

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)	
COMPANY OF NEW MEXICO'S)	
ABANDONMENT OF SAN JUAN)	Case No. 19-00018-UT
<u>GENERATING STATION UNITS 1 AND 4</u>)	

REBUTTAL TESTIMONY

OF

RONALD N. DARNELL

November 15, 2019

**NMPRC CASE NO. 19-00018-UT
INDEX TO THE REBUTTAL TESTIMONY OF
RONALD N. DARNELL**

**WITNESS FOR
PUBLIC SERVICE COMPANY OF NEW MEXICO**

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PNM Exhibit RND-1 (Rebuttal)	NMPRC Open Meeting Minutes (August 14, 2019)
PNM Exhibit RND-2 (Rebuttal)	Naabik'iyati' Standing Committee Resolution
PNM Exhibit RND-3 (Rebuttal)	Nenahnezad Chapter Resolution
PNM Exhibit RND-4 (Rebuttal)	San Juan Chapter Resolution
PNM Exhibit RND-5 (Rebuttal)	Upper Fruitland Chapter

AFFIDAVIT

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I. INTRODUCTION

1

2 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

3 **A.** My name is Ronald N. Darnell. I am the Senior Vice President, Public Policy, for
4 Public Service Company of New Mexico ("PNM" or "Company"). My business
5 address is Public Service Company of New Mexico, 414 Silver Avenue, SW,
6 Albuquerque, New Mexico 87102.

7

8 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS**
9 **PROCEEDING?**

10 **A.** Yes. I filed Direct Testimony in support of PNM's Consolidated Application in
11 Case No. 19-00195-UT on July 1, 2019. The New Mexico Public Regulation
12 Commission ("Commission") bifurcated that proceeding pursuant to the Energy
13 Transition Act and assigned to this docket the Company's application for
14 approval to abandon the San Juan coal plant and PNM's request for approval of a
15 financing order that would authorize the issuance of securitized energy transition
16 bonds. I also filed Direct Errata Testimony on September 20, 2019.

17

18 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

19 **A.** My rebuttal testimony provides the Company's policy response to the testimony
20 filed by sixteen witnesses and eight parties on the abandonment of San Juan
21 Generating Station and the Company's request for a financing order. My

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1 testimony also responds to specific issues raised in the parties' direct testimony.

2 Specifically, I address the following issues:

- 3 • Certain financing issues under the Energy Transition Act;
- 4 • The Company's proposals for job training and severance expenses under
- 5 the Energy Transition Act;
- 6 • Issues relating to the Company's abandonment application if the
- 7 Commission does not apply the Energy Transition Act, including the
- 8 application of the *Commuters' Committee* factors; and
- 9 • The recovery of undepreciated investments in the San Juan Generating
- 10 Station if the Commission does not apply the Energy Transition Act.

11
12 **Q. NEE AND STAFF ASSERT IN THEIR DIRECT TESTIMONIES THAT**
13 **THE ENERGY TRANSITION ACT DOES NOT APPLY TO THIS CASE.**
14 **WHAT IS THE COMPANY'S RESPONSE?**

15 **A.** Based on my review, the testimony submitted by NEE Witness Fetter and Staff
16 Witness Solomon include arguments regarding the applicability of the Energy
17 Transition Act that are governed by legal principles. The Company submitted its
18 legal brief on this issue on August 23, 2019. Other parties submitted their
19 response briefs on this issue on October 18th. In response to Witnesses Fetter and
20 Solomon, the Company reiterates that the Energy Transition Act fully applies to
21 this case and Case No. 19-00195-UT, and that Article, Section 34 of the New
22 Mexico Constitution does not preclude the application of the Act to these
23 proceedings because there was no "pending case" filed by PNM requesting

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1 abandonment or approved by the Commission when the law went into effect on
2 June 14, 2019.

3
4 It is unfortunate that the benefits to local communities that are envisioned under
5 the Energy Transition Act could be jeopardized by the uncertainty surrounding
6 our Consolidated Application for abandonment, financing, and replacement of
7 San Juan Generating Station. This uncertainty is evident in the direct testimony
8 that take an “either or” approach to applying the law. PNM recognizes that the
9 Commission is allowing parties to take differing positions on the Energy
10 Transition Act so that all views can be expressed and we are responding to
11 specific testimony that is based on the assumption that the Act does not apply. I
12 want to emphasize, however, that the Company’s responses in our rebuttal case
13 cannot be interpreted as an agreement or concession that the Energy Transition
14 Act is inapplicable to this proceeding.

15
16 To the contrary, the Energy Transition Act applies to all aspects of PNM’s
17 application and its policies and benefits should be fully implemented. The law
18 embodies a vision and path for New Mexico’s energy policy. To rule that the
19 Energy Transition Act does not apply here would negate the law. It does not
20 seem possible that when stakeholders worked on the law, legislators passed the
21 law and the Governor signed the law that all these groups worked on a nullity –
22 *i.e.*, a thing of no importance or worth.

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1 **Q. WHAT ARE YOUR OTHER MAIN TAKEAWAYS AFTER REVIEWING**
2 **STAFF AND INTERVENOR DIRECT TESTIMONY?**

3 **A.** First and foremost, the vast majority of witnesses filing direct testimony support
4 abandonment of the San Juan coal plant. In this vein, the Energy Transition Act
5 now presents the Commission with a unique opportunity to address the impacts of
6 abandonment on tribal and local communities in the San Juan area. Indeed, we
7 believe that one of the Act's principal objectives is to bring tribal communities in
8 as equal partners in the implementation of the state's energy policies. The
9 Commission has recognized the importance of this objective by ensuring that the
10 representatives of tribal communities have had the opportunity to have their
11 voices heard at the Commission. We have readily engaged in this process, just as
12 we have engaged other members of the public through community dialogues to
13 foster an understanding of how PNM has assessed the future of the San Juan coal
14 plant. PNM has participated in numerous public meetings throughout the
15 Farmington/Four Corners communities beginning with the 2017 IRP process.
16 More specifically at the direction of the Commission, PNM also sought
17 permission of the Navajo Nation leaders to give formal presentations before
18 Navajo Chapter members and the leadership's council.

19

20 **Q. PLEASE SUMMARIZE HOW THE ENERGY TRANSITION ACT'S**
21 **EMPHASIS ON TRIBAL INVOLVEMENT HAS BEEN REFLECTED IN**
22 **THESE PROCEEDINGS.**

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1 **A.** At the Commission’s open meeting on August 14, 2019, it was remarkable to see
2 the leader of a sovereign nation, President Jonathan Nez, providing comments to
3 the Commission in support of the implementation of the Commission’s
4 implementation of the Energy Transition Act. At that meeting, we were also
5 encouraged by the comments of Navajo Nation Vice President Myron Lizon,
6 Honorable Council Delegate Rick Nez, and President Darrell Pais of the Jicarilla
7 Apache Nation. PNM supports the statements and policies articulated by these
8 leaders, both in their own sovereign actions as well as in their formal statements
9 to the Commission. Copies of these resolutions and comments are attached to my
10 testimony as PNM Exhibits RND-1 (Rebuttal) through RND-5 (Rebuttal).

11
12 **Q.** **ARE THERE OTHER STAKEHOLDER INTERESTS THAT PNM HAS**
13 **TAKEN INTO CONSIDERATION IN ITS PROPOSAL TO ABANDON**
14 **THE SAN JUAN COAL PLANT?**

15 **A.** Yes. As I mentioned above, going into this process we understood that
16 stakeholders might have questions about our assessment about the future of the
17 San Juan coal plant. With regard to that assessment, Staff Witness Solomon
18 faults the Company for overlooking the possibility that, in lieu of abandonment,
19 the San Juan coal plant could be retrofitted with Carbon Capture, Utilization and
20 Sequestration (“CCUS”) technology.¹

21

¹ See Solomon Direct Testimony at 13 & 16.

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1 PNM did not present CCUS as a scenario in the Consolidated Application based
2 on the Company's qualitative evaluation of this technology, which indicated that
3 retrofitting the plant with CCUS technology would entail significant risks in terms
4 of cost and performance. In response to Staff Witness Solomon's testimony, we
5 have taken the next step and performed a more detailed analysis of CCUS to
6 address this scenario in our rebuttal case. As a result of this evaluation and as
7 discussed more fully in the rebuttal testimony of PNM Witnesses Fallgren,
8 Graves, and Phillips, we continue to believe that CCUS at the San Juan coal plant
9 is not attractive from an economic perspective and would result in hundreds of
10 millions of dollars in additional costs to our customers. Although CCUS
11 technology may eventually prove out on an economic basis for entities with
12 different economic characteristics than ours, we are skeptical that this alternative
13 will be a reasonable option for our customers in the timeframe relevant to this
14 case.

15
16 In addition, some of the positions advanced in the direct testimony are of
17 questionable relevance and appear designed to distract from or hinder the
18 Commission's advancement of New Mexico energy policy through the
19 implementation of the Energy Transition Act. For example, NEE Witness Steven
20 Fetter's argument that the Act undermines the Commission's "traditional"
21 regulatory authority ignores the role of the Legislature in setting energy policy for
22 New Mexico. Article XI of the New Mexico Constitution, which was ratified by
23 a majority of voters in 1996, specifically requires that the Commission regulate

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1 utilities in the manner prescribed by the Legislature.² To that end, the Energy
2 Transition Act reinforces the Commission’s supervisory role over public utilities
3 as an integral part of the state’s energy policies. The legislation charges the
4 Commission with implementing the state’s zero-carbon energy policy and gives
5 the Commission tools to address industry changes and social and economic
6 impacts to affected communities, which (to my knowledge) are issues the
7 Commission has not addressed before. Moreover, for the Act to be successfully
8 implemented, the Legislature has empowered the Commission to evaluate
9 replacement resources based on a multi-factor analysis, which is no small task.
10 The Energy Transition Act is an example of the Legislature empowering the
11 Commission with new tools to address particularly challenging circumstances.
12 Not only does the Act set forth an energy policy vision, it gives the Commission
13 additional tools outside its normal purview to help the affected community and
14 workers at the San Juan coal plant and the adjacent coal mine.

15
16 Finally, I would observe that there is a “through the looking glass” feel to some of
17 the direct testimony. Some parties appear to view the possibility that the
18 Commission will *not* apply the Energy Transition Act as providing them with an
19 opening to penalize the Company by upending the regulatory compact. They
20 argue for unsupported and arbitrary disallowances of the Company’s
21 undepreciated investments in the San Juan coal plant. As I discuss further below,

² N.M. Const. art. XI, § 2.

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the Company's proposal to fully recover its undepreciated investments if the Act is not applied is reasonable and supported by well-known regulatory principles.

Q. PLEASE SUMMARIZE THE COMPANY'S REBUTTAL TESTIMONY.

A. In addition to my testimony, the Company provides rebuttal testimony from ten witnesses. Below, I provide a brief summary of topics covered by each rebuttal witness.

PNM Table RND-1 (Rebuttal): Witness List and Areas of Testimony

Lauren Azar	<ul style="list-style-type: none">▪ Applicability of the Energy Transition Act▪ Discusses regulatory compact▪ Responds to recommendations on cost recovery
Frank Graves	<ul style="list-style-type: none">▪ Responds to recommendations on undepreciated investments▪ Response to recommendations on carbon capture technology
Tom Fallgren	<ul style="list-style-type: none">▪ Responds to allegations concerning the December 2018 Compliance Filing▪ Response to claims on the feasibility of carbon capture technology▪ Responds to recommendations regarding recovery of costs related to environmental impacts
Nick Phillips	<ul style="list-style-type: none">▪ Responds to recommendations on carbon capture technology
Henry Monroy	<ul style="list-style-type: none">▪ Proposed caps on capital costs▪ Proposed disallowance of severance costs▪ Recommended 50% recovery of abandonment costs
Charles Atkins	<ul style="list-style-type: none">▪ Responds to NEE claim regarding deficient application for financing order
Elisabeth Eden	<ul style="list-style-type: none">▪ Responds to NEE claim regarding deficient application for financing order
Michael Settlage	<ul style="list-style-type: none">▪ Responds to recommendation on the Energy Transition Charge

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Douglas Cowin	▪ Responds to claims concerning soil contamination
John Hale	▪ Responds to claims concerning water contamination

II. FINANCING ISSUES UNDER THE ENERGY TRANSITION ACT

Q. HOW DOES THE COMPANY RESPOND TO NMAG WITNESS CRANE'S RECOMMENDATION TO CAP THE TRUE-UP OF FUTURE COSTS RELATED TO ABANDONMENT?

A. We appreciate intervenors' concerns about ensuring that the Energy Transition Act is implemented in a cost-effective and transparent way. As PNM Witness Monroy explains in the rebuttal testimony, however, there are costs of abandonment under the Energy Transition Act that can be financed and other costs that may be incurred that cannot be financed and instead will be proposed for recovery through future general rate cases. When the Company incurs additional expenses beyond what has been financed under the Act, we will seek the recovery of those costs as appropriate.

Q. STAFF WITNESS ESCHBERGER RECOMMENDS THAT PNM'S ESTIMATED ENERGY TRANSITION COSTS SHOULD BE VERIFIED BEFORE THE COMMISSION FINALIZES A RECOVERABLE AMOUNT. WHAT IS THE COMPANY'S RESPONSE?

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1 **A.** Staff Witness Eschberger’s testimony on this point is not clear, but it appears that
2 she is essentially asking the Commission to order an audit prior to issuing a
3 financing order in this proceeding. We have several concerns about this
4 recommendation because it is not clear what function this proposed audit would
5 serve.

6
7 First, Witness Eschberger’s recommendation is inconsistent with the detailed
8 financing approval process that is set forth in the Energy Transition Act. In
9 accordance with the Act, the Company has provided the information underlying
10 its estimated energy transition costs and this information is subject to review by
11 all of the parties.

12
13 Second, Section 62-18-5(K) of the Energy Transition Act explicitly contemplates
14 the possibility of an audit *after* financing approval. In this regard, paragraph 38
15 on page 61 of the form of Financing Order filed with PNM’s consolidated
16 application expressly provides the Commission with the right to audit the books
17 and records of the Company in accordance with Section 62-18-5(K).

18
19 Finally, Section 62-18-4(B)(10) expressly protects customers in the event the
20 amount of energy transition costs financed through the issuance of energy
21 transition bonds is found to exceed the Company’s actual energy transition costs.
22 Section 62-18-4(B)(10) requires PNM to include a proposed ratemaking process
23 to reconcile and recover or refund any difference between the energy transition

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1 costs financed and the actual energy transition costs incurred by PNM. PNM's
2 proposed ratemaking process to refund amounts to customers in such a case is
3 described in the testimony of PNM Witness Monroy.

