

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)	CASE NO. 20-00222-UT
GENERAL DIVERSIFICATION PLAN; AND ALL)	
OTHER AUTHORIZATIONS AND APPROVALS)	
REQUIRED TO CONSUMMATE AND IMPLEMENT)	
THIS TRANSACTION)	
)	
AVANGRID, INC., AVANGRID NETWORKS, INC.,)	
NM GREEN HOLDINGS, INC.,)	
PUBLIC SERVICE COMPANY OF NEW MEXICO)	
AND PNM RESOURCES, INC.,)	
)	
JOINT APPLICANTS.)	
)	

**NEW ENERGY ECONOMY’S MOTION FOR RULE TO SHOW CAUSE WHY JOINT
APPLICANTS SHOULDN’T BE HELD IN CONTEMPT AND FOR SANCTIONS**

New Energy Economy (“NEE”) hereby files its motion for rule to show cause why Joint Applicants shouldn’t be held in contempt and for sanctions for noncompliance with rules of discovery and misuse of its procedural right under NMSA 1978, § 62-6-17 to designate as ‘confidential’ documents and associated information that Joint Applicants well know are not legally amenable to such designation.

Not only have Joint Applicants repeatedly failed to answer discovery, when they do it is often incomplete, and/or is unnecessarily cloaked in confidentiality, which has burdened parties to spend an inordinate amount of time seeking disclosure, transparency and public access.

In a complex, multi-party adjudication like the one at hand and, especially, given the enormity of

consequence facing New Mexicans in this merger, public scrutiny is needed more than ever. Yet, Joint Applicants are doing everything to suppress the truth and shield from inspection what should be “public records.” Joints Applicants are well aware, or they should be, that the purpose of our discovery rules is to allow liberal pretrial discovery, such that the trial itself is “a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *See, Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, 190 P.3d 322, 328. Actions and inactions of Joint Applicants have been to hide evidence. New Energy Economy has issued six Rule 1.2.2.25(J)(1) NMAC communications and filed one Motion to Compel in this matter in the last five months. Even when discovery disputes are finally resolved Joint Applicants have “successfully” managed to stall production until after the testimony due date, waste time, and generally cause frustration.¹

¹ For example On April 13th NEE asked:

NEE INTERROGATORY 9-12:

PLEASE PROVIDE INVOICES REGARDING ALL ADVERTISEMENTS.

NO RESPONDENT

OBJECTION:

Joint Applicants object to this interrogatory on the grounds that the information sought is not relevant or reasonably likely to lead to the discovery of admissible evidence. Rule 1-026 (B)(1) and (2) NMRA; 1.2.2.25 NMAC. Any costs for advertising are not relevant and not included in rates.

NEE wrote a discovery dispute letter on May 11th, on May 18th NEE met telephonically with attorneys Rick Alvidrez and Brian Haverly for Joint Applicants. On May 21st PNM provided two advertising bills from March 5th, but did so under confidential designation. On May 24th NEE wrote an email asking how the advertising invoice could possibly be considered confidential and later that day Joint Applicants agreed that it was not. This interrogatory response has not been updated despite tv and full page ads in major newspapers and the Joint Applicants obligation to continually update discovery responses.

Apparently this is a bell weather of things to come.

This motion relies on applicable statutes, Commission rules and precedent, and other legal authorities addressed below. In support of this request for sanctions, NEE state as follows:

1. Review of Joint Applicant's Response to the Hearing Examiner's May 11, 2021 Order reveals the Joint Applicant's stunning lack of candor and transparency provided to the intervening parties and the public in the discovery process.

2. As noted, Joint Applicants have been less than forthcoming on issues regarding compliance and enforcement actions. *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, at 3. This lack of forthcomingness is not due to any lack of attempt from the intervenors to obtain this information.

3. Upon review of discovery requested by New Energy Economy ("NEE") and the New Mexico Attorney General ("NMAG"), there were at least two separate instances where intervenors requested such information from the Joint Applicants. See Joint Applicant's Responses to NEE 4-55, January 21 and January 28 First Supplemental Objection and Response to NEE 4-55, and NMAG 4-1, attached as Exhibits A and B, respectively.

