a result of the Proposed Transaction, PNM customers will benefit from PNM continuing to maintain the financial discipline and financial reporting transparency that currently exists under PNM’s ownership by PNMR, including internal auditing processes in compliance with SEC and other regulatory requirements. PNM also will be part of a corporate structure with increased access to debt and equity capital and a demonstrated track record of financial strength and stability. Approval of the Proposed Transaction will help assure that PNM has access to capital on reasonable market-based terms. This outcome is consistent with the regulatory objective that reasonable and proper service through prudent investment in utility plant and equipment is available to customers at fair, just and reasonable rates. The publicly-filed financial reports and other disclosure documents routinely filed by Avangrid will continue to facilitate the Commission’s ongoing oversight of PNM’s financial condition.

No Excessive Dividends

Consistent with the current Commission-approved treatment of dividends paid by PNM to PNMR, Avangrid commits that PNM will not, without prior Commission approval, pay dividends, except for contractual tax payments, at any time its credit ratings are below the credit ratings established in the Regulatory Commitments investment-grade unless otherwise permitted by the Commission. Further, PNM will continue its current methodology to file a notice of its intent to pay a dividend. Avangrid agrees that the Commission will have the right and power to issue an order, within 1530 days of PNM's filing, that prohibits the payment of the proposed dividend if the Commission finds that the payment of the proposed dividend would impair PNM's ability to provide reliable and safe utility services at reasonable rates to its customers, or would otherwise be contrary to the public interest.

Anticipated Tax Effects on PNM on a Consolidated and Stand-Alone Basis

PNM will become part of the Avangrid consolidated tax return in the United States. There will be no tax effect on PNM for rate making purposes from this consolidation. PNM's payment of income taxes will continue to be an amount based on PNM's tax liability computed on a stand-alone basis.

Continued Oversight and Regulation by the Commission

The proposed Class II transaction will not result in any adverse and material effect on PNM's utility operations, and PNM will continue to provide reasonable and proper electric utility service at fair, just and reasonable rates. The Merger will not alter PNM's legal status as a regulated public utility; nor will it affect the Commission's authority and supervision and regulation of PNM's retail rates and service under the Public Utility Act. The Commission and its staff will have access to the books and records of Networks, Avangrid, and Iberdrola pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19. Avangrid and Iberdrola submit to New Mexico

jurisdiction with respect to the enforceability of the Regulatory Commitments and the services that each may provide in New Mexico to PNM.

PNM has a long record of providing safe and reliable quality service, and Avangrid will ensure that PNM continues to provide reasonable and proper service to its New Mexico customers. As a result of the Proposed Transaction, there will be no change in any of PNM's existing tariffs, rules or forms currently approved by the Commission, except for the addition of a Merger-related customer rate credit set forth in the Regulatory Commitments and subject to the Commission's approval. PNM will continue to comply with the rules and orders of the Commission directed to PNM. Any future changes to PNM's tariffs, rules or forms will be subject to all necessary approvals of the Commission. PNM's capital structure and asset valuations used for rate making purposes is based on approvals of the Commission. Any future changes in PNM's capital structure or valuation of assets for ratemaking purposes similarly will be subject to review and approval by the Commission in rate proceedings in accordance with the Public Utility Act.

Exclusion of Transaction Costs and Acquisition Premium from Rate Recovery

No costs incurred by PNM or its affiliates related to the Proposed Transaction will be recovered, directly or indirectly, from PNM customers. Further, no legal or other costs incurred in connection with obtaining regulatory approvals of the Proposed Transaction will be recovered from PNM customers. Finally, PNM will not seek to revalue any of its assets based on, or seek in any way to recover, any acquisition premium that results from the Proposed Transaction.

III. TYPE OF CORPORATE STRUCTURE TO BE USED (17.6.450.10(B)(3) NMAC)

PNM will continue to be a New Mexico corporation, registered to do business in New Mexico and certified as an electric public utility subject to the jurisdiction of the Commission.

PNM will remain a wholly-owned subsidiary of PNMR, a direct public utility holding company as defined by NMSA 1978, Section 62-3-3. Networks will own 100% of the voting securities of PNMR; Networks and its parent company Avangrid each will be an indirect public utility holding company of PNM. Iberdrola, as the majority shareholder of Avangrid, will also be an indirect public utility holding company of PNM.

IV. THE MEANS OF IMPLEMENTING THE CORPORATE STRUCTURE TO BE USED, INCLUDING, BUT NOT LIMITED TO, AMENDMENTS TO CORPORATE ARTICLES, ANY ISSUANCES, ACQUISITIONS, CANCELLATIONS, EXCHANGES, TRANSFERS, OR CONVERSION OF SECURITIES, AND THE IMPACT OF SUCH ON THE RIGHTS OF CREDITORS AND SECURITY HOLDERS. (17.6.450.10(B)(4) NMAC)

The Proposed Transaction will be implemented by the merger of NM Green with and into PNMR, with PNMR as the surviving business entity. Avangrid will thereafter transfer 100% of its interest in PNMR to Networks. All common stock of PNMR outstanding at the closing of the Merger and Proposed Transaction will be cancelled and converted to the right to receive \$50.30 per share in cash, except for any common stock held by Iberdrola, Avangrid, NM Green, or PNMR, or any wholly-owned subsidiary of Iberdrola, Avangrid or PNMR, which stock shall be automatically canceled. PNMR's common stock will be delisted from the NYSE. PNM's existing long-term debt will remain in place following the close of the Transaction. No debt will be issued by PNM or PNMR to finance the Proposed Transaction. No changes to PNM's status as a New Mexico domestic corporation or to PNM's articles of incorporation will occur as a result of the Merger. Avangrid will extinguish all debt at PNMR, reducing it to zero within 90 days following the closing of the Proposed Transaction and maintaining it at zero going forward for as long as Avangrid has an indirect ownership in PNMR unless authorized in advance by the Commission.

V. THE ANTICIPATED CAPITAL STRUCTURE FOR THE UTILITY, ITS AFFILIATES, AND THE CONSOLIDATED ENTITY (UTILITY PLUS AFFILIATES) FOR THE NEXT FIVE-YEARS. (17.6.450.10(B)(5) NMAC)

PNM has historically had an equity ratio between 49% and 51%. PNM expects the equity ratio range to remain above 50% over the next 5 years.

PNMR has historically had an equity ratio between 35% and 40%. With this transaction and Avangrid's plan to eliminate the debt at PNMR, PNMR's equity ratio is expected to improve to a range of 45% to 52%.

Networks does not have any debt, other than the debt carried by its utilities, which appears on Networks' consolidated accounts. For the utilities owned by Networks, the equity ratios range between 48% and 55%. Networks anticipates the equity ratio range to remain in the same range over the next five years.

For Avangrid Renewables and its subsidiaries, there is little to no debt associated with these companies. In the future, Avangrid Renewables may finance and/or refinance some projects with either debt or equity, or a combination of debt and equity, depending on the circumstances existing at the time.

For Avangrid, the consolidated equity ratio is, and is expected to be, in the range of 56% to 60%, over the next five years.

For Iberdrola, as of September 2020, the capital structure was 46.7% debt.

VI. THE CONTEMPLATED ANNUAL AND CUMULATIVE INVESTMENTS IN EACH AFFILIATED INTEREST FOR THE NEXT FIVE (5) YEARS IN DOLLARS AND AS A PERCENTAGE OF THE PROJECTED NET UTILITY PLANT AND AN EXPLANATION OF WHY THIS LEVEL OF INVESTMENT IS REASONABLE AND WILL NOT INCREASE THE RISKS OF INVESTMENT IN THE PUBLIC UTILITY. (17.6.450.10(B)(6) NMAC)

PNM will not invest any funds in any affiliate during the next five years.

VII. AN EXPLANATION OF HOW THE AFFILIATE(S) WILL BE FINANCED, BY WHOM, AND THE TYPE AND AMOUNTS OF CAPITAL OR INSTRUMENTS OF INDEBTEDNESS. (17.6.450.10(B)(7) NMAC)

PNM will not provide financing to any of its affiliates, other than as permitted by the Commission.