4
5 In sum, PNM believes these safeguards are sufficient and there is no need for the
6 "verification" that Staff proposes.

7
8 **Q. NM AREA WITNESS GORMAN TAKES THE POSITION THAT THERE**
9 **SHOULD BE EXPLICIT CONDITIONS FOR THE USE OF THE**
10 **SECURITIZATION BOND PROCEEDS. CAN YOU EXPLAIN HOW THE**
11 **COMPANY WILL USE THE PROCEEDS OF THE BONDS FOR**
12 **PROVIDING UTILITY SERVICE TO CUSTOMERS?**

13 **A.** The use of the bond proceeds for purposes related to providing utility service to
14 customers will include paying certain abandonment costs as described in the
15 direct testimony of PNM Witness Monroy.³ The Company's provision of utility
16 service to customers includes a number of activities, such as the routine
17 construction of extensions and improvements to the Company's electric
18 transmission and distribution system and common plant, environmental
19 expenditures, energy efficiency and renewable energy investments, investments in
20 new generating facilities, and maintenance on the Company's generation,
21 transmission and distribution facilities. The bond proceeds could also be used to
22 retire indebtedness incurred to fund these activities. The precise use will depend

³ See Monroy Direct Testimony at 8:15-23-9:1-6.

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1 upon PNM's capital requirements at the time the bond proceeds are received. In
2 addition, the Company has committed to filing the periodic reports required by
3 Section 62-18-5(J) of the Energy Transition Act that will show the receipt and
4 disbursement of the energy transition bond proceeds, as described in the direct
5 testimony of PNM Witness Eden.⁴ As such, there is no need for the Commission
6 to adopt more explicit conditions for the use of bond proceeds.

7
8 **III. JOB TRAINING AND SEVERANCE COSTS UNDER THE ENERGY**
9 **TRANSITION ACT**

10 **Q. HAVE YOU REVIEWED NMAG WITNESS CRANE'S TESTIMONY**
11 **WITH RESPECT TO THE COMPANY'S REQUEST FOR JOB**
12 **TRAINING AND SEVERANCE COSTS UNDER THE ENERGY**
13 **TRANSITION ACT?**

14 **A.** Yes, I have. PNM has estimated its severance costs for PNM employees based on
15 its 58.7% ownership share in the San Juan coal plant. In turn, NMAG Witness
16 Crane argues that only 58.7% of severance costs for PNMR shared services and
17 San Juan Coal Mine ("SJCM") employees should be allowed for recovery, rather
18 than PNM's proposed 100%. Witness Crane also proposes to apply this 58.7%
19 figure to the job training expenses for all (PNM, PNMR, and SCJM) employees.
20 Witness Crane argues that applying this percentage across-the-board is
21 appropriate because the other San Juan coal plant owners should be responsible
22 for the remaining costs.

⁴ See Eden Direct Testimony at 13:6-20.

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1 **Q. DO YOU AGREE WITH THIS RECOMMENDATION?**

2 **A.** No. The Company does not believe that basing the job training and PNMR/SCJM
3 severance costs on PNM's ownership share in the San Juan coal plant is
4 reasonable because these are not common costs that would be shared with other
5 station owners under the current participation agreement. PNM will incur all of
6 these costs as a result. Under the Energy Transition Act, these costs qualify as
7 energy transition costs.⁵ The Act does not allocate job training and severance
8 expenses based on a qualifying utility's ownership share, nor does it impose
9 obligations on the non-PNM owners of the station. The funds available for job
10 training and severance should not be arbitrarily cut as suggested by the NMAG.

11
12 **Q. DOES THE NMAG RECOMMEND OTHER CUTS TO THE COMPANY'S**
13 **REQUEST FOR JOB TRAINING AND SEVERANCE COSTS UNDER**
14 **THE ACT?**

15 **A.** Yes. NMAG Witness Crane recommends that the Commission disallow
16 approximately \$3.7 million of estimated SJCM severance costs, which is
17 approximately half the amount requested by PNM.⁶ NMAG Witness Crane
18 reaches this result by basing her estimate on the wages and years of service for the
19 SJCM employees, as calculated in Schedule ACC-3. According to NMAG

⁵ Energy Transition Act, Section 62-18-2(H)(2)(b).

⁶ As I discuss in my Direct Testimony, PNM's \$7.4 million cost estimate for SJCM mine employee severance is based on increasing the amount of severance that SJCM is proposing to provide its mine employees from three months to nine months. In its initial discovery response to AG 2-20, PNM provided an exhibit that inadvertently included a cost estimate for three additional months' severance for the mine employees. The Company has served a supplemental discovery response that corrects this exhibit to reflect the additional six months of severance for mine employees, which is consistent with the \$7.4 million amount calculated by PNM Witness Monroy in his Direct Testimony.

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1 Witness Crane, \$3.7 million is the “amount necessary to bring Westmoreland
2 employees to parity with PNM employees.”⁷

3
4 **Q. DO YOU AGREE THAT THE NMAG RECOMMENDATION PROVIDES**
5 **PARITY FOR MINE WORKERS?**

6 **A.** I don’t. The severance amount that we proposed for SJCM employees is intended
7 to provide comparable benefits to PNM employees and mine employees. PNM
8 believes that treating employees equally on this issue is consistent with the
9 Energy Transition Act and is important because the plant and mine closure is an
10 issue of state-wide concern and each impacted job will have a corresponding
11 impact on the affected community. We acknowledge that there may be
12 disagreements over what is fair and what is not. We think PNM’s approach is fair
13 and reflects the intent of the Energy Transition Act.

14
15 **Q. PLEASE RESPOND TO NMAG WITNESS CRANE’S CRITIQUE OF THE**
16 **COMPANY’S PROPOSED APPROACH TO PROVIDING SEVERANCE**
17 **TO SJCM EMPLOYEES.**

18 **A.** NMAG Witness Crane is correct when she acknowledges that the Energy
19 Transition Act authorizes severance expenses for SJCM employees.
20 Nevertheless, she criticizes PNM for “unilaterally decid[ing] to provide additional
21 severance to these employees – at ratepayer expense.”⁸ PNM does not view

⁷ Crane Direct Testimony at 33:14-15.

⁸ *Id.* at 33:2-3.

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1 fulfilling the terms of securitized financing enacted by the Legislature as being a
2 unilateral decision that comes at the “expense” of customers. Although PNM
3 does not have a contractual obligation for severance or training of the coal mine
4 employees, we believe that the Energy Transition Act’s provisions for mine
5 workers are reasonably met by our proposed amount and timing of the
6 disbursement of these funds to SJCM employees. That said, we recognize that the
7 Commission can choose to go in a different direction under the Act if the record
8 supports applying alternative funding criteria in its oversight role with respect to
9 severance and job training benefits for SJCM employees. While we do not
10 believe that a different approach is warranted or has been justified, we do agree
11 that the legislative extension of benefits to employees of an enterprise that is not
12 regulated by the Commission ultimately presents a unique policy judgment for the
13 Commission to make.

14
15 **Q. NMAG WITNESS CRANE ALSO CRITICIZES THE COMPANY FOR ITS**
16 **POSITION ON TRUING-UP COAL MINE SEVERANCE EXPENSES.**
17 **PLEASE RESPOND.**

18 **A.** PNM did not propose a true-up of these expenses because we have proposed to
19 deposit the severance funds for SJCM in a third-party managed trust fund. The
20 trust fund manager would coordinate with SJCM to distribute these funds under
21 our proposal. Further, pending Commission approval, the trust fund manager
22 could be tasked with transferring any remaining funds as of December 2022 to the

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1 Displaced Worker Assistance Fund, which would account for the full and final
2 disposition of these funds.

3
4 **Q. HOW DO YOU RESPOND TO WRA WITNESS HOWE'S POSITION**
5 **REGARDING THE PRE-FUNDING OF ECONOMIC DEVELOPMENT**
6 **SUPPORT FOR IMPACTED TRIBAL AND LOCAL COMMUNITIES?**

7 **A.** WRA Witness Howe's point regarding the uncertainty surrounding the future of
8 the San Juan Generating Station is a valid one. At the same time, we believe that
9 it will be critically important to pre-fund a portion of these activities before plant
10 closure to support affected employees prior to June 2022. To address Witness
11 Howe's concern, the Commission should consider authorizing PNM to provide
12 early funding in the amount of 25% of the total by January 1, 2021, if the closure
13 of the plant is certain by that time, or at such later date upon notice from the City
14 of Farmington to the Commission that it does not intend to continue operating the
15 plant. We would also endorse a similar approach regarding the severance funds
16 for the SJCM mine workers, which we have proposed to deposit in a third-party
17 managed trust fund by April 30th, 2020, to be available to be dispersed when
18 SJCM workers are impacted.

19
20 **Q. STAFF WITNESS ESCHBERGER CONTENDS THAT PNM SHOULD**
21 **NOT BE ALLOWED TO RECOVER THE REQUESTED JOB TRAINING**
22 **AND SEVERANCE COSTS IF THE ENERGY TRANSITION ACT DOES**
23 **NOT APPLY. DO YOU AGREE?**

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1 **A.** I do, although this outcome would be deeply troubling. Without securitization
2 under the Energy Transition Act, the Company is not authorized to support the
3 mine workers who don't work for the Company, nor the economic development
4 funds to be administered by state agencies. The unfortunate truth is that without
5 the Energy Transition Act, these significant community benefits will be lost and it
6 will be much more difficult to equip affected employees for the inevitable
7 transition in the energy business.

8
9 **IV. ABANDONMENT OF THE SAN JUAN GENERATING STATION**

10 **Q.** **STAFF WITNESS SOLOMON CRITICIZES THE COMPANY'S**
11 **JUSTIFICATIONS FOR SEEKING ABANDONMENT OF THE SAN**
12 **JUAN COAL PLANT. WHAT IS THE COMPANY'S RESPONSE?**

13 **A.** In response to my Direct Testimony, Witness Solomon makes the claim that "it
14 appears that PNM predetermined that it would shutdown all coal-fired generation,
15 beginning the process with retirement of Units 2 and 3 in 2017, followed by the
16 remaining Units 1 and 4 using the 'opportunity' provided by the ETA."⁹ We
17 disagree with this statement. As PNM Witness Phillips discusses in his rebuttal
18 testimony, PNM's application to abandon the San Juan coal plant is the
19 culmination of a series of PNM analyses and discussions with other plant owners
20 that began with the Company's 2017 Integrated Resource Plan ("IRP"). The
21 Commission required PNM to analyze both the continuation and shutdown of the

⁹ Solomon Direct Testimony at 10:11-13.

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1 San Juan coal plant as a requirement of approving a two-unit operation. As
2 Witness Phillips observes, the results of the Company's analyses have
3 consistently demonstrated that PNM's customers would be better off if PNM
4 exited its remaining interest in the coal plant before the end of the plant's operable
5 life, at the end of the current fuel supply agreement.

6
7 Furthermore, as I discussed in my direct testimony, the energy industry is at a
8 tipping point when it comes to relying upon traditional existing resources rather
9 than considering newer, more sustainable forms of energy sources. Contrary to
10 Witness Solomon's testimony, I believe that the "opportunity" embodied in the
11 Energy Transition Act is the State of New Mexico's decision to pursue and
12 harness the benefits of these innovative technologies and ensure that our
13 communities are not left behind as this energy transition occurs within New
14 Mexico and across the country.

15
16 Finally, Witness Solomon's apparent criticism that PNM engaged stakeholders
17 during the process of developing the four scenarios is perplexing.¹⁰ Although this
18 case does not involve an IRP process, the Public Utility Act and the
19 Commission's rules and orders clearly recognize the value of conversations that

¹⁰ *Id.* at 10:19-24 & 11:1-3.

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1 occur between PNM and other stakeholders, which we then incorporate into
2 concrete and reliable outcomes.¹¹

3
4 Regardless, we generally agree with Witness Solomon when he states that “[t]he
5 utility must consider primarily cost and service reliability in its selection of any
6 generation mix.”¹² As PNM Witness Phillips explains in his rebuttal testimony,
7 however, cost and reliability also need to be balanced with environmental impacts
8 in order for PNM to demonstrate its ability to comply in the longer-term with
9 mandated zero-carbon standards. This is precisely why the Company is
10 recommending Scenario 1 in Case No. 19-00195-UT.

11
12 **Q. STAFF WITNESS SOLOMON ARGUES THAT THE COMPANY FAILED**
13 **TO ADDRESS THE *COMMUTERS’ COMMITTEE* FACTORS IN ITS**
14 **ABANDONMENT APPLICATION. WHAT IS THE COMPANY’S**
15 **RESPONSE?**

16 **A.** PNM Witness Mark Fenton fully addressed the relevant *Commuters’ Committee*
17 factors in his direct testimony.¹³ Staff Witness Solomon’s argument is based on

¹¹ See, e.g., N.M. Stat. Ann. § 62-17-10 (“The preparation of resource plans shall incorporate a public advisory process.”); 17.7.3.9.H NMAC (“[p]ublic input is critical to the development and implementation of resource planning in New Mexico”).

¹² Solomon Direct Testimony at 12:1-2.

¹³ See Mark Fenton Direct Testimony at 5:15-10:14. The four factors are: (1) the extent of the carrier’s loss on the particular branch or portion of the service, and the relation of that loss to the carrier’s operation as a whole; (2) the use of the service by the public and prospects for future use; (3) a balancing of the carrier’s loss with the inconvenience of the hardship to the public upon discontinuance of service; and (4) the availability and adequacy of substitute service. See *Commuters’ Committee v. Pennsylvania Pub. Util. Comm’n*, 88 A.2d 420, 424 (Pa. Sup. Ct. 1952).

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1 solely on his request to PNM to further consider one additional scenario that
2 would retrofit the San Juan coal plant with CCUS. As PNM Witnesses Phillips
3 and Graves discuss, the Sargent & Lundy study that Staff Witness Solomon relied
4 upon to make this request is merely a “pre-feasibility” study that appears to be
5 inconsistent with the current realities of CCUS. The pre-feasibility study does not
6 establish that CCUS at San Juan is a feasible alternative. To the contrary, our
7 additional analysis of CCUS reconfirms Mr. Fenton’s testimony and the
8 associated resource planning testimony filed on July 1, 2019, that there will be a
9 net benefit to customers if Units 1 and 4 are retired in 2022 and replaced with
10 other resources.