4. On January 11, 2021, NEE sent the following Interrogatory to Joint Applicants:

NEE INTERROGATORY 4-55:

ROBERT D. KUMP

IDENTIFY ALL CURRENT OR PENDING INSTANCES OF NON-COMPLIANCE WITH ANY STATE, FEDERAL LAW OR COMMISSION RULE OR ORDER BY IBERDROLA, AVANGRID, OR ANY OF ITS AFFILIATES FOR WHICH THE COMPANY MAY BE LIABLE AND SUBJECT TO CIVIL OR CRIMINAL PENALTIES FOR THE LAST TEN YEARS.

5. On January 21, 2021, Joint Applicants responded to NEE 4-55, stating: “please see Avangrid Exhibit NEE 4-55.” *Id.* No exhibit 4-55 was ever created, produced, or uploaded to Joint applicants Venue site.

6. Apparently recognizing their error, Joint Applicants supplemented their response on January 28, 2021, stating their objections on the basis that it requested confidential, proprietary and trade secret information. Subject to and without waiving its objection, Joint Applicant’s provided CONFIDENTIAL Avangrid Exhibits 4-55(a)-(i) (1-28-21 Supplemental) to supplement its response to NEE 4-55.² After a Rule 1.2.2.25(J)(1) NMAC letter and discussion, Joint Applicants waived the Confidential designation on those exhibits on May 21, 2021 (after your Honor’s May 11th Order).

7. NMAG 4-1 is reproduced below for reference.

NMAG INTERROGATORY 4-1:
ROBERT D. KUMP

FOR EACH OF AVANGRID’S U.S. UTILITY SUBSIDIARIES, PROVIDE (A) LINKS TO REGULATORY EXPRESSIONS OF CONCERN ABOUT THE SUBSIDIARY’S PERFORMANCE, AND (B) ALL DOCUMENTS REFLECTING OR RELEVANT TO AVANGRID’S (OR ANY AFFILIATE’S) RESPONSES TO THOSE CONCERNS

RESPONSE:

Joint Applicants object to this interrogatory on the basis that it is overly broad, unduly burdensome, and requests information that is in the public domain and equally accessible to the other parties. Subject to and without waiving these objections, Avangrid states that it does not track information in this manner. Below are website addresses for the public utility commissions that regulate Avangrid’s public utility companies, including case/docket numbers for recent rate cases and investigations cases involving the public utilities.

² The actual format that Avangrid provided Exhibits 4-55(a)-(i) are lengthy, in a horizontal format, with many pages that present a query with no information attached and that is why NEE “boiled down” the information into a more accessible format, which is attached as Exhibit C. An email version of the actual spreadsheets have been made available, via email to the Hearing Examiner, with copies to the parties.

Connecticut (United Illuminating (“UI”), Southern Connecticut Gas, and Connecticut Natural Gas). Links to all documents, inclusive of Commission orders and Avangrid and its affiliates responses thereto, are publicly available by docket included below at: <https://portal.ct.gov/PURA/Docket/Docket-and-Document-Information>.

- UI - Tropical Storm Isaias Investigation: Docket 20-08-03
- UI - Interim Rate Decrease: Docket 17-12-03RE11
- UI - CT 96 Hour Storm Docket: Docket 20-12-46
- UI – Most recent rate case: Docket 16-06-04
- CNG - CNG Civil Penalty: Docket 17-12-03
- CNG – Most recent rate case: Docket 18-05-16
- SCG – Most recent rate case: Docket 17-05-42

Maine (Central Maine Power and Maine Natural Gas). Links to all documents, inclusive of Commission orders and Avangrid and its affiliates responses thereto, are publicly available by docket included below at: <https://www.maine.gov/mpuc/online/index.shtml>.

- CMP – Most recent rate case: Case 2018-194.
- CMP - Revenue Decoupling Mechanism Investigation: Case 2020-159.
- CMP - Metering and Billing Investigation: Case 2019-015 and 2018-052.
- CMP - Disconnection Notices Investigation: Case 2020-017.
- CMP - Standard Offer Uncollectible Adder Investigation: Case 2020-228.
- MNG – Most Recent Rate Case: Case 2015-00005.

New York (New York State Electric and Gas and Rochester Gas & Electric). Links to all documents, inclusive of Commission orders and Avangrid and its affiliates responses thereto, are publicly available by docket included below at: <https://www3.dps.ny.gov/W/PSCWeb.nsf/All/FCFC9542CC5BE76085257FE300543D5E?OpenDocument>.