VIII. AN EXPLANATION OF HOW THE UTILITY'S CAPITAL STRUCTURE, COST OF CAPITAL, AND ABILITY TO ATTRACT CAPITAL AT REASONABLE RATES WILL BE IMPACTED.(17.6.450.10(B)(8) NMAC)

As discussed in Section II, the Proposed Transaction will have no effect on PNM's capital structure used for ratemaking purposes. Both PNMR and Avangrid have long-standing policies that their respective regulated utilities should maintain a capital structure designed to support investment-grade credit metrics. The Proposed Transaction is anticipated to maintain or improve the investment-grade credit rating of PNM and PNMR. No acquisition debt is being issued at PNM or PNMR. Moreover, Avangrid proposes to eliminate PNMR's debt entirely, which will be perceived positively by credit rating agencies. PNM will continue to have a strong balance sheet. As a result of the Proposed Transaction, PNM anticipates improved access to the debt markets at reasonable market-based rates and terms.

IX. AN EXPLANATION OF HOW THE UTILITY CAN ASSURE THAT ADEQUATE CAPITAL WILL BE AVAILABLE FOR THE CONSTRUCTION OF NECESSARY NEW UTILITY PLANT AND AT NO GREATER COST THAN IF THE UTILITY DID NOT ENGAGE IN THE CLASS II TRANSACTION. (17.6.450.10(B)(9) NMAC)

Following the completion of the Proposed Transaction, PNM will be a subsidiary of a much larger, financially strong, well-capitalized holding company with a focus on clean energy and

regulated utility businesses. PNM will realize increased access to both debt and equity capital, and may also experience improved credit ratings, as a result of the Proposed Transaction. PNM will fund the construction of necessary new utility plant through a combination of internally generated funds at PNM, equity infusion from PNMR, Networks and Avangrid, and debt issued at PNM, as appropriate. As a result, adequate capital will still be available for the construction of necessary new utility plant and at no greater cost, and possibly at lower cost, than if PNM were not to engage in the Proposed Transaction.

X. TO THE EXTENT NOT ANSWERED IN IX ABOVE, AN EXPLANATION OF HOW RATEPAYERS WILL BE PROTECTED AND INSULATED FROM ANY RISKS, COSTS, OR OTHER ADVERSE AND MATERIAL EFFECTS ATTRIBUTABLE TO CLASS II TRANSACTIONS OR THEIR RESULTING EFFECTS. (17.6.450.10(B)(10) NMAC)

The PNM retail utility services and rates will continue to be subject to the jurisdiction of the Commission.

Further, customers are afforded protection under NMSA 1978, Section 62-6-19 and Rule 17.6.450 NMAC, pursuant to which the Commission has authority to review and investigate Class I and Class II Transactions as they are defined by Section 62-6-3 of the Public Utility Act. PNM will comply with all laws and Commission rules and orders governing transactions with affiliated interests. PNM will comply with reporting requirements with respect to any Class I and Class II transactions.

With regard to affiliate transactions for shared services among and between PNM, PNMR and its subsidiaries, as well as any affiliates with which PNM transacts for shared services in the future, PNM will continue to account for such services, as annually adjusted in accordance with its Commission-authorized Cost Allocation Manual ("CAM"), or will seek to update the CAM to

reflect material changes to shared services transactions. As part of its obligations to maintain its books of accounts and supporting records for shared services, PNM will:

- Maintain current organizational charts showing initial chains of command and horizontal reporting/coordination relationships, including those with affiliates;
- Maintain current job descriptions that state whether the job position provides services or work for more than one subsidiary, and whether the job duties relate to corporate governance functions or provide benefits or services to more than one subsidiary;
- Disclose in any base rate filing each service function from an affiliate on which PNM relies , in whole or in part;
- Require employees who work for more than one subsidiary to keep detailed “positive” timesheets; and
- Designate the basis for the charges for goods, assets and services exchanged between PNM and its affiliates (*e.g.*, fully distributed costs, fair market value, or other applicable basis).

XI. IF THE UTILITY INTENDS TO DIVEST A CORPORATE SUBSIDIARY, AN EXPLANATION OF THE REASONS FOR SUCH DIVESTITURE, HOW IT WILL BE ACCOMPLISHED, HOW IT WILL AFFECT UTILITY OPERATIONS, FINANCIAL VIABILITY, COST OF CAPITAL, AN ADEQUACY OF SERVICE DURING THE NEXT TEN (10) YEARS FOLLOWING DIVESTITURE, THE ANTICIPATED PROCEEDS TO THE UTILITY, THE EXTENT, IF ANY, THAT THE UTILITY INTENDS FOR RATEPAYERS TO SHARE IN THE PROCEEDS OR OTHERWISE BENEFIT FROM THE DIVESTITURE, THE AMOUNT OF AND REASONS WHY ANY RATEPAYER FUNDS HAVE FLOWED DIRECTLY OR INDIRECTLY TO THE BENEFIT OF THE CORPORATE SUBSIDIARY. (17.6.450.10(B)(11) NMAC)

Not applicable.

XII. TO THE EXTENT NOT PROVIDED ABOVE, SUCH OTHER INFORMATION OR REPRESENTATION THAT WILL ALLOW THE COMMISSION TO MAKE THE FINDINGS CONTAINED IN RULE 450.10(C). (17.6.450.10(B)(12) NMAC)

To the extent not provided above, PNM, PNMR, Networks, Avangrid, and Iberdrola represent that:

- (1) the books and records of PNM will be kept separate from those of nonregulated business and in accordance with the Uniform System of Accounts;
- (2) the Commission and its staff will have access to the books, records, accounts, or documents of the affiliate, corporate subsidiary, or holding company pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19;
- (3) the supervision and regulation of PNM pursuant to the Public Utility Act will not be obstructed, hindered, diminished, impaired, or unduly complicated;
- (4) PNM will not pay excessive dividends to its holding companies, and the holding companies will not take any action which will have an adverse and material effect on PNM's ability to provide reasonable and proper service at fair, just, and reasonable rates;
- (5) PNM will not, without prior approval of the Commission:
 - a. loan its funds or securities or transfer similar assets to any affiliated interest;
 - b. purchase debt instruments of any affiliated interests, or guarantee or assume liabilities of such affiliated interests; or
 - c. pledge the assets of PNM to pay or guarantee the debt of Iberdrola, Avangrid, PNMR or any other subsidiary of Iberdrola, Avangrid or PNMR;
- (6) PNM has complied, and will comply, with all applicable federal or state statutes, rules, or regulations;

- (7) when required by the Commission, PNM will have an allocation study (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission; and
- (8) when required by the Commission, PNM will have a management audit (which will not be charged to ratepayers) performed by a consulting firm chosen by and under the direction of the Commission to determine whether there are any adverse effects of Class II Transactions upon PNM.

GCG#~~527325~~528367

Officers and Directors of PNM Resources, Inc. Companies

Avistar Enterprises, Inc.

A New Mexico Corporation, formed 8/2/99. Wholly owned subsidiary of PNM Resources, Inc. Name changed from Avistar, Inc. to Avistar Enterprises, Inc. 4/30/08.

Assistants

Juli M. Marcinelli, Assistant Secretary
Leonard D. Sanchez, Assistant Secretary
Lisa Y. Tillery, Assistant Secretary

Board Members

Carter Cherry, Director
Patricia K. Collawn, Chairman
Joseph D. Tarry, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Carter Cherry, Executive Vice President and Chief Operating Officer
Patricia K. Collawn, President and Chief Executive Officer
Joseph D. Tarry, Vice President and Treasurer

Bellamah Holding Company

A New Mexico Corporation, formed 9/7/82. Wholly owned subsidiary of Meadows Resources, Inc. Company is currently in wind-down activities relating to process of dissolution. Has applied for statement of intent to dissolve.

Board Members

Elisabeth A. Eden, Director
Joseph D. Tarry, Chairman

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Joseph D. Tarry, President and Treasurer

Luna Power Company, LLC

A Delaware Limited Liability Company, formed 5/9/2000. PNMR owns a one-third membership interest along with Tucson Electric Power Company and Samchully Power & Utilities 1 LLC (each owning one-third interest). Luna Power Company, LLC was the previous owner of Luna plant, but most of assets have been transferred out so that all that is held now are real property interests such as easements that would require additional processes to be transferred to the three co-owners of the Luna plant.

Board Members

Jae Lee, Manager

Mark Mansfield, Manager

Chris M. Olson, Manager

Meadows Resources, Inc.