11
12 **IV. RECOVERY OF UNDEPRECIATED INVESTMENT IF THE ENERGY**
13 **TRANSITION ACT IS NOT APPLIED**

14 **Q. HOW DOES THE COMPANY PROPOSE TO RECOVER ITS**
15 **UNDECPRECIATED COSTS IN THE SAN JUAN GENERATING**
16 **STATION IF THE ENERGY TRANSITION ACT IS NOT APPLIED?**

17 **A.** Absent the application of the Energy Transition Act, PNM proposes to recover its
18 undepreciated costs consistent with traditional regulatory stranded cost rules over
19 a period of up to 25 years, to be implemented in a future general rate case. The
20 Federal Energy Regulatory Commission (“FERC”) and states have grappled with
21 these issues in various ways over the years, but the default rule is that a utility

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1 recovers a return *of* and a return *on* prudently incurred costs.¹⁴ FERC Order 888
2 identified these traditional stranded cost principles, and other states have also
3 followed this path as setting the best regulatory incentives.

4
5 **Q. WHY NOT ALLOW ONLY A RETURN OF CAPITAL AND NOT A**
6 **RETURN ON CAPITAL FOR THESE UNDEPRECIATED COSTS?**

7 **A.** The Energy Transition Act answers this question in a particular way, giving PNM
8 and its shareholders a return of its capital. The Act struck a particular balance and
9 reflects a compromise between various stakeholders. If, however, we depart from
10 the balance of the Energy Transition Act, then our shareholders will expect the
11 traditional undepreciated cost rules and principles to apply. Because the
12 undepreciated costs sought in this abandonment were prudently incurred and have
13 been included for full recovery through PNM's rate base, then the traditional
14 undepreciated cost treatment applies where both a return on and a return of the
15 costs occurs.

16
17 **Q. WHY DO YOU PROPOSE APPROVAL OF UP TO A 25-YEAR**
18 **UNDEPRECIATED COST RECOVERY PERIOD?**

19 **A.** Because it parallels the 25-year period embodied in the Energy Transition Act.¹⁵
20 The duration of the recovery period involves balancing factors of rate impact and

¹⁴ See FERC, Order No. 888, at 490 (1996) ("We also will decline to require a utility seeking stranded cost recovery to shoulder a portion of its stranded costs. Such a requirement would be a major deviation from the traditional principle that a utility should have a reasonable opportunity to recover its prudently incurred costs."). See, e.g., *Office of Consumers' Council v. FERC*, 914 F.2d 292 (D.C. Cir. 1990); *National Fuel Gas Supply Corp. v. FERC*, 900 F.2d 340, 342, 347-51 (D.C. Cir. 1990).

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1 intergenerational equity. This time period reflects how the Energy Transition Act
2 strikes that balance and we would urge the Commission to adopt it if the Energy
3 Transition Act was determined to be inapplicable, as well.

4
5 **Q. PLEASE DESCRIBE THE TESTIMONY RECEIVED ON THE ISSUE OF**
6 **THE RECOVERY OF UNDEPRECIATED INVESTMENT IN THE SAN**
7 **JUAN COAL PLANT IF THE ENERGY TRANSITION ACT IS NOT**
8 **APPLIED.**

9 **A.** Several witnesses urge the Commission to deny at least a portion of these
10 investments if the Commission approves the abandonment of the San Juan coal
11 plant but does not apply the Act. Staff takes the view that the full recovery of the
12 undepreciated investment in SJGS would violate the regulatory compact without a
13 rebalance of the interests of customers and PNM's shareholders, and Staff
14 Witness Sisneros therefore recommends that "rate payers should be subject to no
15 more than half the stranded cost of the plant in the amount of \$141.5 million."¹⁶
16 Staff Witness Sisneros also recommends that PNM's return on any recoverable
17 amounts under this proposal should be limited to the cost of debt.¹⁷ For similar
18 reasons, NMAG Witness Crane recommends that no cost recovery from
19 ratepayers should be allowed. In the alternative, Witness Crane recommends that
20 the maximum amount of recovery should be limited to 50% "if the NMPRC

¹⁵ See Energy Transition Act, Section 62-18-4(B)(7) (providing that the "scheduled final maturity for each bond issuance shall be no longer than twenty-five years.").

¹⁶ Sisneros Direct Testimony at 9:5-6.

¹⁷ See *id.* at 10:1-11:2.

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1 determines that New Mexico ratepayers should be responsible for some portion of
2 stranded costs.”¹⁸ The recommendations for a 50/50 split are premised upon the
3 treatment of the undepreciated costs associated with San Juan Units 2 and 3 in the
4 Modified Stipulation in Case No. 13-00390-UT.

5
6 **Q. WHAT IS THE COMPANY’S RESPONSE TO THESE**
7 **RECOMMENDATIONS?**

8 **A.** PNM believes that these recommendations are short-sighted and
9 counterproductive, both environmentally and economically. As a general matter,
10 I would agree that the regulatory compact is the appropriate lens through which
11 the Commission should consider the recovery of costs on appropriate investments
12 if the Energy Transition Act is not applied; however, the arbitrary approach of
13 Staff and the NMAG does not reflect those principles. PNM Witnesses Azar and
14 Graves discuss the regulatory compact in further detail, whereby a utility is
15 required to subject its property to public use at rates designed to provide for the
16 recovery over time of the prudent and reasonable costs of providing service, and
17 includes an obligation on the part of the utility to make investments in property to
18 serve the public. Indeed, it is the regulatory compact that enables PNM to do
19 things that businesses in other industries do not or cannot do, such as keeping
20 retail rates low by recovering costs over extended timeframes and providing
21 universal service within its certificated service territory.

22

¹⁸ Crane Direct Testimony at 57:15-18.

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1 In this instance, a Commission decision that denies PNM full recovery of costs
2 would be contrary to the regulatory compact for a number of reasons. Although
3 PNM Witnesses Graves and Azar support this more fully in their respective
4 testimonies, I highlight several of those reasons here.

5
6 First, we are asking for the recovery of investment dollars that have never been
7 found to be imprudent and have been included in PNM's rate base. As PNM
8 Witness Graves discusses in his rebuttal testimony, the Commission has already
9 authorized PNM to recover these costs from customers through the ratemaking
10 process. The suggestion that the Commission overturn decades of its own
11 precedent and require the Company to split the costs of providing service with
12 ratepayers might have superficial appeal, but it wouldn't result in a balancing of
13 interests under these circumstances. Rather, such a requirement would effectively
14 require us to provide service to retail customers at a discount. Staff Witness
15 Sisneros's recommendation that PNM should be limited to a return that is equal to
16 its cost of debt under the 50/50 splitting proposal would only exacerbate this
17 result. As PNM Witness Graves points out, as a mathematical matter limiting the
18 Company's return to the cost of debt would tip the scales even farther against
19 shareholders because they would not realize the full value of their "50."

20
21 Second, denying the full recovery of undepreciated costs is especially problematic
22 when the weighing of costs and benefits, including the recovery of the prudent
23 investment, demonstrates that the abandonment and replacement of the San Juan

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1 coal plant will result in significant net benefits for customers. The Company's
2 direct case establishes that there will be savings for customers if the San Juan coal
3 plant is retired.¹⁹ Moreover, NM AREA Witness James Dauphinais performed
4 his own "stress test" with higher natural gas price assumptions and a zero carbon
5 emission cost assumption and concluded that the abandonment of the San Juan
6 coal plant "has a much lower 20-year net present value revenue requirement than
7 continued operation...."²⁰ Given the consensus in the record on this issue, a
8 punitive approach that significantly increases the adverse impacts on shareholders
9 and the financial health of the Company would be completely unwarranted.

10
11 Third, the Energy Transition Act has positioned the state to be a leader in carbon-
12 free and renewable energy by 2045, without leaving stakeholders or regulated
13 utilities behind. PNM has taken this a step further by self-imposing a goal of
14 being carbon-free by 2040. Under all circumstances, the Energy Transition Act
15 operates to impose rigorous new emissions restrictions on the San Juan coal plant
16 beginning in 2023. A constructive outcome in this proceeding will help to ensure
17 that the Company is well-situated to take the next steps in implementing New
18 Mexico energy policy, such as acquiring necessary new resources to meet the 50
19 percent renewable energy standard by 2030 and eliminating carbon emissions by
20 no later than 2045, while keeping energy affordable and reliable for the
21 communities we serve.

¹⁹ See, e.g., PNM Table HEM-1 (Errata 9-20-19).

²⁰ Dauphinais Direct Testimony at 15:16-17.

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1 **Q. NMAG WITNESS CRANE ARGUES THAT FULL COST RECOVERY IS**
2 **INAPPROPRIATE WITH REGARD TO ADDRESSING**
3 **ENVIRONMENTAL COMPLIANCE IMPOSED BY LAW. DO YOU**
4 **AGREE?**

5 **A.** No, I do not believe this would be an appropriate outcome in this case and
6 disallowing full cost recovery would be inconsistent with established regulatory
7 principles, for the same reasons discussed in my previous answer and the rebuttal
8 testimonies of PNM Witnesses Azar and Graves.

9

10 **Q. DO YOU HAVE ANY ADDITIONAL COMMENTS ABOUT NMAG**
11 **WITNESS CRANE’S TESTIMONY ABOUT THE RESPONSIBILITIES**
12 **OF PNM’S SHAREHOLDERS?**

13 **A.** I do. As I read the portion of NMAG Witness Crane’s testimony on the balancing
14 of customers and shareholder interests, I specifically noted her opinion that “[t]he
15 shifting of risk from shareholders to ratepayers is especially unfortunate since it
16 was PNM’s management, at the direction of PNM shareholders, that was
17 responsible for PNM’s investment in coal plants.”²¹ As PNM Witness Azar
18 explains in her testimony, second-guessing investments in coal plants ignores the
19 important role they have played in the nation’s generation mix over the past four
20 decades. Witness Crane’s advocacy also ignores the Commission’s
21 determinations over the past decades that the San Juan coal plant was necessary
22 and appropriate to provide reasonably-priced utility service for PNM’s customers.

²¹ Crane Direct Testimony at 25:1-3.

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1
2 I also think it is important to share the Company's perspective on the issue of
3 shareholder interests. While we anticipate playing a major role in the
4 decarbonization of the state, the reality is that PNM Resources is an investor-
5 owned utility and has a fiduciary obligation to its shareholders. This fact can
6 create challenges when it comes to making choices about energy policy. In my
7 direct testimony, I emphasized that making the transition to sustainable energy
8 now is the right thing to do for the environment, the people and the economic
9 health of the state. The Legislature and the Commission have recognized that the
10 investment in the infrastructure needed to provide electricity to the public requires
11 fair treatment of shareholders in order to ensure there will be ongoing investments
12 for the long-term. Beyond applicable regulatory requirements, if we want to
13 make this transition PNM must continue to demonstrate to its shareholders that
14 investing in New Mexico's sustainable energy is not only the right thing to do, but
15 a financially healthy thing to do as well. Making decisions that benefit customers
16 and the environment and also earn money for our shareholders is critical to
17 making a rapid and effective transition to sustainable energy.

18
19 The Company has estimated that the full effects of the Energy Transition Act
20 including securitization will save New Mexicans nearly \$400 million on a net
21 present value basis, as explained in the direct testimony of PNM Witness Phillips.
22 At the same time, the passage of the Act also signals to PNM's shareholders that
23 investing in sustainable energy is a good choice, because it is a comprehensive

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1 solution that allows the utility to recover its investment. By bringing increased
2 benefits to customers while allowing the Company to recover its investments, the
3 legislative process balanced customer and shareholder interests in a way that is
4 perfectly legitimate. Investors want certainty that PNM will be able to continue
5 making investments and recover the costs of those investments in the future. If
6 the Commission bypasses the solution enacted by our elected officials and makes
7 a decision that is not constructive from a financial standpoint, there is a real risk
8 that investors will see too much downside risk and choose to put their money
9 elsewhere. This outcome would be counterproductive because our electric grid is
10 going to need to be much more robust and smarter than it is today to support the
11 opportunities presented by electric vehicles and other emerging technologies in a
12 safe and reliable way.

13
14 **Q. NMAG WITNESS CRANE ALSO ATTEMPTS TO DOWNPLAY THE**
15 **POTENTIAL IMPACT OF A WRITE-DOWN ON THE COMPANY'S**
16 **CREDIT RATING. WHAT IS YOUR RESPONSE?**

17 **A.** Witness Crane's point of view about the potential impact to the Company and its
18 customers strikes me as being overly-optimistic and one-sided. Regulatory
19 decisions that do not properly recognize the interests of investors, particularly in
20 significant proceedings such as this one, can undoubtedly have an adverse impact
21 on PNM's credit ratings and access to capital. In turn, credit ratings and access to
22 capital have a direct impact on the Company and our customers' bills. A decision
23 that has a negative impact on the Company's credit ratings could also have

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1 negative repercussions on the State of New Mexico's new energy policy. While
2 we are committed to getting the best result for New Mexico's future while
3 keeping energy affordable and reliable, the Commission must ensure that the
4 Company is on a solid financial footing to ensure the clean energy transition.

5
6 **Q. HOW DOES THE COMPANY RESPOND TO THE ASSERTION THAT**
7 **THE COMMISSION SHOULD FOLLOW THE MODIFIED**
8 **STIPULATION IN CASE NO. 13-00390-UT TO DETERMINE THE**
9 **RECOVERY OF STRANDED COSTS IN THIS CASE?**

10 **A.** Any reliance on the outcome in Case No. 13-00390-UT would be inappropriate
11 because that case was settled through stipulation. As signatories to the Modified
12 Stipulation, Commission Staff and NMAG should be well-aware that the
13 compromise reached in that case was only achievable because there was give-and-
14 take between PNM and the other signatories on a number of issues. These issues
15 included the abandonment of San Juan Units 2 and 3, a Certificate of
16 Convenience and Necessity ("CCN") for PNM to acquire and operate an
17 additional 132 MW of capacity in San Juan Unit 4, and a CCN to include PNM's
18 ownership share of Palo Verde Unit 3 in rate base, among others.