- New York Tropical Storm Isaias Investigation: Case 20-E-0586
- NYSEG/RG&E – Most recent rate case: *NY Rate case* (Cases 19-E-0378, 19-G-0379, 19-E-0380, 19-G-0381)
- 2018 Storm Investigation: Cases 19-E-0105 and 19-E-0106.
- RGE - “Proceeding on Motion of the Commission of Greenlight Networks' Pole Attachments in the Service Territory of Rochester Gas and Electric Corporation and Frontier” Case 20-M-0360.

Massachusetts (Berkshire Natural Gas). Links to all documents, inclusive of Commission orders and Avangrid and its affiliates responses thereto, are publicly available by docket included below at: <https://www.mass.gov/dpu-file-room-administrative-services>.

- BNG – most recent rate case: **#18-40.**

8. In response to the Hearing Examiner's Order, the Joint Applicants assert that "Avangrid provided information to the parties regarding each of the investigations listed on Attachment 4 to the Bench Request via responses to discovery on March 8, 2021. Included in Avangrid's responses were the docket titles and docket numbers for each investigation, the jurisdictions where the dockets were pending, and the websites for access to documents in each investigation." Joint Applicants' Response to Hearing Examiner May 11, 2021 Order at 9 filed on May 18, 2021.

9. Though not specifically referenced, the March timing of Avangrid's disclosure appears to coalesce with the Joint Applicant's response to the NMAG's Fourth Set of Interrogatories and Requests for Production, responded to on March 8 2021.

10. Joint Applicants identify "a list of all actions and measures that relate to state and federal regulatory compliance issues" in JA Exhibit May 11 Order 1A through 1C. Joint Applicants' Response to Hearing Examiner 5-11-21 Order at 2 filed on May 18 2021.

11. Exhibits 1A through 1C identify forty-nine (49) instances that relate to state and federal regulatory compliance issues. Upon comparison with NMAG 4 and NEE 4, only nine (9) were disclosed to the NMAG, and only (1) one was disclosed to NEE, despite the existence of the instances being within the scope of the discovery requests, and the continuing obligation of Joint Applicants to provide "prompt and complete disclosure and exchange of information" per the Commission's discovery rules.

1.2.2.25(A) NMAG. See Table 1, below for a complete breakdown.

Table 1

	Matter	Provided in Response to NEE 4-55	Provided in Response to NMAG 4-1	Provided in Response to HE	Penalty Amount
Central Maine Power (JA Ex. 1A)					
1	Docket No. 2019-00015	N	Y	Y	
2	Docket No. 2018-00194	N	Y	Y	
3	Docket No. 2020-00017	N	Y	Y	\$500,000
4	Docket No. 2020-00228	N	Y	Y	\$4.5MM (pending)
5	Distributed Generation Interconnection	N	N	Y	On-going investigation
Maine Natural Gas (JA Ex. 1A)					
6	Docket No. 2019-00129	N	N	Y	\$50,000
7	DFU 19-254	N	N	Y	\$500,000
8	Docket No. 2018-00128	N	N	Y	\$25,000
9	Docket No. 2018-00012	N	N	Y	\$15,000
Connecticut (JA Ex. 1A)					
10	Docket No. 03-03-07	N	N	Y	\$7,140
	Matter	Provided in Response to NEE 4-55	Provided in Response to NMAG 4-1	Provided in Response to HE	Penalty Amount
11	Docket No. 20-03-14	N	N	Y	\$219,615
12	Violations of Order in Docket No. 19-07-01	N	N	Y	\$10,000
13	Docket No. 20-03-15	N	N	Y	\$3,000
14	Docket 20-08-03	N	Y	Y	15 basis points
15	Docket 20-08-03	N	Y	Y	\$2.1 MM
Gas Companies (JA Ex. 1A)					
16	#19-11-15	N	N	Y	\$10,000
17	#19-07-14	N	N	Y	\$25,000
18	#17-12-02	N	N	Y	\$1.5 MM
19	#17-09-22	N	N	Y	\$25,000
20	#17-09-21	N	N	Y	\$50,000