A New Mexico Corporation, formed 10/1/81. Wholly owned subsidiary of PNM. Wind down and termination plan activities for MRI and identified subsidiaries and affiliates, as approved in NMPSC Case No. 2429, are continuing.

Assistants

Juli M. Marcinelli, Assistant Secretary

Leonard D. Sanchez, Assistant Secretary

Lisa Y. Tillery, Assistant Secretary

Board Members

Elisabeth A. Eden, Director

Charles N. Eldred, Director

Joseph D. Tarry, Chairman

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary

Elisabeth A. Eden, Treasurer

Joseph D. Tarry, President

New Mexico PPA Corporation

A Delaware Corporation, formed 01/15/2016. Name changed from NM Capital Utility Corporation on 8/14/2019. Authorized to do business in New Mexico on 1/22/2016. Wholly owned subsidiary of PNM Resources, Inc.

Board Members

Elisabeth A. Eden, Director

Officers

Elisabeth A. Eden, Vice President and Treasurer

Henry E. Monroy, Vice President and Corporate Controller
Timothy P. Nichols, Vice President and Secretary
Leonard D. Sanchez, Assistant Secretary
Joseph D. Tarry, President

NM Renewable Development, LLC

A Delaware Limited Liability Company, formed 9/20/2017. A subsidiary of PNMR Development and Management Corporation, which owns a 50% interest along with AEP OnSite Partners LLC

Board Members

Elisabeth A. Eden, PNMR-D Manager
Matthew D. Fransen, AEP Manager
Greg B. Hall, AEP Manager
Joseph D. Tarry, PNMR-D Manager

Officers

Gary Barnard, Co-Vice President
Joel H. Jansen, Co-Vice President

NMRD Data Center II, LLC

A Delaware Limited Liability Company, formed 7/24/2018. Wholly owned subsidiary of NM Renewable Development, LLC

Board Members

Elisabeth A. Eden, Manager (PNMR)
Matthew D. Fransen, Manager
Joel H. Jansen, Manager
Joseph D. Tarry, Manager (PNMR)

Officers

Gary Barnard, Vice President (PNMR)
Joel H. Jansen, Vice President

NMRD Data Center II-Britton, LLC

A Delaware Limited Liability Company, formed 3/18/2019. Wholly owned subsidiary of NMRD Data Center II, LLC; special purpose entity with sole purpose to facilitate IRB process.

Board Members

NMRD Data Center II, LLC, Authorized Person

NMRD Data Center III, LLC

A Delaware Limited Liability Company, formed 7/24/2018. Wholly owned subsidiary of NM Renewable Development, LLC

Board Members

Elisabeth A. Eden, Manager (PNMR)

Matthew D. Fransen, Manager

Joel H. Jansen, Manager

Joseph D. Tarry, Manager (PNMR)

Officers

Gary Barnard, Vice President (PNMR)

Joel H. Jansen, Vice President

NMRD Data Center III-Encino, LLC

A Delaware Limited Liability Company, formed 3/18/2019. Wholly owned subsidiary of NMRD Data Center III, LLC; special purpose entity with sole purpose to facilitate IRB process.

Board Members

NMRD Data Center III, LLC, Authorized Person

NMRD Data Center, LLC

A Delaware Limited Liability Company, formed 12/14/2017. Wholly owned subsidiary of NM Renewable Development, LLC

Board Members

NM Renewable Development LLC, Authorized Person

PNM Resources, Inc.

A New Mexico Corporation, formed 03/03/2000. Investor owned holding company.

Assistants

Sabrina G. Greinel, Assistant Treasurer
Juli M. Marcinelli, Assistant Secretary
Leonard D. Sanchez, Assistant Secretary
Lisa Y. Tillery, Assistant Secretary

Board Members

Vicky A. Bailey, Director
Norman P. Becker, Director
Patricia K. Collawn, Chairman
E. Renae Conley, Director
Alan J. Fohrer, Director
Sidney M. Gutierrez, Director
James A. Hughes, Director
Maureen T. Mullarkey, Director
Donald K. Schwanz, Director
Bruce W. Wilkinson, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Patricia K. Collawn, Chairman, President and Chief Executive Officer
Ronald N. Darnell, Senior Vice President, Public Policy
Elisabeth A. Eden, Vice President and Chief Information Officer
Charles N. Eldred, Executive Vice President, Corporate Development and Finance
Michael P. Mertz, Vice President and Treasurer
Henry E. Monroy, Vice President and Corporate Controller
Chris M. Olson, Senior Vice President, Utility Operations
Joseph D. Tarry, Senior Vice President and Chief Financial Officer
Becky R. Teague, Vice President, Human Resources

PNMR Development and Management Corporation

A New Mexico Corporation, formed 2/18/05. Wholly owned subsidiary of PNM Resources, Inc. Org. meeting--2/23/05

Assistants

Sabrina G. Greinel, Assistant Treasurer
Juli M. Marcinelli, Assistant Secretary
Leonard D. Sanchez, Assistant Secretary
Lisa Y. Tillery, Assistant Secretary

Board Members

Patricia K. Collawn, Chairman
Charles N. Eldred, Director
Joseph D. Tarry, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Elisabeth A. Eden, Vice President and Treasurer
Henry E. Monroy, Vice President and Corporate Controller
Joseph D. Tarry, President and Chief Executive Officer

PNMR Services Company

A New Mexico Corporation, formed 10/8/04. Wholly owned subsidiary of PNM Resources, Inc.

Assistants

Sabrina G. Greinel, Assistant Treasurer
Juli M. Marcinelli, Assistant Secretary
Leonard D. Sanchez, Assistant Secretary
Lisa Y. Tillery, Assistant Secretary

Board Members

Patricia K. Collawn, Chairman
Elisabeth A. Eden, Director
Charles N. Eldred, Director
Chris M. Olson, Director
Joseph D. Tarry, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Patricia K. Collawn, President and Chief Executive Officer
Ronald N. Darnell, Senior Vice President, Public Policy
Elisabeth A. Eden, Vice President and Chief Information Officer
Charles N. Eldred, Executive Vice President, Corporate Development and Finance
Michael P. Mertz, Vice President and Treasurer
Henry E. Monroy, Vice President and Corporate Controller
Joseph D. Tarry, Senior Vice President and Chief Financial Officer
Becky R. Teague, Vice President, Human Resources

Public Service Company of New Mexico

A New Mexico Corporation, formed 5/9/1917. Wholly owned subsidiary of PNM Resources, Inc.

Assistants

Sabrina G. Greinel, Assistant Treasurer
Juli M. Marcinelli, Assistant Secretary
Leonard D. Sanchez, Assistant Secretary
Lisa Y. Tillery, Assistant Secretary

Board Members

Patricia K. Collawn, Chairman
Ronald N. Darnell, Director
Charles N. Eldred, Director
Chris M. Olson, Director
Joseph D. Tarry, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Patricia K. Collawn, President and Chief Executive Officer
Ronald N. Darnell, Senior Vice President, Public Policy
Elisabeth A. Eden, Vice President and Chief Information Officer
Charles N. Eldred, Executive Vice President, Corporate Development and Finance
Thomas G. Fallgren, Vice President, PNM Generation
Todd Fridley, Vice President, NM Operations
Michael P. Mertz, Vice President and Treasurer
Henry E. Monroy, Vice President and Corporate Controller
Chris M. Olson, Senior Vice President, Utility Operations
Julie Rowey, Vice President, Chief Customer Officer
Joseph D. Tarry, Senior Vice President and Chief Financial Officer
Becky R. Teague, Vice President, Human Resources

Republic Holding Company

A Delaware Corporation, formed 7/1/85. Wholly owned subsidiary of Meadows Resources, Inc.. A savings and loan holding company.

Assistants

Leonard D. Sanchez, Assistant Secretary

Board Members

Ronald N. Darnell, Director

Elisabeth A. Eden, Chairman

Charles N. Eldred, Director

Joseph D. Tarry, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary

Elisabeth A. Eden, President and Treasurer

Sunbelt Mining Company, Inc.

A New Mexico Corporation, formed 12/13/79. Wholly owned subsidiary of PNM Resources, Inc. On 1/11/02, PNM transferred its ownership interest in SMC to PNM Resources by means of a dividend.