19
20 For this reason, the Modified Stipulation explicitly states that "the provisions of
21 this Modified Stipulation have no precedential effect" and the Signatories "will
22 not be deemed to have approved, accepted, agreed to or consented to the
23 application of any concept, principle, theory or method in any future

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1 proceeding.”²² Likewise, by approving the Modified Stipulation, the Commission
2 did not “grant[] any approval nor creat[e] any precedent regarding any principle
3 or issue in this or any other proceeding.”²³ But for the give-and-take on the issues
4 in that proceeding, I struggle to envision any scenario in which the Company
5 would have agreed to splitting cost recovery for San Juan Units 2 and 3 on a
6 single-issue basis. I would also add that a Commission decision that rests on this
7 stipulation would also send a clear message to PNM in future cases that it is too
8 risky to negotiate a settlement rather than litigate, which would defeat the strong
9 public policy favoring the settlement of disputes.²⁴

10
11 **Q. STAFF WITNESS ESCHBERGER AND NMAG WITNESS CRANE**
12 **ASSERT THAT THE USED AND USEFUL PRINCIPLE JUSTIFIES A**
13 **DISALLOWANCE OF COST RECOVERY OF THE UNDEPRECIATED**
14 **INVESTMENT IN THE SAN JUAN COAL PLANT. DO YOU AGREE?**

15 **A.** No, I believe that Witnesses Eschberger and Crane are misapplying the used and
16 useful principle in this case.

17

²² Original Stipulation as Modified by Supplemental Stipulation, Case No. 13-00390-UT, ¶ 48.

²³ *Id.*

²⁴ *See Attorney Gen. of New Mexico v. New Mexico Pub. Serv. Comm’n*, 1991-NMSC-028, ¶ 13 (1991).

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1 **Q. WHY DO YOU SAY THAT?**

2 **A.** The Commission has been clear in previous cases that the used and useful
3 principle is one factor to be considered in ratemaking.²⁵ As PNM Witnesses Azar
4 and Graves point out in their rebuttal testimony, however, the used and useful
5 principle is not a standard to be used to deny recovery of the initial investment
6 itself. Instead, a cost recovery determination should be made by reference to
7 prudence and the overall reasonableness of the expense to be recovered.

8
9 The San Juan Generating Station has been a key element of our generation
10 portfolio for decades and was used and useful during this period. The investment
11 in the coal plant would continue to be recovered in rates if it stayed in operation.
12 We are seeking to abandon the plant, however, because changes in technology
13 have resulted in alternative and cleaner generation sources that are more
14 affordable than keeping the units in operation. As PNM Witness Graves points
15 out, penalizing PNM for pursuing a less-costly and more environmentally-friendly
16 alternative would send the wrong message to PNM and other utilities in the state
17 regarding the actions that should be taken when making resource decisions.

18

²⁵ See, e.g., *N.M. Indus. Energy Consumers v. NM S.C.*, 725 P.2d 244, 248 (N.M. 1986) (stating that “the ‘used and useful’ concept is but one factor among many to be considered by the Commission in its rate base analysis.”). See also *Application of Public Service Company of New Mexico for a Revision of its Retail Electric Rates Pursuant to Advise Notice Nos. 397 and 32 (Former TNMP Services)*, Final Order Partially Approving Certification of Stipulation, 2011 N.M. PUC LEXIS 35, *334 (2011) (“[t]he used and useful principle is that only plant currently providing or capable of providing service to the consuming public is allowed in rate base.”).

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1 **Q. STAFF WITNESS SISNEROS CONTENDS THAT PNM WILL HAVE AN**
2 **INCENTIVE TO VENTURE INTO MORE RISKY INVESTMENTS IF IT**
3 **IS PERMITTED TO FULLY RECOVER ITS COSTS. PLEASE**
4 **RESPOND.**

5 **A.** There are unintended consequences if Staff Witness Sisneros's recommendation
6 is granted. First, however, I would note that in the normal course of business
7 utilities do not enter into risky investments such as expensive and immature
8 technologies such as carbon capture and sequestration. Further, it is
9 inconceivable that a Public Regulation Commission would grant a CCN for
10 ventures that it deems to be too risky. As to unintended consequences, Staff
11 Witness Sisneros ignores that penalizing a utility by denying the recovery of
12 prudently-incurred capital costs will incentivize the utility to vigorously argue for
13 an accelerated recovery of its capital outlay, which would result in faster
14 depreciation and higher rates if approved. Making matters worse, if the utility is
15 denied both prudently-incurred costs and accelerated cost recovery it would have
16 a perverse incentive to under-invest in the grid. When these unintended
17 consequences are considered, it is difficult to see how Staff Witness Sisneros's
18 recommendation is in anyone's best interests.

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V. CONCLUSION

1

2 **Q. DO YOU HAVE ANY CLOSING COMMENTS?**

3 **A.** Yes. We urge the Commission to use the tools provided by the Legislature in
4 implementing the state's roadmap to a clean energy future and approve our
5 applications for the abandonment of the San Juan coal plant and for a financing
6 order that will facilitate this transition at the lowest possible cost for our
7 customers.

8

9 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

10 **A.** Yes it does.

GCG#526358

NMPRC Open Meeting Minutes (August 14, 2019)

PNM Exhibit RND-1 (Rebuttal)

Is contained in the following 26 pages.

**MINUTES OF THE OPEN MEETING
NEW MEXICO PUBLIC REGULATION COMMISSION
August 14, 2019**

TIME: 9:30 a. m.

**PLACE: PERA Building
4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fé, New Mexico 87501**

A quorum was present as follows:

Members Present:

Commissioner Theresa Becenti Aguilar, Chairperson
Commissioner Valerie Espinoza, Vice-Chairperson [telephonically]
Commissioner Jefferson Byrd, District 2
Commissioner Stephen Fischmann, District 5
Commissioner Cynthia B. Hall, District 1

Members Absent:

None.

Staff Present:

Jim Williamson, ASD Director, and present for Mr. Montoya
Jason Montoya, Acting Chief of Staff
Brad Borman, Legal Division Director
Danielle Jiminez, Executive Assistant

General Counsel Present:

Michael Smith, Acting General Counsel
Judith Amer, Associate General Counsel
Russell Fisk, Associate General Counsel
David Black, Associate General Counsel

Others Present

Carl Boaz, Stenographer

CALL TO ORDER

The Open Meeting was scheduled at 9:30 a.m., pursuant to proper notice under NMSA 1978, 10-15-1(c), and the Commission's Open Meeting Policy. Commissioner Theresa Becenti-Aguilar, Chairperson, called the Open Meeting to order at 9:30 a.m., in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo de Peralta, Santa Fé, New

Mexico.

A copy of the sign-in sheet for the Open Meeting is incorporated herewith to these minutes as Exhibit 1.

A copy of the Agenda for the Open meeting is incorporated herewith to these minutes as Exhibit 2.

A copy of the Public Comment sign-in sheet for the Open Meeting is incorporated herewith to these minutes as Exhibit 3.

1. PLEDGE OF ALLEGIANCE/STATE PLEDGE

The Pledge of Allegiance and Salute to the State Flag were recited.

2. INTRODUCTION OF SPECIAL GUESTS

Miguel Luján introduced Rico Luján, a new employee from DFA coming to the IT Division.

Chair Becenti-Aguilar introduced Jonathan Nez, President and Vice President Myron Lizar, of the Navajo Nation and Honorable Council Delegate Rick Nez.

Chair Becenti-Aguilar recognized others from the Navajo Nation who were present and their Staff members and recognized George Rivera, Former Governor of Pojoaque.

The Legislative Counsel from Jicarilla, Romaine Wood introduced himself.

Chair Becenti-Aguilar stated they had been meeting weekly since January 2019 and now, in August 2019 while they are meeting to take care of business taking care of utility companies, telecommunication companies, they get many inquiries along the way. That is the status of being in a public office and she welcomed that.

She believes as Chairperson, her responsibility is to inform the public of where the Public Regulation Commission stands today. She stated first, she wanted to say that she is very proud and has the highest respect for her colleagues, and the way they perform, their professionalism, and their focus on the material of every case record.

Chair Becenti-Aguilar indicated that Vice Chair Espinoza was on the phone and Commissioner Hall would be joining them shortly.

She stated she has been a Commissioner since 2010 and 2019 is a different year. She brings to the podium, the office, a mutual respect. The Commission will take on any intervenor; any inquiry from the media. When she responds, "no comment" that is because she was given that instruction from the General Counsel's Office. She says no comment because she wants the ability to vote on the contentious cases before the Commission.

Commissioner Hall arrived at 9:36.

Chair Becenti-Aguilar continued, "I have never seen the best team of the General Counsel's Office of the PRC in a long time. I have never seen tremendous dedication from staff members that starts with the technical directors down to all of the staff members who are involved in ensuring the PRC office functions in the manner that it does today.

"I will turn away from making negative comments because that is not growth and turns away from any making comments out of the ordinary that is under the Commission status. Everyone is well aware that Commissioners are elected by the people of New Mexico. That is where they stand strong and receive the strength to make decisions for every ratepayer. Every family feels those decisions in their pocketbook; every head of household has to decide whether they pay their utility bill or pass on it. Those people are the people the Commission looks out for.

"People know my background is as a member of the Navajo Nation. My clan is [spoken in Navajo]. My ancestors were taken from their homeland long ago to Bosque Redondo to starve and were put in a corral for a long period of time. Many Navajos lost their lives. This is the trail, Santa Fe New Mexico, that I descended from; the decision-maker while my people were captive. People know his name as Chief Manuelita. I am a seventh generation descendent of Chief Manuelita who signed the treaty so his people could be returned to their homeland, so that someday a Navajo could conduct business among all New Mexicans in New Mexico. It was a great thing and a good thing.

"This is the trail when the treaty was signed, and the Navajo were asked. I remember my grandmother telling me about a mother and her infant walking back from Bosque Redondo near Fort Sumner, New Mexico. The mother was tired, and her baby was uncomfortable and crying and she tried everything she could to calm the baby down. Between Fort Sumner and Santa Fe, she lost her tolerance and put her infant child under a shady tree and left it there and kept walking west. Finally, someone noticed and asked, 'what did you do with your infant child?' She told them she could not carry the child any longer, she was cranky, and I left her under a tree. The elder of the group turned around and went back; 6,7,8 miles back to the tree to retrieve the baby, picked it up and continued to march West to Navajo land."

Chair Becenti-Aguilar stated that was her story for the day and she shared it because she has been holding the story back for quite some time. She shared the story because she is at a point in her career where she wants to educate people and where all children are her children. The decisions she makes in the regulatory business pertain to their future and she knows where she comes from and where her family is from.

She welcomed Commissioner Hall who had joined the meeting. She explained to her that at the beginning of her statement she had indicated she had the highest mutual respect for her colleagues.

Chair Becenti-Aguilar said she had never made a statement like that in her whole career but was called to do that today.

3. CONSIDERATION AND APPROVAL OF AGENDA

Commissioner Byrd moved, seconded by Commissioner Espinoza to table Case # 19-00018-UT and Case # 19-00195-UT.

Commissioner Hall asked why they wanted to table it when a large number of people were present to hear the case.

Commissioner Byrd replied that not all of the Commissioners were here, and it would be respectful to make sure everyone was present.

Commissioner Hall stated that with the importance of the case, if a Commissioner could not be present, they should call in for the vote. People had traveled across the state and members of the Navajo Nation were present now.

Commissioner Espinoza pointed out it is non-debatable when an item is tabled.

Mr. Jason Montoya is on the phone at 9:44.

Commissioner Hall asked if Commissioner Byrd had changed his mind now that Commissioner Espinoza was on the line.

Commissioner Byrd explained to Commissioner Hall that Commissioner Espinoza had been on the line since the beginning of the meeting.

Commissioner Hall stated she thought this was unsatisfactory.

Commissioner Fischmann asked General Counsel to comment as to whether the motion to table was nondebatable.

Mr. Smith explained that it is normally non-debatable and should go to a vote.

There were no further changes on the agenda.

Commissioner Byrd moved, seconded by Commissioner Espinoza to approve the agenda as amended with Case 19-00018-UT and Case 19-00195-UT tabled. The motion was approved on a majority 3-2 voice vote after a short loss of communication with Commissioner Espinoza. Commissioner Espinoza confirmed her vote in favor and Commissioner Hall and Commissioner Fischmann voted against the motion.

Commissioner Hall objected. She stated either Commissioner Espinoza was there, or was not, and if she was not there and the Commission was having a vote in which Commissioner Espinoza was voting, that was not fair or appropriate. It was not fair to the constituents of the remaining Commissioners, among other things.

She continued that her point was that Commissioner Espinoza, as with all Commissioners, is permitted to participate in a hearing in an open meeting over the telephone. If she was going to participate, that was one thing. But if she is only going to participate for the purpose of postponing the case because she did not want to participate in the vote, then that was another.

Commissioner Espinoza replied she was participating wholeheartedly in the conversation and in the meeting twice fold. She stated she planned to stay on the line for the entire meeting and it did not matter whether she was present at the meeting or not; she was present by phone.

Commissioner Espinoza said for Commissioner Hall to debate this; the vote had been taken as far as she was concerned. She had lost communication for a moment but was on the line and was participating. She stated, "I would really appreciate Commissioner Hall not putting words in my mouth. As we all are aware, Commissioner Hall has missed quite a few meetings, herself."

4. CONSIDERATION AND APPROVAL OF MINUTES

- **Minutes of the Regular Open Meeting for July 10, 2019**

Commissioner Hall moved, seconded by Commissioner Fischmann to approve

the minutes of July 10, 2019 as presented. The motion was approved on a unanimous 5-0 voice vote.

5. PUBLIC COMMENT

Chair Becenti-Aguilar knew there were certain people who signed up as they came in. She started with John Guthing and asked if he was present.

Mr. John Guthing said, "Yes, I am but I cede my time."

Chair Becenti-Aguilar thanked him and asked the Honorable President Jonathan Nez, "If you can please come to the podium. For the public comment we have a time limit, but I will signal you once I know your message has been brought before the Commission. It is a great honor to have you here, Honorable Leader."

President Nez - Thank you, and good morning Madam Chair and Vice Chair, and members of the Commission. As you know I am President Jonathan Nez of the Navajo Nation. I am joined by our Vice President Myron Lizer and also Rick Nez, Chairman of the Navajo Nation Council Resource Development Committee, and also the Jicarilla Apache Nation Counsel member Romaine Wood, and any other stakeholders behind me here, standing in unity on the item that you just tabled.

I understand that you, Madam Chair, have asked that the Navajo Nation be consulted regarding the effects of the closure of the San Juan Generating Station. So, I am here to provide our input. I am taking this unprecedented step today as the leader of a sovereign nation, providing comments to you because of the direct impact to the Navajo workers.