2 1	#17-07-34	N	N	Y	\$50,000
2 2	#16-12-07	N	N	Y	\$50,000
2 3	20-11-12	N	N	Y	\$25,000
2 4	#20-02-20	N	N	Y	\$50,000
2 5	#19-12-02	N	N	Y	\$50,000
2 6	#19-11-14	N	N	Y	\$10,000
2 7	#19-10-30	N	N	Y	\$50,000
2 8	#18-12-15	N	N	Y	\$50,000
2 9	#18-02-10	N	N	Y	\$75,000
3 0	#17-09-23	N	N	Y	\$50,000
3 1	#16-08-19	N	N	Y	\$50,000
3 2	#16-05-11	N	N	Y	\$15,000
Massachusetts (JA Ex. 1A)					
3 3	DPU 19-PL-35	N	N	Y	\$100,000
3 4	DPU 19-DS-0588	N	N	Y	\$30,000
3 5	DPU 19-DS-0617A Berkshire	N	N	Y	\$20,000
3 6	DPU 20-PL-33 Berkshire	N	N	Y	\$50,000
3 7	DPU 20-PL-37 Berkshire	N	N	Y	\$75,000
3 8	DPU 20-PL-65 Berkshire	N	N	Y	\$10,000
New York (JA Ex. 1B)					
3 9	2016; RG&E	N	N	Y	\$300,000
4 0	2017; RG&E	N	N	Y	\$525,000 (Meter Reads) \$544,000 (Gas Safety)
4	Case 17-E-0594;	N	N	Y	\$3.9 MM

1	NYSEG and RG&E				
	Matter	Provided in Response to NEE 4-55	Provided in Response to NMAG 4-1	Provided in Response to HE	Penalty Amount
4 2	2018; NYSEG and RG&E	N	N	Y	\$3.5 MM (CAIDI) \$136,000 (RGE Gas Safety) \$67,000 (NYSEG Gas Safety)
4 3	2019; NYSEG and RG&E	N	N	Y	\$7.0 MM (SAIFI) \$525,000 (Meters) \$750,000 (NYSEG Gas Safety) \$1.8 MM (RGE Gas Safety)
4 4	Cases 19-E-0105 (NYSEG), 19-E-0106 (RG&E), 19-E-0107 (Con Ed), 19-E-0108 (O&R), 19-E-0109 (Central Hudson) and 19-E-0110 (National Grid)	N	105 and 106 only	Y	\$10.5 MM
4 5	Case 20-E-0586 NYSEG	N	Y	Y	\$2.0 MM
4 6	Case 20-M-0360; RG&E (Also Greenlight Networks and Frontier Communications)	N	Y	Y	Settlement on going
4 7	2020; NYSEG and RG&E	N	N	Y	\$7 MM (SAIFI) \$1.4 MM (NYSEG Meter) \$1.8 M (RGE

					Meter) \$1 MM (NYSEG Gas Safety) \$600,000 MM (RGE Gas Safety)
NERC (JA Ex. 1C)					
4 8	2021; CMP	N	Y	Y	\$360,000 (mitigated)
4 9	2019; CMP, NYSEG, RG&E	Y	Y	Y	\$450,000 (mitigated)

12. The information that was actually disclosed in response to NEE 4-55 only included a single matter disclosed to both the NMAG and the Hearing Examiner regarding NERC reporting violations in 2019. The majority of disclosures to NEE generally related to fines for violations of “call before you dig” violations, self-described “minor violations” and miscellaneous litigation matters, among other things. See, Exhibit C.

13. The failure to disclose this information speaks directly to the credibility, or lack thereof, of the Joint Applicants’ witnesses. Additionally, the service record of Avangrid and its parent company Iberdrola should be considered when reviewing this application for adequate consumer protections. The Commission must ensure that customers are sufficiently insulated from the risk imposed by a new board of directors beholden to foreign investors.

14. Further, the failure to provide complete disclosure of these facts prejudiced all the intervening parties. This information should have been disclosed in January, and the timing of most of the items contained in JA Exhibit May 11 Order 1A through 1C indicates that the majority of information was available to the Joint

Applicants at the time discovery was requested. Despite counsel for Avangrid asserting they “have nothing to hide”³, their actual disclosures say otherwise.

15. NEE 12-6, responded to on May 24, 2021 asks essentially the same discovery information as NEE 4-55 responded to at the end of January, 2021, yet NEE 12-6 a & b,⁴ attached here as Exhibit D, includes much more information. The information in NEE 12-6 was known during the January timeframe and if it had been provided in a timely manner would have been included in expert witness testimony. The fulsome nature of Avangrid’s response only occurred after the May 11th Order.

16. While Joint Applicants state to the PRC that they have tendered “all” violations and penalties⁵ they failed to mention the five corruption and fraud cases that Iberdrola and its affiliates have been involved with internationally. Also what’s curious is that the charges that Iberdrola and affiliates have won on appeal are “public documents”,⁶ but the settlements documents that have been tendered, for instance under CONFIDENTIAL JA Exhibit NEE 12-1, have been shielded from public inspection. In the narrative portion of NEE 12-1 on pp. 3-4, Exhibit D, it would seem that one lone rogue actor caused all the problems with “corruption and fraud” at Iberdrola Ingenieria y Construcccion, even though 1) a simple Google search of “Latvia

³ “Avangrid attorney Brian Haverly of Albuquerque at one point Tuesday morning told Schannauer he was confident there would be a satisfactory outcome.