Assistants

Juli M. Marcinelli, Assistant Secretary

Leonard D. Sanchez, Assistant Secretary

Lisa Y. Tillery, Assistant Secretary

Board Members

Joseph D. Tarry, Chairman

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary

Elisabeth A. Eden, Vice President and Treasurer

Joseph D. Tarry, President

Texas-New Mexico Power Company

A Texas Corporation, formed 4/18/63. Wholly owned subsidiary of TNP Enterprises, Inc. Changed name from Community Public Service Company on 5/14/81.

Assistants

Sabrina G. Greinel, Assistant Treasurer

Juli M. Marcinelli, Assistant Secretary

Leonard D. Sanchez, Assistant Secretary

Lisa Y. Tillery, Assistant Secretary

Board Members

Patricia K. Collawn, Chairman

Ronald N. Darnell, Director

Charles N. Eldred, Director

Chris M. Olson, Director

Joseph D. Tarry, Director

James N. Walker, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary

Patricia K. Collawn, Chief Executive Officer

Elisabeth A. Eden, Vice President and Chief Information Officer

Charles N. Eldred, Executive Vice President, Corporate Development and Finance

Michael P. Mertz, Vice President and Treasurer

Henry E. Monroy, Vice President and Corporate Controller

Keith C. Nix, Vice President, Engineering and Technical Services

Chris M. Olson, Senior Vice President, Utility Operations

Evans Spanos, Vice President, Operations

Joseph D. Tarry, Senior Vice President and Chief Financial Officer

Becky R. Teague, Vice President, Human Resources

James N. Walker, President

Stacy R. Whitehurst, Vice President, Regulatory Affairs

TNP Enterprises, Inc.

A Texas Corporation, formed 2/7/83 (Bayport Cogeneration, Inc.). Wholly owned subsidiary of PNM Resources, Inc. Changed name from Bayport Cogeneration Company 3/1/83. Surviving corporation of merger with ST Acquisition Corp. on 4/7/00. Stock acquired by PNM Resources, Inc. on 6/6/05.

Assistants

Sabrina G. Greinel, Assistant Treasurer

Juli M. Marcinelli, Assistant Secretary

Leonard D. Sanchez, Assistant Secretary

Lisa Y. Tillery, Assistant Secretary

Board Members

Patricia K. Collawn, Chairman

Charles N. Eldred, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Patricia K. Collawn, President and Chief Executive Officer
Charles N. Eldred, Executive Vice President, Corporate Development and Finance
Michael P. Mertz, Vice President and Treasurer
Henry E. Monroy, Vice President and Corporate Controller
Joseph D. Tarry, Senior Vice President and Chief Financial Officer

TNP Operating Company

A Texas Corporation, formed 10/17/84. Wholly owned subsidiary of TNP Enterprises, Inc. Inactive other than owning certain tracts of land in TX and NM.

Board Members

Patricia K. Collawn, Chairman
Charles N. Eldred, Director
Joseph D. Tarry, Director

Officers

Patrick V. Apodaca, Senior Vice President, General Counsel and Secretary
Ronald N. Darnell, President and Chief Executive Officer
Joseph D. Tarry, Vice President and Treasurer

PNM Resources and Subsidiaries
Home Office Addresses and Addresses for Service of Process

Avistar Enterprises, Inc. 414 Silver Ave, SW Albuquerque, NM	NMRD Data Center, LLC 1 Riverside Plaza Columbus, OH
Bellamah Holding 414 Silver Ave, SW Albuquerque, NM	PNM Resources, Inc. 414 Silver Ave, SW Albuquerque, NM
Luna Power Company, LLC 414 Silver Ave, SW Albuquerque, NM	PNMR Development and Management Corporation 414 Silver Ave, SW Albuquerque, NM
Meadows Resources, Inc. 414 Silver Ave, SW Albuquerque, NM	PNMR Services Company 414 Silver Ave, SW Albuquerque, NM
New Mexico PPA Corporation 414 Silver Ave, SW Albuquerque, NM	Public Service Company of New Mexico 414 Silver Ave, SW Albuquerque, NM
NM Renewable Development, LLC 155 W. Nationwide Blvd. Columbus, OH	Republic Holding Company 414 Silver Ave, SW Albuquerque, NM
NMRD Data Center II, LLC 1 Riverside Plaza Columbus, OH	Sunbelt Mining Company, Inc. 414 Silver Ave, SW Albuquerque, NM
NMRD Data Center II-Britton, LLC 1 Riverside Plaza Columbus, OH	Texas-New Mexico Power Company 577 N. Garden Ridge Blvd. Lewisville, TX
NMRD Data Center III, LLC 1 Riverside Plaza Columbus, OH	TNP Enterprises, Inc. 577 N. Garden Ridge Blvd. Lewisville, TX
NMRD Data Center III-Encino, LLC 1 Riverside Plaza Columbus, OH	TNP Operating Company 577 N. Garden Ridge Blvd. Lewisville, TX

Avangrid, Inc. and Subsidiaries
Chief Executive Officer
As of June 15, 2021

Avangrid, Inc.

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Dennis V. Arriola – Chief Executive Officer
180 Marsh Hill Road
Orange, CT 06477

Atlantic Renewable Energy Corporation

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

Avangrid Networks, Inc.

Business Address:
One City Center, 5th Floor
Portland, ME 04101

Corporate Address:
One City Center, 5th Floor
Portland, ME 04101

Catherine S. Stempien – President and Chief Executive Officer
180 Marsh Hill Road
Orange, CT 06477

Avangrid Renewables Holdings, Inc.

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

Avangrid Renewables, LLC

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

Avangrid Service Company

Business Address:
One City Center, 5th Floor
Portland, ME 04101

Corporate Address:
One City Center, 5th Floor
Portland, ME 04101

Catherine S. Stempien – Chief Executive Officer and President.
160 Marsh Hill Road
Orange, CT 06477

Berkshire Energy Resources

Business Address:
115 Cheshire Road
Pittsfield, MA 01201

Corporate Address:
115 Cheshire Road
Pittsfield, MA 01201

Franklyn Reynolds – Chairman and Chief Executive Officer
160 Marsh Hill Road
Orange, CT 06477

The Berkshire Gas Company

Business Address:
115 Cheshire Road
Pittsfield, MA 01201

Corporate Address:
115 Cheshire Road
Pittsfield, MA 01201

Franklyn Reynolds – Chairman and Chief Executive Officer
160 Marsh Hill Road
Orange, CT 06477

CMP Group, Inc.

Business Address:
83 Edison Drive
Augusta, ME 04336

Corporate Address:
83 Edison Drive
Augusta, ME 04336

Catherine S. Stempien – Chairman and Chief Executive Officer
160 Marsh Hill Road
Orange, CT 06477

Connecticut Energy Corporation

Business Address:
60 Marsh Hill Road
Orange, CT 06477

Corporate Address:
60 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, President and Chief Executive Officer
160 Marsh Hill Road
Orange, CT 06477

Connecticut Natural Gas Corporation

Business Address:
76 Meadow Street
East Hartford, CT 06108

Corporate Address:
76 Meadow Street
East Hartford, CT 06108

Franklyn Reynolds – Chairman, President and Chief Executive Officer
115 Cheshire Road
Pittsfield, MA 01201

Connecticut Yankee Atomic Power Company

Business Address:
362 Injun Hollow Road
East Hampton, CT 06424

Corporate Address:
362 Injun Hollow Road
East Hampton, CT 06424

Wayne A. Norton - President and Chief Executive Officer
362 Injun Hollow Road
East Hampton, CT 06424

CTG Resources, Inc.

Business Address:
60 Marsh Hill Road
Orange, CT 06477

Corporate Address:
60 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, President and Chief Executive Officer
160 Marsh Hill Road
Orange, CT 06477

Manzana Power Services, Inc.

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

NECEC Transmission, LLC

Business Address:
One City Center, 5th Floor
Portland, ME 04101

Corporate Address:
One City Center, 5th Floor
Portland, ME 04101

Thorn Dickinson – Chief Executive Officer and President
One City Center, 5th Floor
Portland, ME 04101

New York State Electric & Gas Corporation

Business Address:
89 East Avenue
Rochester, NY 14649

Corporate Address:
89 East Avenue
Rochester, NY 14649

Carl A. Taylor – President and Chief Executive Officer
89 East Avenue
Rochester, NY 14649

PPM Technical Services, Inc.

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

RGS Energy Group, Inc.