The issue is of great importance for the Navajo people and for the Navajo Nation that we make time today to be here while the Navajo Code Talkers Day celebration are ongoing as we testify, back in the capital of the Navajo Nation.

You may not be aware that the Navajo workers make up 60% of the entire workforce of the coal plant; the coal mine contractors and vendors affected by the power stations shut down. I understand that in part, the consolidated abandonment filing was timed to fund severance and training funds for the workers by the end of April 2020. Since there will be enough coal above the surface by July of 2020, they said a significant number of mine workers will be laid off at that time.

You have the ability and the confusion and confirmed that the Energy Transition Act applies to all aspects of the abandonment filings. I felt compelled to appear

and address this Commission so that you could understand that deferring a decision leaves these workers and their families and loved ones, in a vulnerable position. This is especially true for the workers who will need those severance funds by next summer.

My Nation, the Navajo Nation, speaks with one voice, as one people. And our hope and trust is that you will live up to the spirit and requirements of the Energy Transition Act by entering this uncertainty and officially proclaiming that the Energy Transition Act applies to all aspects of the San Juan filing. Which includes the abandonment, financing and replacement power. Not to mention that when a bill goes through the legislative process and is signed by a governor, that it becomes the law of the land. And I am hoping that in the State of New Mexico that is such.

Replacement power constructed in the affected school district as identified in the Energy Transition Act, is vital to the central consolidated school districts bonding ability; which the majority of the students there are Navajo. Let me also mention that there is the Yazzie Martínez case. The Yazzie Martinez versus the State of New Mexico that is still pending. You may think what does this have to do with those schools. Remember, we are asking for quality and equal education for our at-risk students and those students are attending Central Consolidated School.

To delay would be negligence of your responsibility as regulators for which your constituents elected you, and anything less would be entirely unacceptable to the Navajo Nation. And the people who are depending on the Energy Transition Act to fulfill its intent of creating a just, fair, and responsible transition for workers.

As I mentioned today, our Code Talkers are being recognized in Window Rock. Madam Chair, members of the Commission, in honor of our Code Talkers who utilize the Navajo language to win battles and to help win a war, let me say this in our indigenous and native language: *He spoke briefly in Navajo.*

You know, I mentioned the treaty and I appreciate the sharing by our Chairperson Becenti-Aguilar of her lineage. And it is true, the resilience is still moving through all of us today, no matter what people. We have hardship as Navajo Nation, the Jicarilla Apache Nation has their hardship, all people have a story within their family of overcoming tough times. And that is the story of mankind. They call it the five-fingered beings and we are all human beings and we draw strength from that as we were. The sharing of Becenti-Aguilar chairperson's story; not many of us went on the long walk as well. And I come from a family where my mother's family went to Fort Sumner, and my father's side did not go to Fort Sumner and they hid out in those canyons and they couldn't even build fires to keep warm during the winter because of fear of

the Cavalry.

And so, bringing those two parts of my history together and including what Chairperson Becenti-Aguilar mentioned, I think it is very important that we come together. First, I know this is tough for many, but to forgive one another; to forgive one another and move forward in unity. We are not going anywhere. Navajo is not going anywhere; other nationalities are not going anywhere, and it is time for us to come together and to help our constituency. And that is why I am here today. And for that San Juan Basin, that area, the constituents, we want something better for those workers and that region as well.

And when those monies do get to those workers and that region and that in turn better the quality of life for that region. Economic development, a severance for our workers so that they can provide for their families. And that's I think universal, trying to provide for families and to also plan for the future. And with that treaty that was signed it was that government to government relationship, that unique relationship. And so today the members of the Navajo Nation Council, the Jicarilla Apache Nation, we are speaking for an entire constituency of our tribal sovereign lands.

You know, we are in the position of transitioning from fossil fuel to renewable energy with the signing of a proclamation on the Navajo Nation to do such. We are in a similar situation in the State of Arizona Navajo Nation where the Navajo generating station is closing down. And it will be shut down by the end of this year, by the end of the calendar year. When Peabody, that's where the generating station gets their coal, automatically shuts down there is a big constituency there on that side that are wanting assistance.

Which is different than New Mexico. New Mexico is growing and able to help those displaced workers because of a closure. In Arizona, we have been challenging the state, that is a whole other story. But I just want to commend the State of New Mexico for being there for our workers there at the plant.

The other is I will ...

Chair Becenti-Aguilar - Mr. President I will give you two minutes to close your remarks. Thank you.

President Nez - Thank you Madam Chair. I will be handing out our August 8th... I think it was emailed to all the Commissioners. And just for the record I will leave that once again - the August 8th letter that was signed by President - myself and the vice president. And I respectfully request that you accept this letter from me to you and add it to the public documents.

Please do what is right for our Navajo workers.

And lastly, I just want to let you know, leaders, we are mandated to pray for our leaders, no matter what party and no matter what views they have. And I just want you to know that we are praying for you; this Commission as well, on behalf of our Navajo people. Thank you so much Madam Chair. God bless you; God bless this great State of New Mexico.

Chair Becenti-Aguilar - Spoke in Navajo. Thank you very much.

Next speaker, Vice President Myron Lizer. As you all noticed I have extended the public comment to 10 minutes because these are my leaders from the Nation.

Vice President Lizer - Thank you [*spoke Navajo*].

Chair Becenti-Aguilar - Yes, welcome.

Vice President Lizer - Good morning Madam chairwoman and members of the Commission. I am Vice President Myron Lizer of the Navajo Nation. I want to echo our president's comments of these issues. They are vitally important to the Navajo people. As stated by President Nez, we felt it was so important to appear before you in person today that we are here rather than at home with our Navajo Code Talker Day ceremonies going on as we speak in Window Rock Arizona.

The president spoke eloquently and forcefully about the workers and I would like to speak about our community. The Energy Transition Act, which was passed by the state legislature and signed into law, contains \$12 million for affected workers. Which not only financially aids mine workers, but contractors and vendors as well.

In addition to that aid, another \$1.8 million to Indian Affairs and \$6 million for economic development in the affected communities. All of this goes away if you refuse to apply the Energy Transition Act. While this Commission delays it does not hurt the parties. Those parties can find ways to cover those delays, but what about the workers who have to put food on the table? Who is going to cover that delay? The legislation was passed with overwhelming bi-partisan support and 100% of the Native American legislators, including our late great Senator John Pinto whose communities are greatly affected by this.

We implore you that doing the right thing for ratepayers is consistent with doing the right thing for the workers and communities because of the foresight of the Energy Transition Act.

We respectfully ask you to do the right thing for people. Thank you. [*Spoke in Navajo*].

Chair Becenti-Aguilar - [*Spoke in Navajo*]. Have safe travels home. [*Spoke in Navajo*].

Anybody else that would like to speak? The Honorable Council Delegate Rick Nez. The way the Navajo Nation Council of Government is set up, he is one of the legislators for the Navajo people.

Council Delegate Nez - Good morning. [*Spoke in Navajo*]. Chairwomen, Ms. Honorable Teresa Becenti-Aguilar and members of the New Mexico Public Regulation Commission. Greetings Commissioner Hall, Commissioner Byrd, Commissioner Espinoza, and also Commissioner Fischmann and your staff here. [*Spoke in Navajo*].

We have been blessed with a beautiful day [*spoke in Navajo*]. My name is Rick Nez. I am from the community of San Juan Chapter along San Juan River. My clans are [*speaking in Navajo named them*] which tells me that you are my young sister and I am your older brother. [*Speaking in Navajo*]. The root word comes from *adeé*, meaning a gourd. You teach and feed and protect your younger sister with a gourd and the teachings that go with it. As an older brother you are [*ninaaí - speaking Navajo*] which means that I look out for my younger siblings; protect them and teach them.

I have served my country that I love, the United States of America, the great State of New Mexico and the great Navajo Nation. As a sergeant I was honorably discharged serving six years. I am very proud of who I am and where I came from. As a young boy I grew up on a farm. My uncle had four farms, large farms, and he had four cuts of alfalfa every year. And we as young men, boys, would always help. Nobody told us anything about child labor laws because those things did not apply when you were young. We had fun on the farm playing with all sorts of critters, snakes and anything. But picking up bales of hay has taught me work ethics, how to be industrious. And today I am a leader elected by my people [*spoke in Navajo*].

When we picked up those bales of hay, we had no gloves, we were poor. Our hands would be blistered, they would be bloodied, but that did not matter because we had fun out on the farm. These are the foundations of who I am. I represent six chapters San Juan [*spoke Navajo*]. Prior to being elected, as a Navajo Nation delegate, I was the president of San Juan Chapter 14 years and plus, I served as legislative district assistant to the Honorable Lorenzo Bates, Speaker of the Navajo Nation at that time.

I humbly come before you, my Commissioners, to provide comment on the matter that has, and will continue to have, an impact in local communities I represent as a Navajo Nation Council Delegate. Last week I had made a formal request to this body to be placed on its agenda to provide information regarding PNM's July consolidated filing for San Juan Generating Station is scheduled for closure in June of 2022.

As a of now, I have not received a response on my request, but I was informed by PRC staff that I may address the Commission during the Open Comment of the PRC's agenda. This is the reason I am before you today. As mentioned, the intended closure at PNM's San Juan Generating Station located in the Waterflow New Mexico, has been a matter of discussion. The local communities do have concerns if the closure -- of the closure of San Juan Generating Station is imminent.

Several of the concerns are: 1) With the close proximity of San Juan Generating Station to Navajo Nation and its nearby chapters, which I represent, has a significant number of Navajo skilled workers employed at the power plant and San Juan line will be affected by the impending closure. 2) The closure will certainly have an effect to the local school districts which have a significant number of Navajo students enrolled in several area schools, and those include members of my community and chapters. A concern of the uncertainty the closure will bring to the area. Those I have listed are only a few thoughts of concern of the overall social and economic impact, the closure to the area, and questioning if there has been any consideration of potential options to offset this oncoming change.

I ask this Commission for consideration to apply the Energy Transition Act in its decision-making to all three portions of the San Juan Coal Plant case; Abandonment, Financing, and Replacement Plan. The Navajo Nation has supported the Energy Transition Act in this situation to apply ETA would benefit those Navajo plant and mine workers affected by the '22 closure of San Juan Generating Station. It would assist in providing resources to those Navajo workers, but also to the nearby communities as we make that transition due to the plant closure of San Juan Generating Station.

We are looking out for our Navajo people. This is happening; the coal plant is closing. The coal mine is closing also. The only thing our people can do is use the financial aid of the Energy Transition Act to prepare for the future.

[*Speaking Navajo*] Ms. Chairwoman, Honorable Becenti-Aguilar, we understand that your earlier decision was made with your best intentions. We regret there

was not an opportunity in meeting with you beforehand to explain how our people - your people - will benefit directly because of the Energy Transition Act. And how they will lose greatly without it.

As leaders representing the tribal community, we are looked at in how we answer questions, how we work together, and how we make decisions. As leaders, our actions reflect not only upon ourselves but on our tribe. We are set on a pedestal as examples of our community. Because of that we must take careful consideration of how our decisions impact our people we serve.

As chair of the Commission, and myself as chair of the Navajo Nations Council Resources and Development Committee, we must always make choices that consider the best outcome for our people and for our land. I know each of you have a great responsibility to make decisions that balance customers and the utility shareholders. The Energy Transition Act not only balances those responsibilities but also serves the affected communities, affected employees at the plant and the many, many of whom are tribal members and the Navajo Nation itself.

Through the Energy Transition Act our people and our lands will provide opportunity to prosper more than without it. Thank you for your time and opportunity to address the members of the Commission.

I have resolutions here passed by the Nenahnezad Chapter in there are others that will be passing their resolutions as well. [Spoke Navajo] thank you very much.

Chair Becenti-Aguilar replied in Navajo.

We have another public comment, Mr. Wood from Jicarilla Apache Nation.

Mr. Wood - Good morning Madam chair and members of the Commission. My name is Romaine Wood, I am legislative counsel and I am here representing the Jicarilla Apache Nation. And I would like to read a letter from our president, Mr. Darrell Pais.

Honorable Chairman, members of the Commission, the Jicarilla Apache Nation offers this public comment urging your support and application of the Energy Transition Act at the earliest possible moment. The Energy Transition Act's renewable energy mandates will forever transform the way utilities procure and supply energy in New Mexico. The transformation has presented opportunities for Native American communities that did not previously exist.

The Jicarilla Apache Nation and other Native communities now have the opportunity to put Native owned land and natural resources to use in a clean, renewable manner that provides benefits not only to the tribes, but to the State of New Mexico. The Jicarilla Apache Nation has already taken steps to encourage solar development on Nation lands and welcomes future opportunities this new law presents. Indeed, power to be generated on Jicarilla lands will supply all New Mexicans. The new law will encourage this development and potential for more partnerships with the solar community.

The Energy Transmission Act also contemplates millions of dollars for funding for displaced employees, including Native American employees affected by the closure of the San Juan Generating Station.

The Nation now stands in support of the provisions of the Energy Transition Act that mandates this assistance. We urge your support and thank you for the opportunity to provide this comment.

From Darrell Pais, President of the Jicarilla Apache Nation.

Mr. Wood stated with the governor and direction things were moving, he would urge the Commission to consider the Energy Transition Act in the closing of the plant. Jicarilla is moving toward renewable energy with the plans of the governor. They have a partnership with PNM for 50 MW to provide 25 MW of electricity to the City of Albuquerque, Isleta and Sandia. The Jicarilla supports the Energy Transition Act and would like the Commission's consideration.

He agreed to leave copies of the letter.

6. CONSENT ACTION

A. Transportation Matters:

- 1) **19-00180-TR-M IN THE MATTER OF THE APPLICATION OF ENCHANTED MEDICAL TRANSPORT LLC FOR A CERTIFICATE TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE (David Black) POTENTIAL ORDER GRANTING NON-EMERGENCY MEDICAL TRANSPORT SERVICE CERTIFICATE**

B. Utility Matters:

- 2) **19-00225-UT IN THE MATTER OF THE FORMAL COMPLAINT OF DAVID A.**

**NEAL AND CRISTELLA TRUJILLO-NEAL AGAINST JEMEZ
MOUNTAIN ELECTRIC COOPERATIVE, INC.
(Judith Amer) POTENTIAL ORDER REQUIRING
RESPONSE**

Commissioner Hall moved, seconded by Commissioner Fischmann, to approve the orders for these two consent cases. The motion was approved on a unanimous 5-0 voice vote. So Ordered.