‘I am sure we will work through this,’ Haverly said. “And I have nothing to hide about it.””
https://www.santafenewmexican.com/news/local_news/prc-hearing-examiner-blasts-avangrid-over-problems-elsewhere/article_4f250474-b269-11eb-98b4-97b1e09d642f.html

⁴ JA Exhibit NEE 12-6c is 282 pages, containing thousands upon thousands of pole violations and is not included herein.

⁵ “Avangrid is providing a list of *all* actions and measures that relate to state and federal energy regulatory compliance issues.” ⁵ JA Response, p. 2 of 26. “Avangrid is providing in this filing information regarding all investigations at all state utility regulators, the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation. ... Avangrid takes all of these proceedings very seriously, and works cooperatively with its utilities to resolve expeditiously and in a manner that is satisfactory to their respective public utility commissions.” JA Response, p. 9 of 26.

⁶ JA Exhibit NEE 12-2c, 12-2d, 12-2e

corruption fraud Iberdrola” produces a host of hits, including a list of international fines and 2) why would Iberdrola have settled for so much money (shouldn’t the public have a right to know how much?) and be required to fund anti-corruption and fraud efforts for four years⁷ if the wrongdoing lay at the feet of just one man? Avangrid provides an incomplete picture of the Latvia Settlement Agreement with the European Investment Bank. *See*, Exhibit D, at p. 5:

“Please see document attached hereto as JA Exhibit NEE 12-1 and CONFIDENTIAL JA Exhibit NEE 12-1; At p. 6: Please see documents attached hereto as JA Exhibits NEE 12-2a through f, and CONFIDENTIAL JA Exhibits NEE 12g through i: At p. 7: Please see CONFIDENTIAL JA Exhibits NEE 12-3a and b. The information sought in NEE Discovery Requests should have been produced in response to the Hearing Examiner’s Order and been made public. *Bryant v. Farmers Ins. Co., Inc.*, 2002 U.S. Dist. LEXIS 14344 (D. Kan., 2002) (Information sought is discoverable if it is particularly convincing or compelling to his or her case.)

17. When the discovery sought appears relevant, the party resisting discovery bears the burden of establishing lack of relevance by demonstrating that the requested discovery either does not come within the broad scope of relevance as defined under Fed. R. Civ. P. 26(b)(1) or is of such marginal relevance that the potential harm occasioned by discovery would outweigh the ordinary presumption in favor of broad disclosure. “In construing Rules 33 and 34, we must begin with the notion that discovery is designed to ‘make a trial less a game of blindman’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.’” *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P. 2d 231, 246 (1980)⁸

⁷ https://www.iberdrola.com/wcorp/gc/prod/en_US/inversores/hr/210226_OIR_04_res/210226_OIR_04.pdf, p.346.

⁸ The requirement of materiality does not ... compel the person seeking discovery definitely to prove materiality before being entitled to a discovery. Such an interpretation of the rule would place upon it a narrow construction which would severely limit the bounds of the discovery procedure. It might compel a party to know what was in the documents before he had seen them. One of the basic purposes of the new Rules is to enable a full disclosure of the facts so that

citing, *United States v. Procter & Gamble*, 356 U.S. 677, 682, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958) (citation omitted). “In light of that policy, Rules 33 and 34 must be liberally construed in order to insure that a litigant’s right to discovery is ‘broad and flexible.’” *Audiotext Communs. Network v. US Telecom*, 1995 U.S. Dist. LEXIS 15416 (D. Kan. 1995) See also *Smith v. MCI Telecommunications Corp.*, 137 F.R.D. 25, 27 (D. Kan. 1991); *Aramburu v. Boeing Co.*, 1994 U.S. Dist. LEXIS 20675 at *4, (D. Kan. 1994).