Business Address:
89 East Avenue
Rochester, NY 14649

Corporate Address:
89 East Avenue
Rochester, NY 14649

Catherine S. Stempien – Chairman, President and Chief Executive Officer
160 Marsh Hill Road
Orange, CT 06477

Rochester Gas and Electric Corporation

Business Address:
89 East Avenue
Rochester, NY 14649

Corporate Address:
89 East Avenue
Rochester, NY 14649

Carl A. Taylor – President and Chief Executive Officer
89 East Avenue
Rochester, NY 14649

ScottishPower Financial Services, Inc.

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

ScottishPower Group Holdings Company

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

ScottishPower International Group Holdings Company

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Alejandro de Hoz García-Bellido – President and Chief Executive Officer
1125 NW Couch Street Ste 700
Portland, OR 97209

The Southern Connecticut Gas Company

Business Address:
60 Marsh Hill Road
Orange, CT 06477

Corporate Address:
60 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds - President and Chief Executive Officer
115 Cheshire Road
Pittsfield, MA 01201

Thermal Energies, Inc.

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, Chief Executive Officer and President
115 Cheshire Road
Pittsfield, MA 01201

UIL Distributed Resources, LLC

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, President and Chief Executive Officer
180 Marsh Hill Road
Orange, CT 06477

UIL Holdings Corporation

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – President and Chief Executive Officer
115 Cheshire Road
Pittsfield, MA 01201

United Capital Investment, Inc.

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, Chief Executive Officer and President
180 Marsh Hill Road
Orange, CT 06477

The United Illuminating Company

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds - President and Chief Executive Officer
115 Cheshire Road
Pittsfield, MA 01201

United Resources, Inc.

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, President and Chief Executive Officer
180 Marsh Hill Road
Orange, CT 06477

Vineyard Wind, LLC

Business Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Corporate Address:
1125 NW Couch Street Ste 700
Portland, OR 97209

Lars Thaaning Pedersen – CEO
1125 NW Couch Street Ste 700
Portland, OR 97209

Xcelecom, Inc.

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, President and Chief Executive Officer
180 Marsh Hill Road
Orange, CT 06477

Xcel Services, Inc.

Business Address:
180 Marsh Hill Road
Orange, CT 06477

Corporate Address:
180 Marsh Hill Road
Orange, CT 06477

Franklyn Reynolds – Chairman, President and Chief Executive Officer
180 Marsh Hill Road
Orange, CT 06477

Yankee Atomic Electric Company

Business Address:
Midstate Office Park
19 Midstate Drive
Auburn, MA 01503

Corporate Address
Midstate Office Park
19 Midstate Drive
Auburn, MA 01503

Wayne A. Norton – President and Chief Executive Officer
Midstate Office Park
19 Midstate Drive
Auburn, MA 01503

IBERDROLA, S.A.
Addresses and Chief Executive Officers
As of November 1, 2020

Iberdrola, S.A.

Business Address:
Plaza de Euskadi, 5 48009
Bilbao, Spain

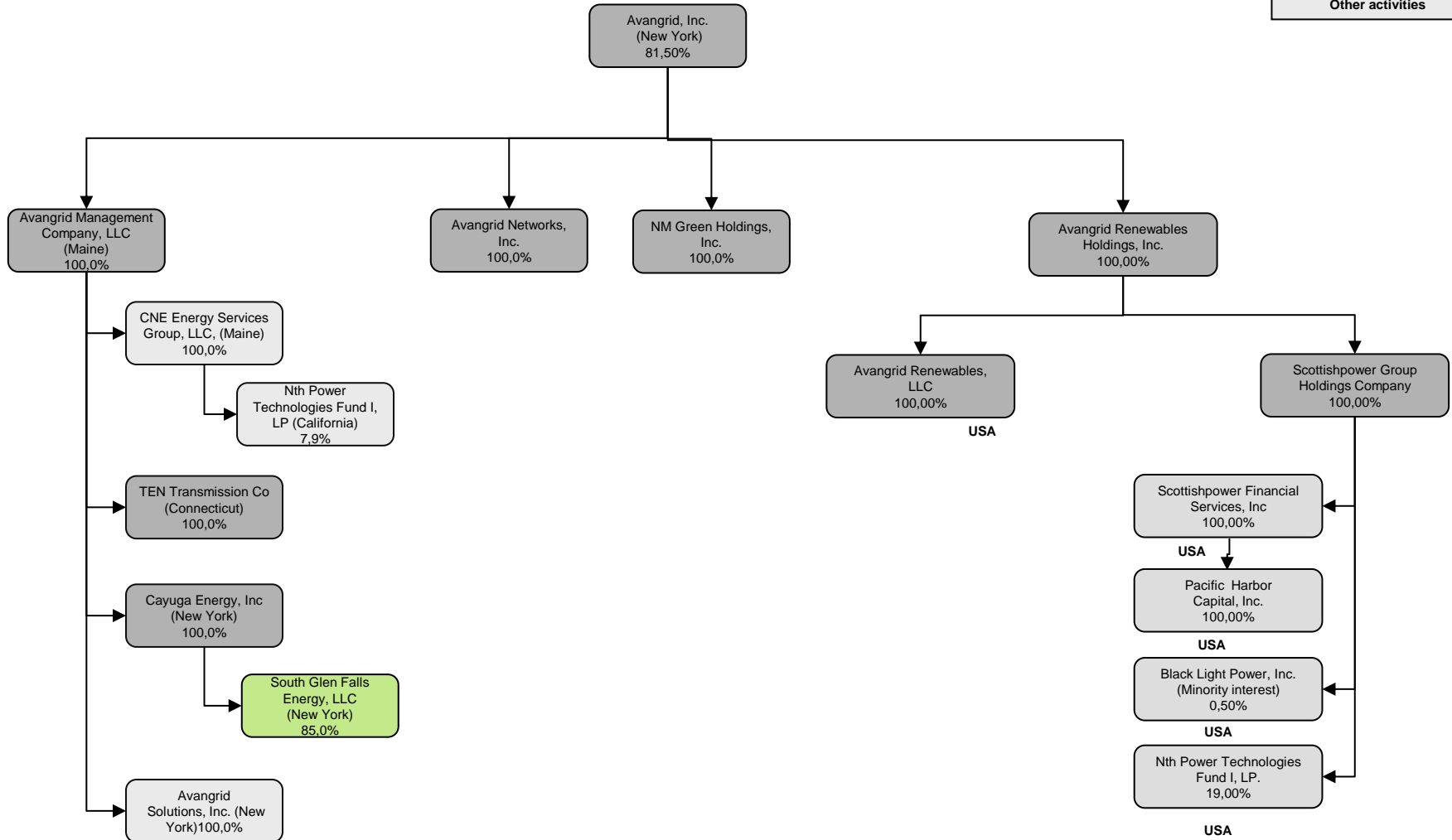
Ignacio Sánchez Galán – Chief Executive Officer
Plaza de Euskadi, 5 48009
Bilbao, Spain