7. REGULAR ACTION AND DISCUSSION

A. Transportation Matters:

None

B. Utility Matters:

- 3) 19-00018-UT IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S ABANDONMENT OF SAN JUAN GENERATING STATION UNITS 1 AND 4
- 19-00195-UT IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S CONSOLIDATED APPLICATION FOR APPROVALS FOR THE ABANDONMENT, FINANCING, AND RESOURCE REPLACEMENT FOR SAN JUAN GENERATING STATION PURSUANT TO THE ENERGY TRANSITION ACT
(Michael Smith) POTENTIAL ORDER ON WRA'S MOTION TO PERMIT INTERLOCUTORY APPEAL OF ORDER ON MOTION FOR CLARIFICATION

This agenda item was tabled under Approval of Agenda.

Commissioner Espinoza stated that she did hear all of public comment and was grateful for their prayers.

8. DISCUSSION/POSSIBLE ACTION

- **CONCERNING THE STATE RURAL UNIVERSAL SERVICE FUND (SRUSF), THE BROADBAND PROGRAM, POTENTIAL RULEMAKING PERTAINING TO THE COMMISSION'S SRUSF RULE, 17.11.10 NMAC, CHALLENGES FACING TELECOM CARRIERS IN HIGH TERRAIN AREAS, POTENTIAL AUDITING PROCEDURES FOR SRUSF**

RECIPIENTS
- Chairwoman Theresa Becenti-Aguilar; Russell Fisk

Mr. Fisk suggested the Commission could possibly open a rulemaking for this rule for auditing procedures and it would be for recipients of broadband funding and access reduction support - CLECs. With regard to access reduction support, he recommended a rulemaking for a uniform procedure just like other audits - taking the standardized forms on file each year and audit them every year. If the Commission wants to do that.

For the other part of the rule, he brought on his own initiative two weeks ago in Farmington.

We have \$4.8 million requested in applications for \$5 million in funds in New Mexico. The Commission can actually award more than \$5 million but could not do much more.

Also, it is the same four applicants: Smith Bagley, ENMR, Windstream and CenturyLink. So he ask someone to tell us why they apply for certain areas and not others. He pointed out that we have to make a report to the Legislature at year end, plus any recommendations the Commission has. He asked for input from carriers and last week got an email from a carrier to say they did not apply because of the rural requirement to serve only unserved or underserved areas. The standard is pretty low. In the workshops about it, he thought the agency would get plenty of applications. But, for some reason, the restrictions were too severe.

The other comment was that our rule restricts or prohibits applications where the recipient is already receiving other funds except for federal high-cost funds. We could change that rule. We did not think we were making it too restrictive. He just wanted the Commission to know that.

At the conference, one carrier said they would like to have \$5 million or more.

Commissioner Fischmann thanked him for that. The fund has been present a long time and the industry has changed a lot. So we should examine the rule again

From the Farmington conference, we heard comments from rural electric providers regarding infrastructure. A light bulb came on. We have a lot of infrastructure to reach in rural areas with electric and should be used for more cost-effective service. He had not heard anything about incentives that ILECs or Rural Coops could use for more cost-effective service delivery.

Those two industries have often competed with each other and he wondered if electric coops would soon take over telecom in rural areas. Such a discussion would be great. What would be a good incentive to make it work? There are ROW issues, liability

issues, none of which is insoluble. It could be adequate rewards for best service to the public.

Without prejudging the outcome, he put it out to you and industries as a very valuable discussion to have for all parties.

Mr. Fisk said the FCC connection meant they specifically invited the coops to consider that service. It could include a coop. KCEC is providing 40 up/40down which is phenomenal.

Commissioner Fischmann thought in opening such a dialogue we should keep in mind it is providing an opportunity for all to consider. Tearing away obstacles and providing best regulation possible is not a process that gets in the way.

Commissioner Hall agreed, with the kind of conversation that is happening out there.

Commissioner Fischmann suggested it would be great to have discussions with industry first to have a comfort level. There is no problem doing an inquiry and being open to their concerns.

Commissioner Hall saw several in connection with a carve out for broadband. Broad participation by the industry.

Commissioner Fischmann said it would be smart to check in with the players ahead of time.

Commissioner Byrd reminded them it is by line at \$1.24 per line. Land lines are a dying breed and legislation would have to change.

Mr. Fisk observed that it is more than land lines. There are questions about it, but it does apply to wireless.

Commissioner Byrd noted it is just for 505 and 575 line numbers. It should be based on billing addresses.

Mr. Ripperger said there are monthly updates on access lines and the numbers have been pretty steady and are averaging out. The FCC did accept the per connection charge and would fine tune who gets the bill.

Mr. Fisk said they did an excellent transition to per connection charge. There were questions about more detail to make sure all the companies were reporting on the same basis. They asked him about top priority, and he related that it is working well and for the next cycle to do the same recommendation on that.

Commissioner Espinoza had no questions. She would encourage more participation and more companies to apply. Thanks for the presentation.

Chair Becenti-Aguilar asked if she was in support of a formal inquiry by the Commission.

Commissioner Espinoza did not feel there was a need and felt we have already done what we needed to do and should not overwhelm the staff.

Commissioner Fischmann would like informal talks with providers. It would be good to get their input and it needs a formal inquiry to dig into it. At some point they might ask us to do an inquiry. Requiring it is not the right thing to do.

Commissioner Byrd agreed with Commissioner Fischmann to keep it informal and with an open spirit.

Chair Becenti-Aguilar also agreed. She suggested setting a time in October. She didn't know when the gas conference and electric conference would be held in Albuquerque but thought they were at the front of the month.

Commissioner Hall saw it as a possibility but not as a requirement.

Mr. Fisk thought it could just be to hold a conference like they did a couple of weeks ago in Farmington.

Chair Becenti-Aguilar thanked Mr. Fisk and thought a majority of Commissioners were interested in holding it here in Santa Fe. She asked for mid-October.

Mr. Fisk agreed. He added that it does not have to be done in an open meeting.

**4) 18-00103 IN THE MATTER OF THE FILING OF APPLICATIONS FOR
BROADBAND PROGRAM SUPPORT FROM THE STATE RURAL
UNIVERSAL SERVICE FUND, AS PER 17.11.10.31 NMAC
(Russell Fisk) POTENTIAL ORDER CONCERNING
VERIFICATION PROCEDURES**

Mr. Fisk presented this matter on the broadband program applications last year and payments made to those awarded. The initial payments have been approved and made. Smith Bagley requested their midpoint payment on their McKinley-Cibola project. Before deciding to make the payment, the Commission should decide on verification that the work is being done. If Smith Bagley can prove they are at the midpoint, he will inform

the Commission. Telecomm Staff reviews all applications and will present by September 1.

With the staffing we now have, the Commission was considering a verification procedure that would put all companies on notice that they were subject to review. But there is no required verification process. We have affidavits and do not have to look behind those affidavits.

After discussing it with Mr. Evans, he understood we just need to allow him to report whether or not more documentation was needed.

For access line reduction, he received an audit process to make sure they are accurate. He supported that as the best way to do it and would not present a formal order. Going forward, they will be on the consent agenda.

Commissioner Fischmann felt there is wisdom in allowing Mr. Evans to handle it. And if a company felt they were being treated unfairly, that they could get a second opinion.

Mr. Fisk agreed and would take it directly to the Commission.

Mr. Evans said he agreed with Mr. Fisk and felt he could review and make appropriate recommendations on the applications with explanations of how the fund is being utilized.

Chair Becenti-Aguilar reasoned that the Commission would allow Mr. Evans to be the project manager for these applications.

Ms. Ellis reminded the Commission that they must issue an order to pay them.

Mr. Fisk agreed and last time, the Commission issued an order to pay Smith-Bagley and ENMR the initial payment. If verification is needed, he would appreciate being informed. Otherwise, he would say Staff does not oppose. He will start bringing the orders for specific payments.

9. COMMUNICATIONS WITH CHIEF OF STAFF

Mr. Montoya announced new microphones are now installed and he believed the sound is a lot better on this side and streaming on the computer.

Mr. Williamson said an RFP was issued by staff in June and the committee has received instructions for procurement. The official contract is being drafted for

consideration next week. Mr. Borman is available for questions.

10. COMMUNICATIONS WITH GENERAL COUNSEL

Mr. Black reminded Commissioners about the rulemaking hearing for State Fire Marshal Rules this Friday at 10:30 a.m.. It will be recorded by a court reporter. Four rules will be considered which he listed. Written comments were allowed.

11. COMMUNICATIONS WITH COMMISSIONERS

Commissioner Fischmann commented that it is silly to go ahead with a proceeding that has not been resolved and will be heard at the Supreme Court. That is most fair.


The Navajo Nation is hanging in the balance there with closure of San Juan Generating Station. We will still need full time on the clock, whatever the legal requirements are, to make us serve the public. A lot of fine points are all great but not serving the public if we don't serve those parameters - timing and seriousness.

Chair Becenti-Aguilar believed if the case pertains to certain businesses in District 4, that she has the right to ask questions on every aspect. She was looking out for her constituents and wanted to know exactly how many will be affected. The company will need to be informed.

12. ADJOURNMENT

The meeting was adjourned at 11:15 a.m.

ATTEST:



Carl Boaz, Stenographer

APPROVED: September 25, 2019



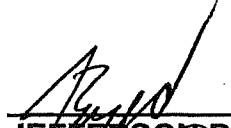
THERESA BECENTI AGUILAR, CHAIRPERSON



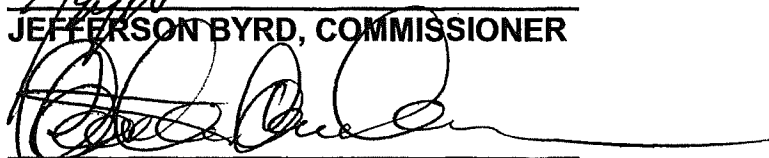
VALERIE ESPINOZA, VICE CHAIRPERSON

TELEPHONICALLY APPROVED

CYNTHIA B. HALL, COMMISSIONER



JEFFERSON BYRD, COMMISSIONER



STEPHEN FISCHMANN, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Date: August 14, 2019

SIGN-IN SHEET

NAME	COMPANY NAME (if any)	PHONE NUMBER
Mark Fendler	PNM	505-241-2488
Zoe Lees	Xcel	505 9488660
Jeff Albright	JA Albright Law LLC	505-926-4105
Deanna Maxwell	Jicarilla Apache Nation	575 419 0065
Jay Santillanes	Navajo Nation	505-440-6119
Jonathan Nez	"	928-871-7000
Phylo Lizon	"	928 871-7000
Pickie Nez	"	928-871-7160
Adam J. Begaye	The Navajo Nation	928/871-7000
Sam Beel	Navajo-San Juan	505-675-5443
Andrew D. Chavez	Jemez Coop	505-367 1155
Chuck Garrison	Greely & McCreedy	505-888-1335
Stacey Goodwin	PNM	505 241 4927
M. Ike Dutton	Xcel	505-681-0946
YH M Salo	MWA	505-982-3873
DAVID A. NEAL	CITIZEN	505 455 2175
Martha Trujillo	" "	455 2779
Mateo Santillanes		505-270-0602

Thank you for attending this meeting.



NEW MEXICO PUBLIC REGULATION COMMISSION

**NOTICE OF OPEN MEETING
OPEN MEETING: REGULAR WEEKLY MEETING
Wednesday, August 14th, 2019
9:30 a.m.
PERA Building, 4th Floor Hearing Room
1120 Paseo de Peralta, Santa Fe, NM 87501**

AGENDA

- I. PLEDGE OF ALLEGIANCE/STATE PLEDGE**
- II. INTRODUCTION OF SPECIAL GUESTS**
- III. CONSIDERATION AND APPROVAL OF THE AGENDA**
- IV. CONSIDERATION AND APPROVAL OF THE MEETING MINUTES**
 - **Minutes of the Regular Open Meeting for July 10, 2019**
- V. PUBLIC COMMENT**
- VI. CONSENT ACTION**
 - A. Transportation Matters:**

1)	19-00180-TR-M David Black	IN THE MATTER OF THE APPLICATION OF ENCHANTED MEDICAL TRANSPORT LLC FOR A CERTIFICATE TO PROVIDE NON-EMERGENCY MEDICAL TRANSPORT SERVICE
		<u>POTENTIAL ORDER GRANTING NON- EMERGENCY MEDICAL TRANSPORT SERVICE CERTIFICATE</u>

- B. Utility Matters:**

2)	19-00225-UT Judith Amer	IN THE MATTER OF THE FORMAL COMPLAINT OF DAVID A. NEAL AND CRISTELLA TRUJILLO-NEAL AGAINST JEMEZ MOUNTIAN ELECTRIC COOPERATIVE, INC. <u>POTENTIAL ORDER REQUIRING RESPONSE</u>
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VII. REGULAR ACTION AND DISCUSSION

A. Transportation Matters:

NONE

B. Utility Matters:

3)	19-00018-UT/19-00195-UT Michael Smith	IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S ABANDONMENT OF SAN JUAN GENERATING STATION UNITS 1 AND 4 IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S CONSOLIDATED APPLICATION FOR APPROVALS FOR THE ABANDONMENT, FINANCING, AND RESOURCE REPLACEMENT FOR SAN JUAN GENERATING STATION PURSUANT TO THE ENERGY TRANSITION ACT <u>POTENTIAL ORDER ON WRA'S MOTION TO PERMIT INTERLOCUTORY APPEAL OF ORDER ON MOTION FOR CLARIFICATION</u>
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VIII. DISCUSSION/POSSIBLE ACTION

- **CONCERNING THE STATE RURAL UNIVERSAL SERVICE FUND ("SRUSF"), THE BROADBAND PROGRAM, POTENTIAL RULEMAKING PERTAINING TO THE COMMISSION'S SRUSF RULE, 17.11.10 NMAC, CHALLENGES FACING TELECOM CARRIERS IN HIGH TERRAIN AREAS, POTENTIAL AUDITING PROCEDURES FOR SRUSF RECIPIENTS**
-Chairwoman Theresa Becenti-Aguilar and Russell Fisk

4)	18-00103-UT Russell Fisk; Telecommunications Bureau Staff	IN THE MATTER OF THE FILING OF APPLICATIONS FOR BROADBAND PROGRAM SUPPORT FROM THE STATE RURAL UNIVERSAL SERVICE FUND, AS PER 17.11.10.31 NMAC <u>POTENTIAL ORDER CONCERNING VERIFICATION PROCEDURES</u>
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- IX. COMMUNICATIONS WITH CHIEF OF STAFF
- X. COMMUNICATIONS WITH GENERAL COUNSEL
- XI. COMMUNICATIONS WITH COMMISSIONERS
- XII. ADJOURNMENT

To obtain a copy of this agenda please log in the Commission's website at www.pnmprc.state.nm.us.