18. Failure to timely disclose these issues concerning management audits, reliability issues, and other compliance and enforcement matters at a time when testimony was being drafted definitely affected the scope of testimony and the time and resources devoted to those topics. Further, Joint Applicants when directly confronted by this Commission about past violation and penalties and their lack of transparency continued to withhold information about fraud and corruption that took place on the international stage. While the Commission generally only considers sanctions for discovery violations after a motion to compel has been granted and not complied with⁹, this situation is distinct because we have direct evidence that Joint Applicants withheld vital information during the time testimony was being drafted. As held in NMPUC Case No. 2146 Part II, “granting of sanctions is an extraordinary remedy and, although PNM’s conduct should not be condoned, it is not clear that PNM acted intentionally with bad faith.”¹⁰

justice might not move blindly. *United Nuclear*, *supra*, at p.255 citing, [*Belser v. Savarona Ship Corporation*, 26 F. Supp. 599 \(E.D.N.Y. 1939\)](#)

⁹ NMPRC Case No. 18-00216-TR-M, Order Denying Motion for Sanctions of Bernalillo Health Care Corporation D/B/A Albuquerque Ambulance Service, filed 10/24/2018.

¹⁰ NMPUC Case No. 2146 Part II, Order on AG’s Motion to Compel and Motion for Sanctions, filed 10/26/1988.

19. A court order issued under NMRA 1-037(A) is not required to impute sanctions under NMRA 1-037(B) because any clearly articulated order requiring or permitting discovery can provide the basis of sanctions for noncompliance. *Marchman v. NCNB Tex. Nat'l. Bank*, 1995-NMSC-041, 120 N.M. 74, 898 P.2d 709. Here we have both the Procedural Order establishing the discovery requirements in this case, the Rules of Civil Procedure, and the Commission's Rules governing the scope and purpose of discovery.

20. Withholding this information calls into question every response provided by Joint Applicants, and all intervenors are greatly prejudiced by this withholding. One must ask myriad questions after being presented with this information, such as:

- a. Would the signatories to the stipulation have signed on, had they had all this information available?
- b. What other responses to discovery have been incomplete and inadequate?
- c. What discovery responses did the signatories rely on before agreeing to sign on?
- d. Were the responses relied upon answered fully and completely?
- e. How would their positions have changed if a complete and forthright disclosure had been made?
- f. Knowing that Joint Applicants have not been forthright with all relevant information, do they still wish to be signatories to this stipulation?

- g. Knowing that Joint Applicants have not been forthright, how credible are commitments made by signatories, especially related to clauses to “work with” parties and “negotiate in good faith”?

21. Intervenor now have the task of follow up of discovery for over two thousand five hundred (2,500) pages of additional disclosures before the next date for testimony. If Joint Applicants’ proposed schedule is accepted, Intervenor will be forced to attempt to get to the bottom of these disclosures under cross examination with witnesses who have already demonstrated willingness to hide and obfuscate critical information that may demonstrate that they are not the green energy savior that they purport to be.

22. Given the egregiousness of Joint Applicants failure to disclose, and the attestations that they did in fact provide complete answers, sanctions under 1.2.2.25 (J) NMCA are warranted. The court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure. NMRA 1-037(B). Dismissal of a matter it also an appropriate sanction. *State ex rel. King v. Advantageous Cmty. Servs., LLC*, 2014-NMCA-076.

23. Joint Applicants show a willful disregard and abuse of the discovery process that has not only forced NEE to incur more expense to address their intransigence, but also should trouble the Commission, particularly in a case such as this where public inquiry and analysis matters more than ever – for what is decided in this case will have long-ranging consequences. The fact that Joint Applicants have already lost one Motion to Compel,¹¹ constitute a further abuse of the discovery process that also should trouble the Commission and warrants sanctions

¹¹ *Order Addressing New Energy Economy Motion to Compel Outstanding Discovery*, April 19, 2021.

against Joint Applicants. *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P.2d 231 (1980), *appeal dismissed*, 451 U.S. 901 (1981) (Sanctions entered for noncompliance with discovery orders.)

24. Now, particularly after the Hearing Examiner's two explicit rulings that:
- a. The extent to which and the circumstances in which a witness has participated in statements intended to directly or indirectly influence a Commission decision are potentially relevant to the credibility of the witness. The extent to which the witness conceals or fails to disclose that participation is also potentially relevant to the witness's credibility. The discovery, therefore, is reasonably calculated to lead to the discovery of admissible evidence.¹²
 - b. The Joint Applicants have 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. The failure is also significant, given that Avangrid, Inc. has considered the issues to be sufficiently important to include them in its reports filed with the SEC.¹³
 - c. [T]he Joint Applicants' testimony has been less than forthcoming on these issues.¹⁴ The Joint Applicants' failure to disclose this information to the Commission in this proceeding is troubling and is also relevant to the credibility of their witnesses' testimony and the transparency by which Avangrid and PNM would conduct their business in New Mexico if the merger is approved.¹⁵

Joint Applicants are still refusing to comply with discovery, whether its about international enforcement actions for corruption and fraud or advertising dollars used to influence the public and elected officials regarding the merger. NEE should not have to chase down these answers and neither should the PRC. Avangrid/Iberdrola and PNM have necessitated this motion for rule to show cause why Joint Applicants shouldn't be held in contempt and for sanctions. See, *United*

¹² *Id.*, at p. 9.