Iberdrola Solutions, LLC

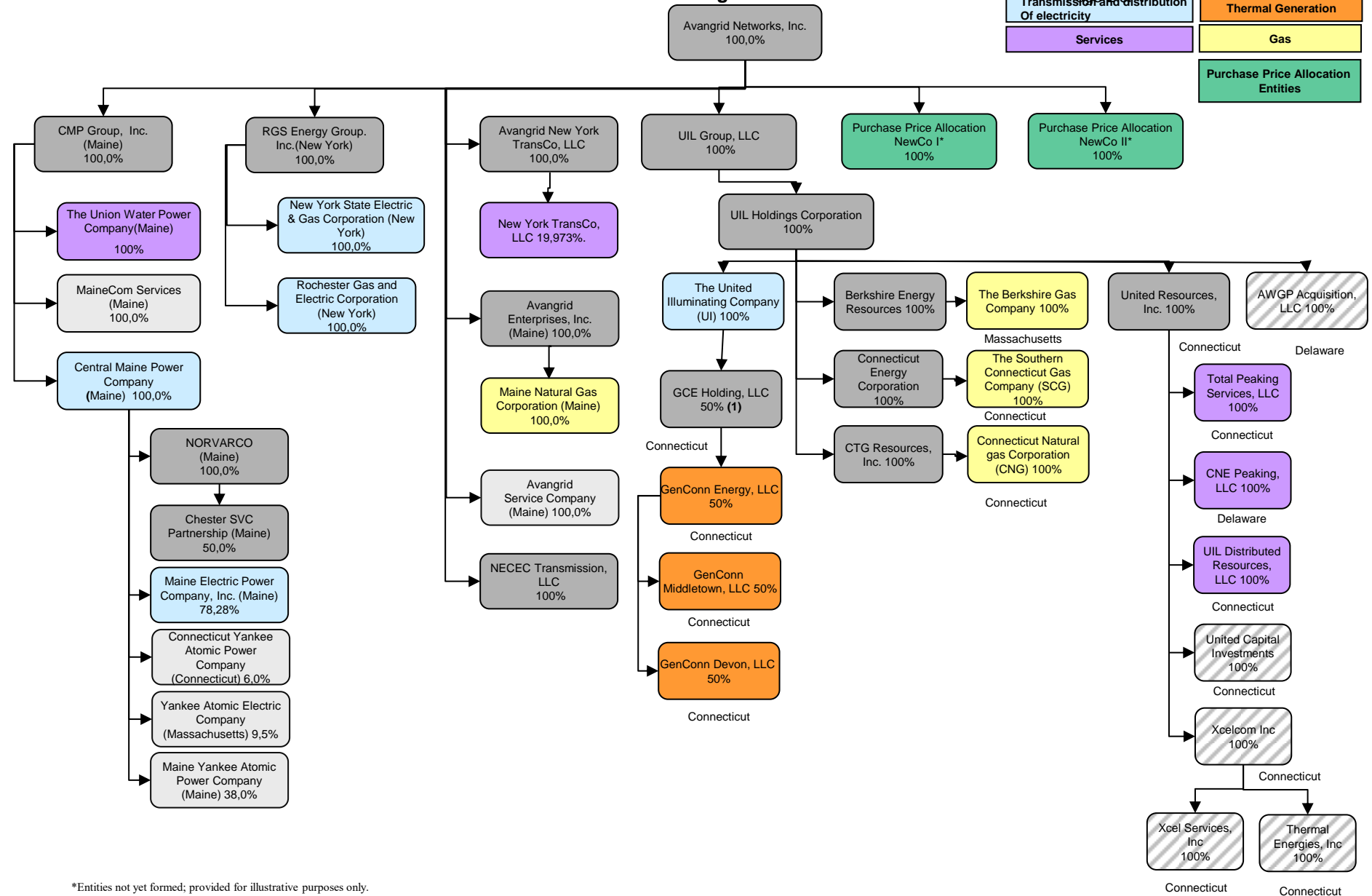
Business Address:
One City Center
5th Floor
Portland, ME 04101

Laney Brown – President
One City Center
5th Floor
Portland, ME 04101

Holding
Hydroelectric Generation
Other activities



Other activities	Exhibit RND-2 Purchase Price Allocation Of electricity	Dormant
	Transmission and distribution Services	Thermal Generation
		Gas
		Purchase Price Allocation Entities