The Commission will make reasonable efforts to post the agenda on the Commission's website at least 72 hours before the open meeting, but the inability to do so within the 72 hours prior, will not require the Commission to delay the meeting or to refrain from taking action on any agenda item on which it otherwise could act.

At any time during the Open Meeting the Commission may close the meeting to the public to discuss matters not subject to the New Mexico Open Meetings Act. The Commission may revise the order of the agenda items considered at this open meeting.

Notice is hereby given that the Commission may request that any party answer clarifying questions or provide oral argument with respect to any matter on the agenda. If the Commission makes such a request, any party present at the meeting, either in person or by telephone, shall have an equal opportunity to respond to such questions or argument. In the event a party whose case is on the agenda chooses not to appear, the absence of that party shall not cause such discussion or argument to become ex-parte communications.

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE IN ORDER TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE OFFICE OF DIRECTOR OF ADMINISTRATIVE SERVICES OF THE COMMISSION AT (505) 827-4042 AS SOON AS POSSIBLE PRIOR TO THE COMMENCEMENT OF THE OPEN MEETING.

PUBLIC COMMENT

All members of the public wishing to provide public comment must sign a sign-up sheet prior to the start of the meeting and identify their name and the name of the organization they represent (if any), and the topic or issue on which they desire to comment. The portion of the agenda allocated for public comment at any one open meeting shall be limited to a maximum of 30 minutes for all persons wishing to provide comment. The order of speakers will be based on the order in which speakers sign up, but public officials may be taken out of order. If a speaker is not present at the time he or she is called to provide comment, that speaker shall forfeit their opportunity to speak. **Public comment by an individual or entity shall be limited to no more than three (3) minutes** unless the Commission acts to extend the period. If the number of individuals on the sign-up sheet desiring to provide comment would exceed the allotted 30-minute period, the Chairman may limit individual remarks to a shorter time period. Individuals represented by or representing a common organization or association may be asked to select one individual to act as spokesperson to speak for the group. Individuals who sign up to comment, but either fail to do so or choose to speak for less than their allotted time, may not cede or yield their time to another speaker. Written comments of individuals who cannot be physically present may not be read aloud at the meeting but may be submitted to the Commission.

The subject matter of public comments shall be relevant to matters within the Commission's jurisdiction. Public comment will not be permitted on matters that should be addressed appropriately as the subject of an informal or formal complaint before the Commission or on pending rulemaking proceedings before the Commission once the opportunity for public comment in those proceedings has closed. Public comment by parties to a proceeding or adjudication pending before the Commission will not be permitted where the comment concerns matters at issue in such proceeding. The Chairman shall retain the right to stop any speaker who raises an issue that is not under the Commission's jurisdiction or is subject to the restrictions above. Public comment will be received without Commission comment or response. However, individual Commissioners may at their option seek clarification or additional information from speakers through the Chairman. No speakers will be accommodated after the public comment portion of the agenda has closed. The Chairman retains the right to exercise discretion in the implementation of this policy and may override the above rules in case of emergency or other unforeseen circumstances.

Speakers providing comment shall at all times conduct themselves in accordance with proper decorum. Profane or vulgar language or gestures will not be tolerated. Audience members shall not disrupt an open meeting by speaking without being recognized by the Commission and shall not incite others to do so. The Commission retains the right to remove disruptive attendees and individuals who fail to conduct themselves in accordance with these provisions from the Commission meeting.

NEW MEXICO PUBLIC REGULATION COMMISSION

OPEN MEETING: CASE MANAGEMENT MEETING

Date: August 14, 2019



NAME	PHONE NUMBER	TOPIC
John Gutierrez	505-983-2777	
Jonathan Nez	928 871 7000	San Juan Gen. Station
Myron Lizer	928 871 7000	San Juan Gen. Station
Rickie Nez	928 871 7160	San Juan Gen. Station
Romaine Wood	505 330 0160	San Juan Gen. Station

Thank you for attending this meeting.

Naabik'iyati' Standing Committee Resolution

PNM Exhibit RND-2 (Rebuttal)

Is contained in the following 5 pages.

NABIO-59-19

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE OF THE
24th NAVAJO NATION COUNCIL -- First Year, 2019

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE AND THE NAABIK'ÍYÁTI' COMMITTEE; REQUESTING THE NEW MEXICO PUBLIC REGULATION COMMISSION TO RECONSIDER AND CONFIRM THAT SENATE BILL 489, THE ENERGY TRANSITION ACT, APPLIES TO ALL ASPECTS OF THE SAN JUAN GENERATING STATION ABANDONMENT, FINANCING AND REPLACEMENT FILINGS AND THAT NAVAJO WORKERS ARE PROVIDED ALL THE FINANCIAL AND EDUCATIONAL HELP AFFORDED TO THEM BY THE ENERGY TRANSITION ACT.

BE ENACTED WHEREAS;

SECTION ONE. AUTHORITY

- A. The Navajo Nation established the Resources and Development Committee to oversee the regulation of activities on Navajo Nation lands for disposition or acquisition of resources. 2 N.N.C. § 500(C)(2).
- B. The Navajo Nation established the Naabik'iyáti' Committee as a Navajo Nation Council standing committee. 2 N.N.C. § 700(A).
- C. The Naabik'iyáti' Committee has the power to coordinate all federal, county and state programs with other standing committees and branches of the Navajo Nation government to provide the most efficient delivery of services to Navajo Nation. 2 N.N.C. § 701(A)(4).
- D. The Naabik'iyáti' Committee further has the power to review and continually monitor the programs and activities of federal and state departments and to assist development of such programs designed to serve the Navajo People and the Navajo Nation through intergovernmental relationships between the Navajo Nation and such departments. 2 N.N.C. § 701(A)(7).

NABIO-59-19

- E. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.

SECTION TWO. FINDINGS

- A. In March 2019, the New Mexico State Senate passed Senate Bill 489, the Energy Transition Act ("ETA"). See attached as **Exhibit A**.
- B. The ETA is a transformative energy policy legislation which provides a responsible and just transition out of coal mining, while also providing financial, educational, and economic development funds to the workers and region affected by the proposed San Juan Generating Station ("SJGS") coal plant shutdown.
- C. Navajo workers, including plant workers, mine workers, suppliers, contractors, and outage maintenance workers, make up sixty percent (60%) or the total workforce affected by the SJGS shutdown, providing much of New Mexico with affordable, reliable energy for decades.
- D. The shutdown of SJGS affects fifty-six (56) Navajo power plant workers as well as one hundred and ten (110) Navajo contractors and suppliers, one hundred thirteen (113) coal mine workers, and ten (10) Navajo contractors or suppliers. These Navajo workers, contractors and suppliers would be irreparably harmed if the ETA did not apply to the SJGS filings or if litigation dragged on in the courts.
- E. The New Mexico Public Regulation Commission (NMPRC) has created confusion and potential jeopardy to the \$40 million funds. The NMPRC's actions regarding the SJGS abandonment could directly affect Navajo workers, contractors, and suppliers.
- F. The breakdown of the \$40 million in funds that are in jeopardy is as follows:

NABIO-59-19

- a. \$12 million for displaced workers un which would help plant and mine workers as well as contractors, suppliers, and vendors affected by the SJGS shutdown;
 - b. \$10.4 million for severance for Public Service Company of New Mexico (PNM) plant workers;
 - c. \$7.4 million in additional severance funds to equalize severance packages for affected coal miners;
 - d. \$6 million in economic development;
 - e. \$1.8 million for Indian affairs and;
 - f. \$8,000 per year for three (3) years for professional training of both plant and coal mine workers;
- G. The NMPRC has the authority to end confusion surrounding the ETA's effect on the SJGS shutdown, and provide clarity to Navajo workers as they navigate their futures. It is irresponsible of NMPRC to leave our Navajo workers in an uncertain position when Senate Bill 489, the Energy Transition Act, provides the means to give monetary compensation and training to aid these workers in this time.
- H. The Navajo Nation has a vested interest in seeing that Navajo workers are treated fairly and provided all the financial and educational help afforded to them by the ETA, and it is in Navajo Nation's best interest to encourage the NMPRC to confirm that the ETA applies to all aspects of the SJGS shutdown.

NOW, THEREFORE BE IT RESOLVED:

- A. The Navajo Nation hereby requests the New Mexico Public Regulation Commission to reconsider and confirm that Senate Bill 489, the Energy Transition Act applies to all aspects of the San Juan Generating Station abandonment, financing, and replacement filings and that the New Mexico Public Regulation Commission, while balancing the Public Service Company of New Mexico's customer costs, will not neglect their duties to the numerous Navajo workers, contractors and suppliers who are

NABIO-59-19

negatively impacted by the San Juan Generating Station shutdown.

- A. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council, President of the Navajo Nation, and their respective designees, to advocate on the behalf of the Navajo Nation to ensure Navajo workers impacted by the San Juan Generating Station are provided for under Senate Bill 489, the Energy Transition Act.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 14 in Favor, and 03 Opposed, on this 10th day of October 2019.



Honorable Seth Damon, Chairman
Naabik'iyáti' Committee

Motion: Honorable Nathaniel Brown
Second: Honorable Mark A. Freeland

Chairman Seth Damon not voting

NAVAJO NATION

323

10/10/2019

Naa'bik'iyati Committee Meeting

03:23:41 PM

Amd# to Amd#	Legislation 0258-19: Requesting	PASSED
MOT Brown	the New Mexico Public Regulation	
SEC Freeland, M	Commission to Reconsider and	
	Confirm that Senate Bill 489...	

Yea : 14

Nay : 3

Excused : 1

Not Voting : 5

Yea : 14

Begay, E	Daniels	Nez, R	Tso, E
Begay, K	Freeland, M	Smith	Walker, T
Begay, P	Henio, J	Tso, C	Yellowhair
Brown	James, V		

Nay : 3

Tso, D	Slater, C	Charles-Newton
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Excused : 1

Wauneka, E

Not Voting : 5

Crotty	Stewart, W	Tso, O	Yazzie
Halona, P			

Presiding Chair: Damon

Nenahnezad Chapter Resolution

PNM Exhibit RND-3 (Rebuttal)

Is contained in the following 2 pages.

Norman C. Begaye
President

Lucinda Yellowman-Bennalley
Vice President

LoJan Watson
Secretary/Treasurer

Harold Dodge
Grazing Committee Member

Tracy Raymond
Farm Board Member



Rickie Nez
Council Delegate

NENAHNEZAD CHAPTER

P.O. BOX 438
FRUITLAND, NEW MEXICO 87416
Ph 505/960-9702 Fax 505/960-6657
www.nenahnezad@navajochapters.org

NZC-61-2019

SUPPORTING THE ENERGY TRANSITION ACT (ETA) AS PASSED BY THE NEW MEXICO LEGISLATURE AND EXECUTED BY GOVERNOR LUJAN-GRISHAM AND ENSURING NEW MEXICO PUBLIC REGULATION COMMISSION WILL APPLY THE ETA IN ALL MATTERS UNDER CONSIDERATION

WHEREAS:

1. Pursuant to 26 N.N.C. §3 (A), the Nenahnezad Chapter was certified on November 10, 1955 as a chapter of the Navajo Nation and is listed under 11 N.N.C., Part 1, §(B), the Nenahnezad Chapter is delegated the governmental authority to make decisions over local matters consistent with Navajo Laws including custom, tradition, and fiscal matters; and
2. The Nenahnezad Chapter is aware that Public Service of New Mexico's San Juan Generating Station has provided reliable and cost-effective energy for the State of New Mexico and much of the southwest for forty years and has had a significant economic impact in the Four Corners region, including the Navajo Nation; and
3. That the New Mexico Public Regulation Commission Chairwoman Theresa Becenti-Aguilar requested that the Nenahnezad Chapter be one of several Northern Agency Chapters consulted and provide feedback voice to be heard regarding PNM's filing for abandonment of San Juan Generating Station; and
4. That PNM conducted a presentation and dialogue at a public meeting with Nenahnezad Chapter in accordance with the Commission's orders of July 10 and July 12, 2019 to educate chapter members concerning PNM's plans and intentions about the proposed shutdown of the San Juan Generating Station; and
5. That Nenahnezad Chapter and neighboring northern chapters have a direct interest in the plan to provide Navajo workers with resources and/or training and provided all the financial and educational help afforded to them by the Energy Transition Act; and
6. That Navajo workers make up 60% of the total workforce affected by the shutdown which includes plant workers, mine workers, suppliers, contractors and outage maintenance workers; and
7. That approximately 56 Navajo Power Plant workers are affected as well as 110 Navajo contractors and suppliers and 113 coal mine workers and 10 Navajo contractors and/or suppliers would be affected if the Energy Transition Act did not apply to the San Juan filings or if litigation dragged on in the courts; and
8. That the Energy Transition Act was transformative piece of energy policy legislation that provides a responsible transition out of coal and at the same time providing for resources such as financial, educational and economic development funds to the workers and region affected by the proposed coal plant shutdown; and
9. That the New Mexico Public Regulatory Commission's actions in bifurcating Public Service Company of New Mexico (PNM) recent July 2019 filing of Consolidation application for approvals for the Abandonment, Financing, and Resources Replacement for PNM's San Juan Generating Station pursuant to the Energy Transition Act have created confusion and potential jeopardy to \$40 million in funding generated from the implementation of the Energy Transition Act by refusing to clarify and determine whether the Energy Transition Act applies, directly affect workers and contractors; and

10. That the \$40 million at risk breaks down as such:
 - \$10.4 million
 - \$7.4 million in additional severance funds to equalize severance packages for coal miners
 - \$8,000 per year for three years for professional training for both plant and coal mine workers
 - \$1.8 million Indian affairs
 - \$6 million in economic development
 - And \$12 million for displaced workers fund (This fund not only helps plants and mine workers but also contractors and suppliers and vendors affected by the plant shutdown"
11. That the Nenahnezad Chapter as a community stakeholder would be derelict in its duty not to protect their workers by ensuring the Energy Transition Act's financial aid did not make it to our workers, who have provided much of New Mexico with affordable reliable energy for decades; and
12. That The New Mexico Public Regulatory Commission has the power to end it this confusion and provide clarity to our workers as they navigate their futures; and
13. That it is irresponsible of the New Mexico Public Regulatory Commission to leave our Navajo workers in this uncertain position when the New Mexico legislature provided the means to provide dollars and training to aid them in this time.
14. That for over 40 years, the Nenahnezad Chapter has contributed \$50+ million to the State of New Mexico revenues through royalties and taxes paid from the Navajo Mine; and
15. That the Navajo livestock owners with grazing permits had to relinquish them for energy development; and
16. That this support is in the best interest of the community.