¹³ *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, p. 3.

¹⁴ *Id.*, pp. 3

¹⁵ *Id.*, pp. 4.

Nuclear Corp. v. General Atomic Co., 96 N.M. 155, 629 P.2d 231 (1980), *appeal dismissed*, 451 U.S. 901 (1981) quoting *Perry v. Golub*, 74 F.R.D. 360, at 365, (N.D.Ala. 1976) ([T]he 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.)

25. NEE sought the position of parties: **Joint Applicants oppose the motion.**

WHEREFORE, New Energy Economy is respectfully requesting that the Commission order:

- A. Joint Applicants to reimburse Mariel Nanasi, attorney for New Energy Economy, for the time expended on the the six efforts to resolve discovery disputes including the bringing of this Motion, paid for by shareholder funds (not to be reimbursed by ratepayers);
- B. An Order that Joint Applicants provide public information about all penalties and violations against Avangrid, Iberdrola, or any of its affiliates in the last 15 years within and outside of the United States;
- C. Joint Applicants to be forewarned that the withholding of evidence based on any frivolous claim that material is “irrelevant” or that “the discovery is not reasonably calculated to lead to the discovery of admissible evidence” will not be tolerated and that if there is a successful motion to compel and it is successful that Joint Applicants will have to reimburse the attorney for the entity contesting the

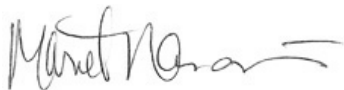
withholding of evidence, paid for by shareholder funds (not to be reimbursed by ratepayers);

- D. Joint Applicants to be forewarned that any frivolous confidential designation will not be tolerated and that if there is a successful motion to release information from the cloak of confidentiality and it is successful that Joint Applicants will have to be reimburse the attorney for the entity contesting the confidential designation, paid for by shareholder funds (not to be reimbursed by ratepayers);
- E. Joint Applicants must review all previously designated confidentiality material to determine if said documents are actually deserving of protection and notify intervenors of said changes;
- F. That intervenors' experts be allowed to include in future testimony all information they deem necessary to properly defend their claims about whether the merger is in the public interest and fairly balances the interests between ratepayers and shareholders, that was previously withheld from them.

DATED this 27th day of May 2021.

Respectfully Submitted,

New Energy Economy



Mariel Nanasi, Esq.
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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;) **Case No. 20-00222-UT**
AND ALL OTHER AUTHORIZATIONS AND APPROVALS)
REQUIRED TO CONSUMMATE AND IMPLEMENT THIS)
TRANSACTION)
)
)
)
)

CERTIFICATE OF SERVICE

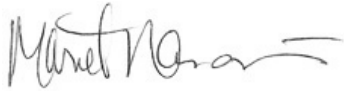
I CERTIFY that on this date I sent via email to the parties and individuals listed below a true and correct copy of:

NEW ENERGY ECONOMY'S MOTION FOR RULE TO SHOW CAUSE WHY JOINT APPLICANTS SHOULDN'T BE HELD IN CONTEMPT AND FOR SANCTIONS

<p>Stacey Goodwin Ryan Jerman Richard Alvidrez Mark Fenton Carey Salaz Steven Schwebke Patrick V. Apodaca Mariel Nanasi Christopher Sandberg Joan Drake Lisa Tormoen Hickey Nann M. Winter Keith Herrmann Dahl Harris Peter Auh Andrew Harriger Jody Garcia Steven S. Michel April Elliott Cydney Beadles Pat O'Connell Douglas J. Howe Cholla Khoury Gideon Elliot Robert F. Lundin Andrea Crane Doug Gegax Joseph Yar Jeffrey Spurgeon Bruce C. Throne Rob Witwer Jeffrey Albright Michael I. Garcia Amanda Edwards Matt Dunne Maureen Reno Richard L. C. Virtue Daniel A. Najjar Philo Shelton Kevin Powers Robert Cummins Steven Gross Martin R. Hopper Kurt J. Boehm Bill Templeman Justin Bieber Karl F. Kumli, III Mark Detsky K. C. Cunilio Julie A. Wolfe Andrew Wernsdorfer Joel Johnson</p>	<p>Stacey.Goodwin@pnmresources.com; Ryan.Jerman@pnmresources.com; Ralvidrez@mstlaw.com; Mark.Fenton@pnm.com; Carey.salaz@pnm.com; Steven.Schwebke@pnm.com; Patrick.Apodaca@pnmresources.com; Mariel@seedsbeneaththesnow.com; cksandberg@me.com; jdrake@modrall.com; lisahickey@newLawgroup.com; nwinter@stelznerlaw.com; kherrmann@stelznerlaw.com; dahlharris@hotmail.com; pauh@abcwua.org; akharriger@sawvel.com; JGarcia@stelznerlaw.com; smichel@westernresources.org; April.elliott@westernresources.org; Cydney.Beadles@westernresources.org; pat.oconnell@westernresources.org; dhowe@highrocknm.com; ckhoury@nmag.gov; gelliot@nmag.gov; rlundin@nmag.gov; ctcolumbia@aol.com; dgegax@nmsu.edu; joseph@yarlawoffice.com; spurgeonJ@southwestgen.com; bthroneatty@newmexico.com; witwerr@southwestgen.com; JA@Jalblaw.com; mikgarcia@bernco.gov; AE@Jalblaw.com; dunneconsultingllc@gmail.com; mreno@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; karlk@dietzedavis.com; mdetsky@dietzedavis.com; kcunilio@dietzedavis.com; julie@dietzedavis.com; andy@berrendoenergy.com; Joel@berrendoenergy.com;</p>	<p>Kyle J. Tisdell Ally Beasley Ahtza Dawn Chavez Joseph Hernandez Nicole Horseherder Jessica Keetso Thomas Singer Mike Eisenfeld Robyn Jackson Jane L. Yee Larry Blank, Ph.D. Saif Ismail Peter J. Gould Kelly Gould Jim Dauphinais Michael Gorman Justin Lesky Stephanie Dzur Ramona Blaber Don Hancock April Elliott Brian J. Haverly Jason Marks Matthew Gerhart R. Scott Mahoney David L. Schwartz Katherine Coleman Thompson & Knight Randy S. Bartell Sharon T. Shaheen Jennifer Breakell Hank Adair Cindy A. Crane Peter Mandelstam Steve W. Chriss Barbara Fix Katherine Lagen Camilla Feibelman Michael C. Smith Bradford Borman Peggy Martinez-Rael Elizabeth Ramirez Gilbert Fuentes Jack Sidler John Bogatko Milo Chavez Marc Tupler Elisha Leyba-Tercero Gabriella Dasheno Dhiraj Solomon John Reynolds Ana Kippenbrock</p>	<p>tisdell@westernlaw.org; beasley@westernlaw.org; ahza@navaeducationproject.org; joseph@navaeducationproject.org; nhorseherder@gmail.com; jkeetso@yahoo.com; Singer@westernlaw.org; mike@sanjuancitizens.org; Robyn.jackson@dine-care.org; jyee@cabq.gov; lb@tahoeconomics.com; sismail@cabq.gov; peter@thegouldlawfirm.com; Kelly@thegouldlawfirm.com; jdauphinais@consultbai.com; mgorman@consultbai.com; jlesky@leskylawoffice.com; Stephanie@Dzur-law.com; Ramona.blaber@sierraclub.org; sricdon@earthlink.net; ccae@elliottanalytics.com; bjh@keleher-law.com; lawoffice@jasonmarks.com; matt.gerhart@sierraclub.org; Scott.Mahoney@avangrid.com; david.schwartz@lw.com; Katie.coleman@tklaw.com; Tk.eservice@tklaw.com; rbartell@montand.com; sshaheen@montand.com; jbreakell@fmrn.org; hadair@fmrn.org; crrane@enchantenergy.com; peterm@enchantenergy.com; Stephen.chriss@wal-mart.com; baafix@earthlink.net; 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;</p>
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DATED this 27th day of May 2021.

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New Energy Economy,

A handwritten signature in dark ink, appearing to read "Mariel Nanasi", with a horizontal line extending from the end of the signature.

Mariel Nanasi, Esq.
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