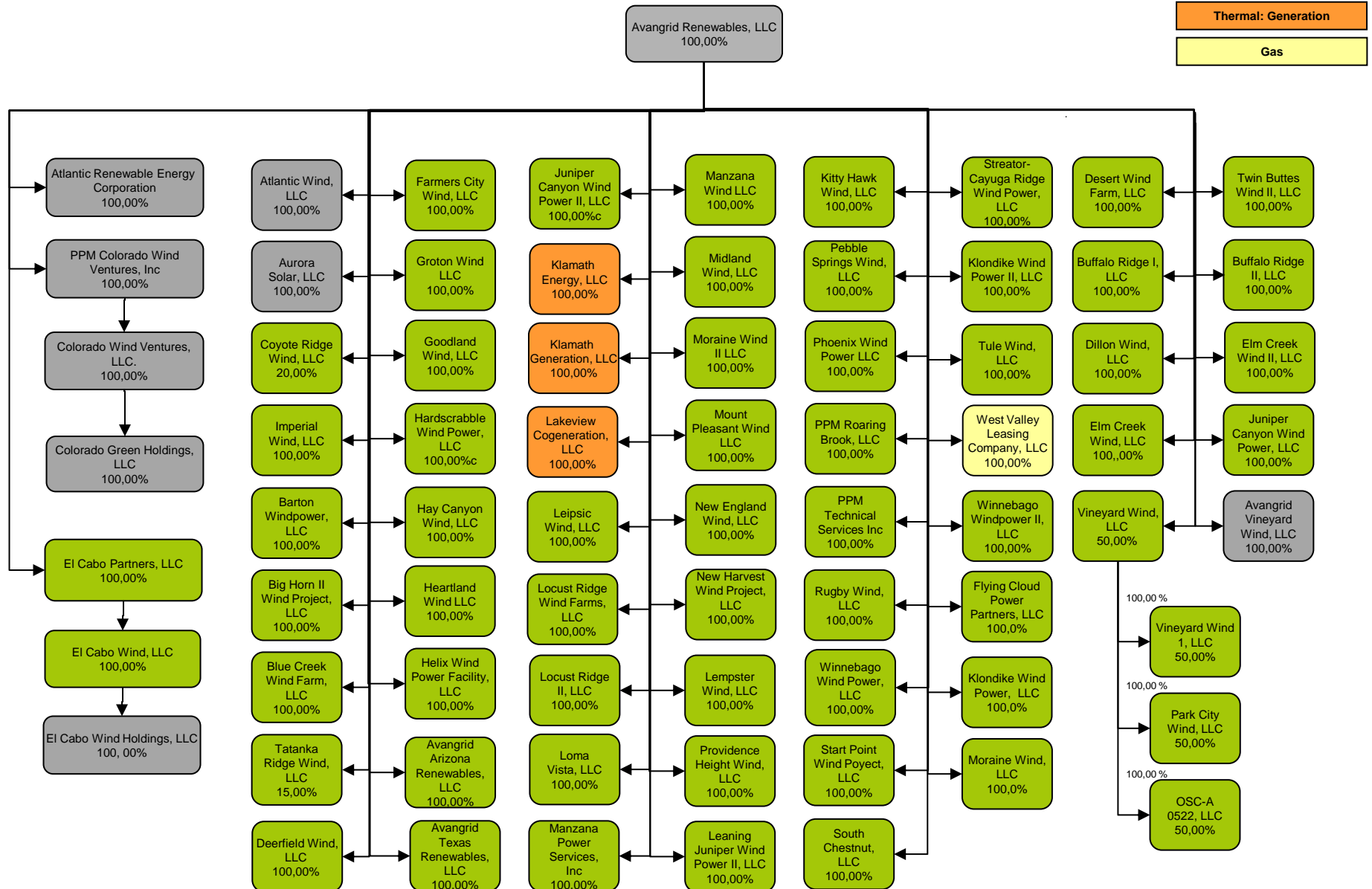


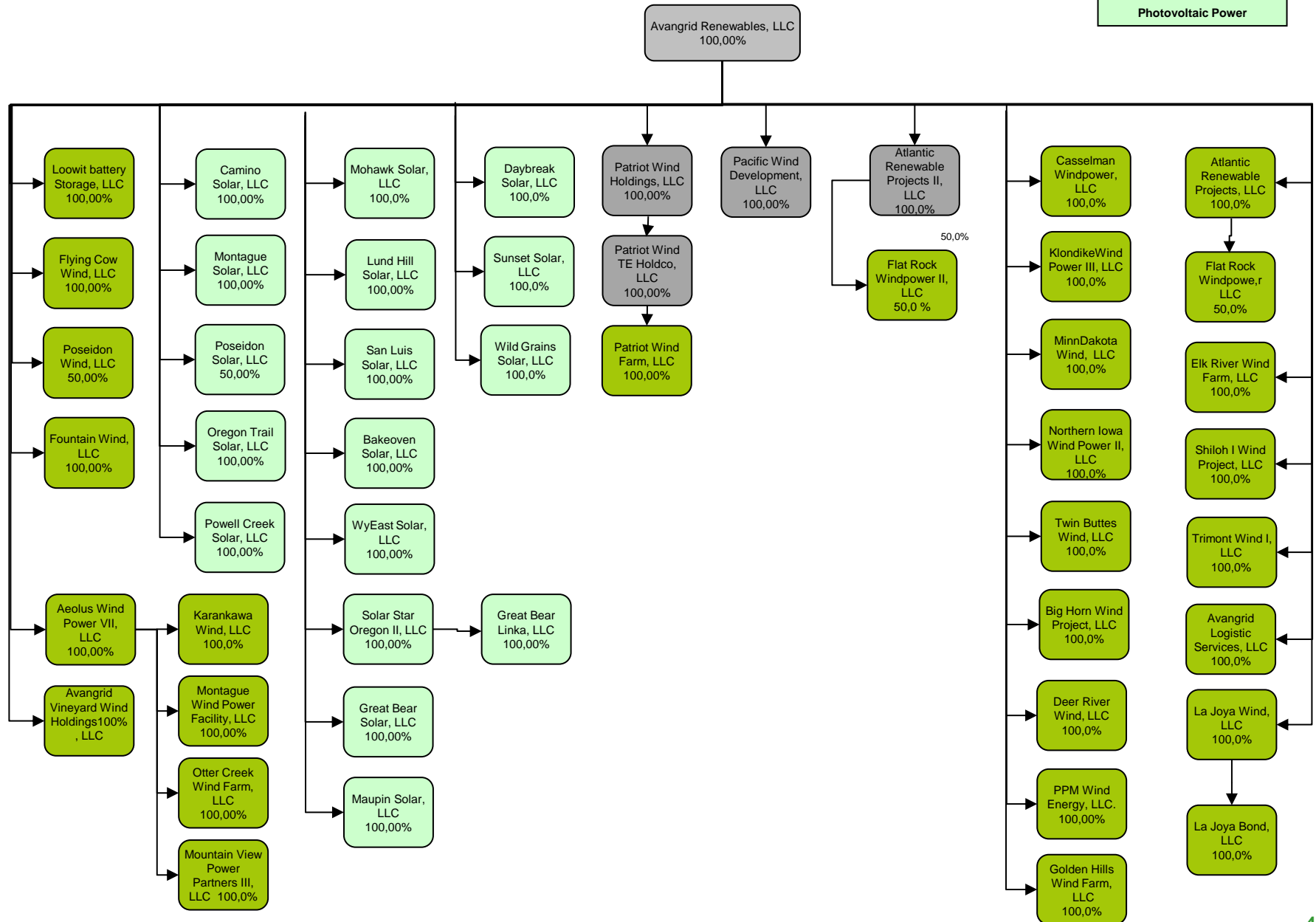
Holding

Wind Power

Thermal: Generation

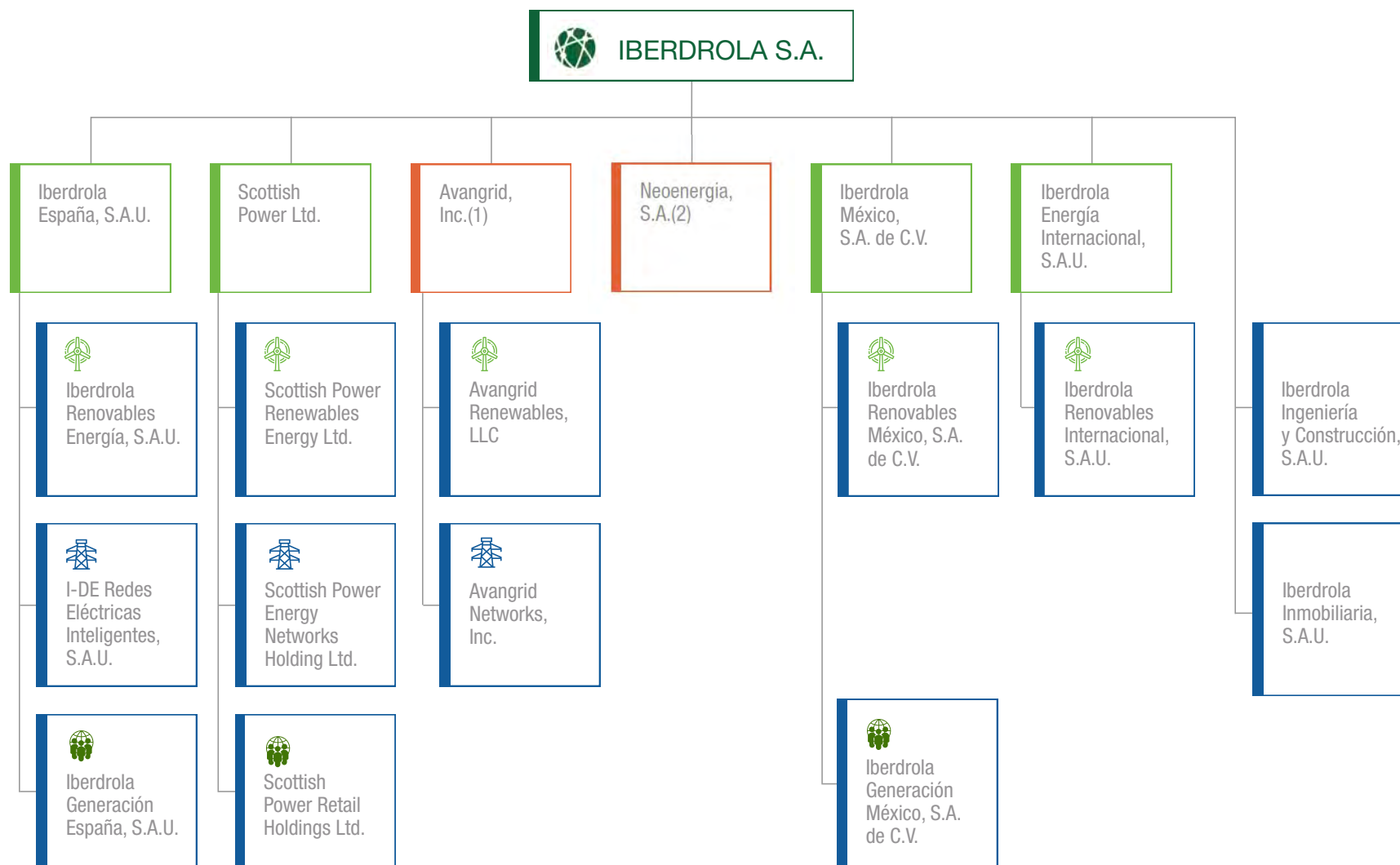
Gas





SIMPLIFIED SCHEME OF THE CORPORATE STRUCTURE OF THE GROUP

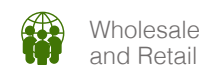
Exhibit GDP-3
Page 1 of 1



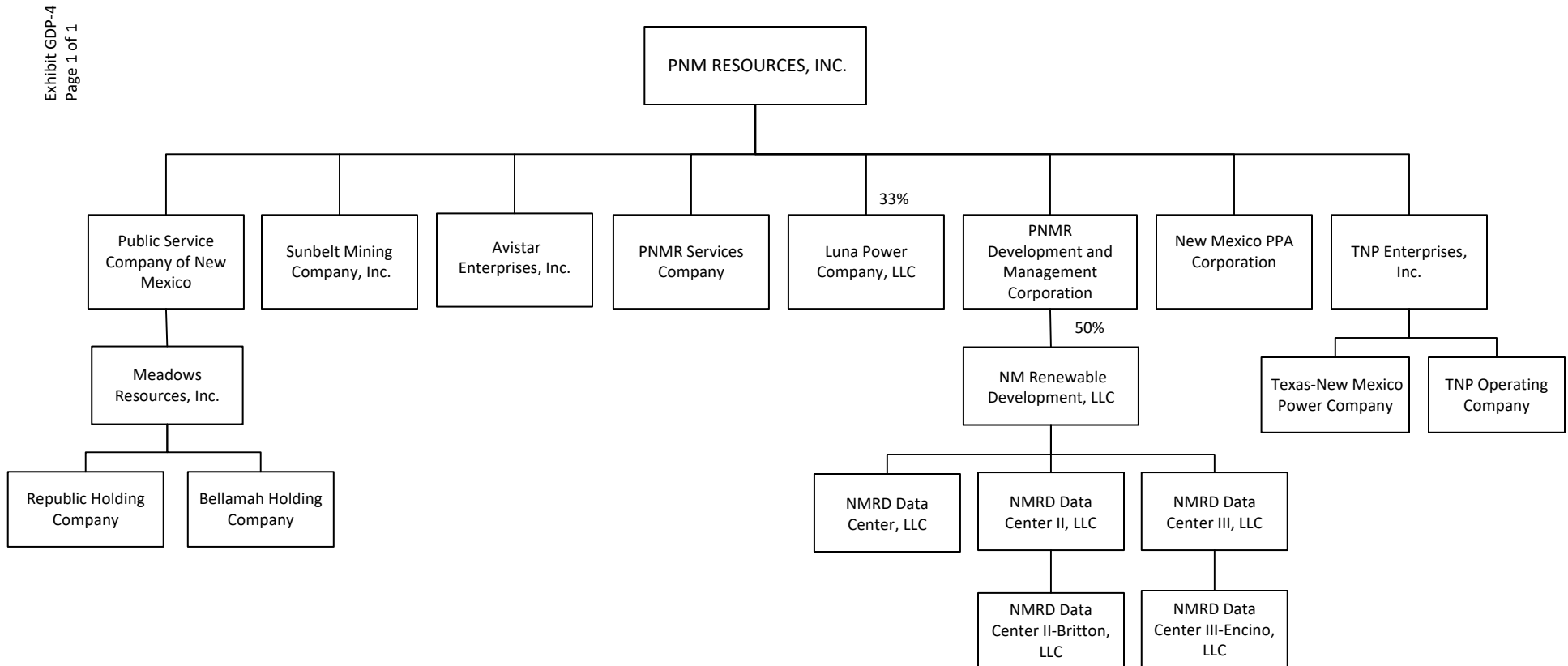
-  Holding company
-  Head of business companies
-  Country subholding companies
-  Listed country subholding company