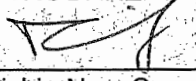
NOW, THEREFORE BE IT RESOLVED THAT:

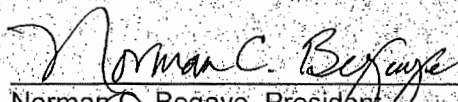
1. The Nenahnezad Chapter supports the Energy Transition Act (ETA) as passed by the New Mexico Legislature and executed Governor Lujan-Grisham and ensuring New Mexico Public Regulation Commission will apply the ETA in all matters under consideration.
2. The Nenahnezad Chapter directs the Community Coordinator, Chapter Officials, and Council Delegate to carry out the intent of this resolution.

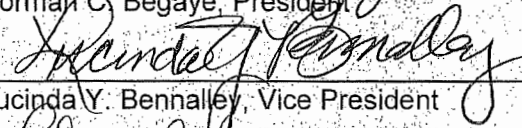
CERTIFICATION

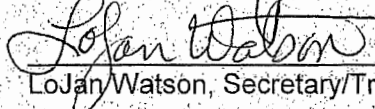
We hereby certify that the foregoing resolution was duly considered by the Nenahnezad Chapter at a duly called meeting at Nenahnezad, (New Mexico) Navajo Nation. A motion was made by Carmelita Lowe and seconded by Mae Atcitty and the same was passed by a vote of 36 in favor, 00 opposed, and 00 abstained, this 12th day of August 2019.

CONCURRED:


Rickie Nez, Council Delegate


Norman C. Begaye, President


Lucinda Y. Bennalley, Vice President


LoJan Watson, Secretary/Treasurer

San Juan Chapter Resolution

PNM Exhibit RND-4 (Rebuttal)

Is contained in the following 3 pages.



SAN JUAN CHAPTER

SANJ-2019-79

Rickie Nez
Council Delegate

Sam Bee
President

Shawn Mike
Vice President

Andrey Nez
Secretary/Treasurer

Harrison Gly
Term Board Member

Keith Tso
Grazing Member

RESOLUTION OF SAN JUAN CHAPTER

SUPPORTING THE ENERGY TRANSITION ACT (ETA) AS PASSED BY THE NEW MEXICO LEGISLATURE AND EXECUTED BY GOVERNOR LUJAN-GRISHAM AND ENSURING NEW MEXICO PUBLIC REGULATION COMMISSION WILL APPLY THE ETA IN ALL MATTERS UNDER CONSIDERATION

WHEREAS:

1. San Juan Chapter is a duly Certified Chapter under the Navajo Nation Government pursuant to Resolution No. CD-86-82 and pursuant to 26 N.N.C §103 and they are delegated and authorized to review all matters affecting its community people; and
2. PNM's San Juan Generating Station has provided reliable and cost-effective energy for the State of New Mexico and much of the southwest for forty years and has had a significant economic impact in the Four Corners region, including the Navajo Nation; and
3. New Mexico Public Regulation Commission Chairwoman Theresa Becenti-Aguilar requested that the San Juan Chapter be one of several Northern Agency Chapter's consulted and provide for feedback voice to be heard regarding PNM's filing for abandonment of San Juan Generating Station; and
4. PNM conducted a presentation and dialogue at a public community meeting with San Juan Chapter in accordance with the Commission's orders of July 10 and July 12, 2019, to educate chapter members concerning PNM's plans and intentions about the proposed shutdown of the San Juan Generating Station; and
5. San Juan Chapter and neighboring northern chapters have a direct interest in seeing Navajo workers are provide resources and/or training and provided all the financial and educational help afforded to them by the Energy Transition Act; and
6. Navajo workers make up 60% of the total workforce affected by the shutdown which includes plant workers, mine workers, suppliers, contractors, and outage maintenance workers; and
7. Approximately 56 Navajo power plant workers are affected as well as 110 Navajo contractors and 113 coal mine workers and 10 Navajo contractors and or suppliers would be affected if the Energy transition act did not apply to the San Juan filings or if litigation dragged on in the courts; and

8. The Energy Transition Act was a transformative piece of energy policy legislation that provides a responsible transition out of coal and at the same time providing for resources such as financial, educational, and economic development funds to the workers and region affected by the proposed coal plant shutdown; and
9. The New Mexico Public Regulatory Commission's action in bifurcating Public Service Company of New Mexico's (PNM) recent July 2019 filing of Consolidation Application for approvals for the Abandonment, Financing, and Resources Replacement for PNM's San Juan Generation Station pursuant to the Energy Transition Act have created confusion and potential jeopardy to \$40 million in funding generated from the implementation of the Energy Transition Act by refusing to clarify and determine whether the Energy Transition Act applies, directly affect workers and contractors.
10. The \$40 million at risk breaks down as such:
 - a. 10.4 million for severance for PNM and PNM are plant workers
 - b. 7.4 million in additional severance funds to equalize severance packages for coal miners
 - c. \$8,000 per year for three years for professional training for both plant and coal mine workers
 - d. \$1.8 million Indian Affairs
 - e. \$6 million in economic development
 - f. \$12 million for displaced workers fund (This fund not only helps plants and mine workers, but also contractors and suppliers and vendors affected by the plant shutdown.)
11. San Juan Chapter as a community stakeholder would be derelict in its duty not to protect their workers by ensuring the energy transition act's financial aid did not make it to our workers, who have provided much of New Mexico with affordable reliable energy for decades; and
12. The New Mexico Public Regulatory Commission has the power to end this confusion and provide clarity to our workers as they navigate their futures; and
13. It is irresponsible of New Mexico Public Regulatory Commission to leave our Navajo workers in this uncertain position when the New Mexico legislature provided the means to provide dollars and training to aid them in this time.

NOW THEREFORE, BE IT RESOLVED THAT:

San Juan Chapter and its community people with the strongest voice that we encourage the Commission to reconsider and confirming that the Energy Transition Act applies to all aspects of the San Juan Generating Station abandonment, financing, and replacement filings and that the Commission, while balancing PNM's customer costs, will not leave workers out in the cold. The San Juan Chapter directs the Chapter Manager, Chapter Officials, and Council Delegate to carry out the intent of this resolution.

CERTIFICATION

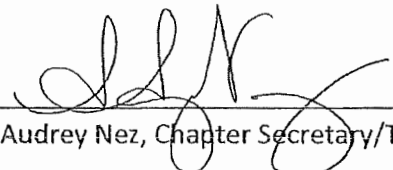
We hereby certify that the foregoing resolution was duly considered at a duly called meeting at San Juan Chapter (New Mexico) Navajo Nation, at which a quorum was present that the same was passed by a vote of 17 in favor, 0 opposed, and 1 abstained on this 10th day of September 2019.

Motion by: Gayle Goldtooth

Second by: Sylvia McKinley

Sam Bee, Chapter President

Shawn Mike, Chapter Vice President



Audrey Nez, Chapter Secretary/Treasurer

Rickie Nez, Council Delegate
SANJ-2019-79

Upper Fruitland Chapter

PNM Exhibit RND-5 (Rebuttal)

Is contained in the following 3 pages.

FRUI 2019-08-155

The Navajo Nation
Upper Fruitland Chapter
PO Box 1257
Fruitland, New Mexico 87416
Tel (505) 960-5032/9811
Fax (505) 960-0614



Rickie Nez, Council Delegate
Lynlaria Dickson, President
Faye BlueEyes, Vice-President
Lynelle Etsitty, Secretary/Treasurer
Albert Lee, Farm Board
Ray Jim, Jr., Grazing Representative

**RESOLUTION OF THE NAVAJO NATION
UPPER FRUITLAND CHAPTER**

**SUPPORTING THE ENERGY TRANSITION ACT (ETA) AS PASSED BY THE NEW
MEXICO LEGISLATURE AND EXECUTED BY GOVERNOR LUJAN-GRISHAM AND
ENSURING NEW MEXICO PUBLIC REGULATION COMMISSION WILL APPLY
THE ETA IN ALL MATTERS UNDER CONSIDERATION**

WHEREAS:

1. Pursuant to 26 N.N. C. § 3(A), the Upper Fruitland Chapter is a certified Chapter of the Navajo Nation as listed under 11 N.N.C., Part 1, P10; and, recreation
2. Pursuant to 26 N.N.C. §1(B), the Upper Fruitland Chapter is delegated the governmental authority to make decisions over local matters consistent with Navajo Law, Custom, and Tradition and under 11 N.N. C. Part, P10 and also delegated authority to make local decisions in the best interest and welfare of the community members; and,
3. Pursuant to 26 N.N.C. §103(d) (1), the Resources and Development Committee certified Upper Fruitland Chapter as Governance Certified who shall exercise authorities pursuant to 26 N.N.C., Section 103, with exceptions of Land Administration Authority beginning February 28, 2012; and,
4. PNM's San Juan Generating Station has provided reliable and cost-effective energy for the State of New Mexico and much of the southwest for forty years and has had a significant economic impact in the Four Corners region, including the Navajo Nation; and,
5. New Mexico Public Regulation Commission Chairwoman Theresa Becenti-Aguilar requested that the Upper Fruitland Chapter be one of several Northern Agency Chapter's consulted and provide for feedback voice to be heard regarding PNM's filing for abandonment of San Juan Generating Station; and,
6. PNM conducted a presentation and dialogue at a public community meeting with Upper Fruitland Chapter in accordance with the Commission's orders of July 10 and July 12, 2019 to educate chapter members concerning PNM's plans and intentions about the proposed shutdown of the San Juan Generating Station; and,

FRUI 2019-08-155

7. Upper Fruitland Chapter and neighboring Northern Chapters have a direct interest in seeing Navajo workers are provided resources and/or training and provided all the financial and educational help afforded to them by the Energy Transition Act; and,
8. Navajo workers make up 60% of the total workforce affected by the shutdown which includes plant workers, mine workers, suppliers, contractors and outage maintenance workers; and,
9. Approximately 56 Navajo power plant workers are affected as well as 110 Navajo contractors and suppliers and 113 coal mine workers and 10 Navajo contractors and or suppliers would be affected if the Energy transition act did not apply to the San Juan filings or if litigation dragged on in the courts; and,
10. The Energy Transition Act was a transformative piece of energy policy legislation that provides a responsible transition out of coal and at the same time providing for resources such as financial, educational and economic development funds to the workers and region affected by the proposed coal plant shutdown; and,
11. New Mexico Public Regulatory Commission's actions in bifurcating Public Service Company of New Mexico's (PNM) recent July 2019 filing of Consolidation Application for Approvals for the Abandonment, Financing, and Resources Replacement for PNM's San Juan Generating Station pursuant to the Energy Transition Act have created confusion and potential jeopardy to \$40 million in funding generated from the implementation of the Energy Transition Action by refusing to clarify and determine whether the Energy Transition Act applies, directly affect workers and contractors; and,
12. The \$40 million at risk breaks down as such; 10.4 million for severance for PNM and PNM are plant workers, 7.4 million in additional severance funds to equalize severance packages for coal miners, \$8,000 per year for three years for professional training for both plant and coal mine workers, \$1.8 million Indian affairs, \$6 million in economic development and \$12 million for displaced workers fund. (This fund not only helps plants and mine workers but also contractors and suppliers and vendors affected by the plant shutdown).
13. Upper Fruitland Chapter as a community stakeholder would be derelict in its duty not to protect their workers by ensuring the energy transition act's financial aid did not make it to our workers, who have provided much of New Mexico with affordable reliable energy for decades; and,
14. The New Mexico Public Regulatory Commission has the power to end it this confusion and provide clarity to our workers as they navigate their futures; and,
15. It is irresponsible of the New Mexico Public Regulatory Commission to leave our Navajo workers in this uncertain position when the New Mexico legislature provided the means to provide dollars and training to aid them in this time.

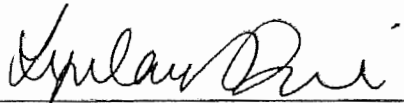
NOW THEREFORE BE IT RESOLVED THAT:


FRUI 2019-08-155

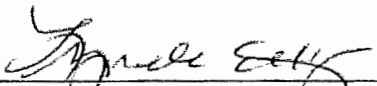
The Upper Fruitland Chapter supports the Energy Transition Act (ETA) as passed by the New Mexico Legislature and executed by Governor Lujan-Grisham and ensuring New Mexico Public Regulation Commission will apply the ETA in all matter under consideration.

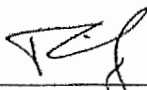
CERTIFICATION

WE HEREBY CERTIFIED that the foregoing resolution was approved by the Upper Fruitland Chapter at a duly called meeting held at Upper Fruitland Chapter (Navajo Nation), N.M. A motion to approve was made by Kenneth Miller and seconded by Herbert Willie and the same was passed by a vote of 19 in favor, 00 opposed, 06 abstained, this 20th day of August, 2019.


Lynlaria Dickson, President


Faye BlueEyes, Vice-President


Lynelle Etsitty, Secretary/Treasurer


Rickie Nez, Council Delegate

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

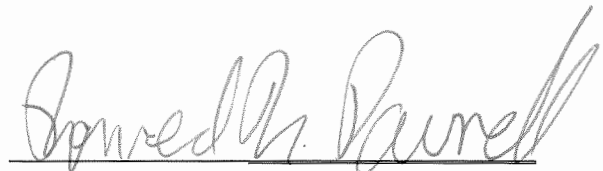
IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S)
ABANDONMENT OF SAN JUAN)
GENERATING STATION UNITS 1 AND 4) Case No. 19-00018-UT

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

RONALD N. DARNELL, Senior Vice President, Public Policy at PNMR Services Company, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Rebuttal Testimony of Ronald N. Darnell** and it is true and correct based on my personal knowledge and belief.


SIGNED this 13th day of November, 2019.


RONALD N. DARNELL

SUBSCRIBED AND SWORN to before me this 13th day of November, 2019.



OFFICIAL SEAL
TANYA D. ARAGON
NOTARY PUBLIC - STATE OF NEW MEXICO
My commission expires January 31, 2023


NOTARY PUBLIC IN AND FOR
THE STATE OF NEW MEXICO

My Commission Expires:

January 31, 2023