¹ Avangrid, Inc. is 81.50% owned by Iberdrola, S.A.

² Neoenergia, S.A. is 50% + 1 share indirectly owned by Iberdrola, S.A.



PNM Resources, Inc. Organizational Chart



(Last updated August 16, 2019)

CONFIDENTIAL

Appendix 4

(Included only in Confidential version of the Certification)

Court Orders and Public Prosecutor Reports (Spanish criminal proceedings)

June 23, 2021 Order, Central Investigative Court No. 006 Madrid

June 22, 2021 Public Prosecutor Report

July 9, 2021 Order, Central Investigative Court No. 006 Madrid

June 25, 2021 Public Prosecutor Report

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Case No. 20-00222-UT

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

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email to the parties listed below a true and correct copy of the Order Striking Portions of Joint Applicants Post-Hearing Briefs.

Stacey Goodwin	Stacey.Goodwin@pnmresources.com ;	Kyle J. Tisdell	tisdell@westernlaw.org ;
Ryan Jerman	Ryan.Jerman@pnmresources.com ;	Ally Beasley	beasley@westernlaw.org ;
Richard Alvidrez	Ralvidrez@mstlaw.com ;	Ahtza Dawn Chavez	ahtza@navaeducationproject.org ;
Mark Fenton	Mark.Fenton@pnm.com ;	Joseph Hernandez	joseph@navaeducationproject.org ;
Carey Salaz	Carey.salaz@pnm.com ;	Nicole Horseherder	nhorseherder@gmail.com ;
Steven Schwebke	Steven.Schwebke@pnm.com ;	Jessica Keetso	jkeetso@yahoo.com ;
Patrick V. Apodaca	Patrick.Apodaca@pnmresources.com ;	Thomas Singer	Singer@westernlaw.org ;
Mariel Nanasi	Mariel@seedsbeneaththesnow.com ;	Mike Eisenfeld	mike@sanjuancitizens.org ;
Tim Davis	Tim@newenergyeconomy.org ;	Robyn Jackson	Robyn.jackson@dine-care.org ;
Christopher Sandberg	cksandberg@me.com ;	Jane L. Yee	jyee@cabq.gov ;
Joan Drake	jdrake@modrall.com ;	Larry Blank, Ph.D.	lb@tahoeconomics.com ;
Haley B. Adams	hadams@modrall.com ;	Saif Ismail	sismail@cabq.gov ;
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Jody García	JGarcia@stelznerlaw.com ;	Ramona Blaber	Ramona.blaber@sierraclub.org ;
Steven S. Michel	smichel@westernresources.org ;	Don Hancock	sricdon@earthlink.net ;
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Cydney Beadles	Cydney.Beadles@westernresources.org ;	Noah Long	Nlong@nrdc.org ;
Pat O'Connell	pat.oconnell@westernresources.org ;	Brian J. Haverly	bjh@keleher-law.com ;
Douglas J. Howe	dhowe@highrocknm.com ;	Kurt Wihl	kw@keleher-law.com ;
Cholla Khoury	ckhoury@nmag.gov ;	Jason Marks	lawoffice@jasonmarks.com ;
Gideon Elliot	gelliott@nmag.gov ;	Matthew Gerhart	matt.gerhart@sierraclub.org ;

Jennifer Van Wiel Keven Gedko Sydnee Wright Andrea Crane Doug Gegax Joseph Yar Jeffrey Spurgeon Bruce C. Throne Rob Witwer Jeffrey Albright Michael I. Garcia Amanda Edwards Matt Dunne Maureen Reno Richard L. C. Virtue Daniel A. Najjar Philo Shelton Kevin Powers Robert Cummins Steven Gross Martin R. Hopper Kurt J. Boehm Bill Templeman Justin Bieber Julie A. Wolfe Andrew Wernsdorfer Joel Johnson Andrew Rhodes	jvanwiel@nmag.gov ; kgedko@nmag.gov ; swright@nmag.gov ; etcolumbia@aol.com ; dgegax@nmsu.edu ; joseph@yarlawoffice.com ; spurgeonJ@southwestgen.com ; bthronetty@newmexico.com ; witwerr@southwestgen.com ; JA@Jalblaw.com ; mikgarcia@berncogov ; AE@Jalblaw.com ; dunneconsultingllc@gmail.com ; mrreno@reno-energy.com ; rvirtue@virtuelaw.com ; dnajjar@virtuelaw.com ; Philo.Shelton@lacnm.us ; Kevin.Powers@lacnm.us ; Robert.Cummins@lacnm.us ; gross@portersimon.com ; mhopper@msrpower.org ; kboehm@bkllawfirm.com ; WTempleman@cmtisantafe.com ; jbieber@energystrat.com ; julie@dietzedavis.com ; andy@berrendoenergy.com ; Joel@berrendoenergy.com ; rhodes@denovocapgroup.com ;	R. Scott Mahoney David L. Schwartz Katherine Coleman Thompson & Knight Randy S. Bartell Sharon T. Shaheen Jennifer Breakell Hank Adair Cindy A. Crane Peter Mandelstam Steve W. Chriss Katherine Lagen Camilla Feibelman Michael C. Smith Bradford Borman Peggy Martinez-Rael Elizabeth Ramirez Gilbert Fuentes Jack Sidler John Bogatko Milo Chavez Marc Tupler Elisha Leyba-Tercero Gabriella Dasheno Dhiraj Solomon John Reynolds Ana Kippenbrock	Scott.Mahoney@avangrid.com ; david.schwartz@lw.com ; Katie.coleman@tklaw.com ; Tk.eservice@tklaw.com ; rbartell@montand.com ; sshaheen@montand.com ; jbreakell@fmtn.org ; hadair@fmtn.org ; ccrane@enchantenergy.com ; peterm@enchantenergy.com ; Stephen.chriss@wal-mart.com ; Katherine.lagen@sierraclub.org ; Camilla.Feibelman@sierraclub.org ; Michaelc.smith@state.nm.us ; Bradford.Borman@state.nm.us ; Peggy.Martinez-Rael@state.nm.us ; Elizabeth.Ramirez@state.nm.us ; GilbertT.Fuentes@state.nm.us ; Jack.sidler@state.nm.us ; John.Bogatko@state.nm.us ; Milo.Chavez@state.nm.us ; Marc.Tupler@state.nm.us ; Elisha.Leyba-Tercero@state.nm.us ; Gabriella.Dasheno@state.nm.us ; Dhiraj.Solomon@state.nm.us ; John.Reynolds@state.nm.us ; Ana.Kippenbrock@state.nm.us ;
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DATED November 1, 2021

NEW MEXICO PUBLIC REGULATION COMMISSION

Ana C. Kippenbrock

Ana C. Kippenbrock, Law Clerk