

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE APPLICATION OF  
PUBLIC SERVICE COMPANY OF NEW MEXICO  
FOR REVISION OF ITS RETAIL ELECTRIC RATES  
PURSUANT TO ADVICE NOTICE NO. 513,**

**PUBLIC SERVICE COMPANY OF NEW MEXICO ,**

**Applicant.**

**Case No. 15-00261-UT**

**NEW ENERGY ECONOMY’S FILING PURSUANT TO  
COMMISSION ORDER OF JUNE 26, 2019**

COMES NOW New Energy Economy (“NEE”), by and through its attorney, Mariel Nanasi, and in accordance with the Order of June 26, 2019 by the New Mexico Public Regulation Commission (“Commission” or “PRC”) to “identify[] succinctly and with specificity precisely what relief it seeks and intends to address in its oral argument.” Order on Motion for Oral Argument, June 26, 2019, ¶B.

In its Opinion of May 16, 2019, the New Mexico Supreme Court stated that: “we vacate and annul the Commission’s final order en toto. We therefore remand to the Commission for *further proceedings* consistent with this opinion.”<sup>1</sup> (citations omitted.) (emphasis supplied.)

**RELIEF SOUGHT:**

PNM has failed in its job. The Hearing Examiner, the Commission, and the New Mexico Supreme Court found that PNM was imprudent when it invested in the Palo Verde Nuclear Generating Station (“Palo Verde” or “PV”) interests. The PRC must uphold its duty to protect ratepayers and its regulatory responsibility to hold PNM accountable to the PRC’s own standards

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<sup>1</sup> *Public Service Company of New Mexico v. New Mexico Public Regulation Commission*, No. S-1-SC-36115, 5/16/2019, p. 80. (the “Opinion”) *See, also*, p. 3.

and relevant law. The best and least harmful course at this time is for the PRC to set this case for further proceedings. In fact, had PNM followed the law and provided the PRC with all the required financial information and analyses to support a reasoned and proper decision, the PRC would not be facing this issue on Remand. PNM, the party that caused this situation by lack of due diligence, negligence, or deliberate omissions, should be required to prove, what it should have done from the start: that its preferred resource choice is the most cost effective among feasible options and will result in fair, just, and reasonable rates for customers.

Ratepayers must be held harmless.

## **I. FINDINGS BY THE COURTS:**

### **A. 2016 PRC Decisions**

On August 4, 2016, the Hearing Examiner (“HE”) who presided over the entire rate case, which included two hearings, recommended a rate increase for residential ratepayers of 8.4% and a rate increase across all customer classes of 6.4% — the equivalent of a \$41.3 million rate increase.<sup>2</sup> On September 28, 2016, the New Mexico Public Regulation Commission issued its Final Order<sup>3</sup> granting PNM permission to raise all customer class rates by more than 9.5%,<sup>4</sup> or the equivalent of a \$61.2 million rate increase.<sup>5</sup>

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<sup>2</sup> See Exhibit B to PNM’s Appeal, Corrected Recommended Decision, attachment G, PNM Exhibit JCA-11

<sup>3</sup> Attached as Exhibit A to PNM’s Appeal

<sup>4</sup> September 30, 2016, PNM Exhibit JCA-11, Attachment G, p. 1, Line 36.

See, column B, line 17, which \$642M current rates and compare that to Column L, on line 35, which is \$703M. The difference revealed on line 36 (L35-L17), is \$61M, and if one divided \$61M by \$642 - the rate increase is 9.5+%.

<sup>5</sup> Commissioners Karen Montoya, Patrick H. Lyons and Lynda Lovejoy voted in the affirmative and Commissioners Valerie Espinoza and Sandy Jones voted in the negative.

Both the HE and the Commission found PNM to be imprudent in its procurement of PV assets. The major difference between the Hearing Examiner's Recommended Decision and the PRC's Final Order is that the HE recommended that PNM be given \$0 for its imprudence, yet the nuclear interests were still allowed to serve jurisdictional ratepayers and the PRC voted 3-2 to compensate PNM for its imprudent purchase of Palo Verde Unit 2 nuclear power assets in Arizona and the cost of lease extensions for Palo Verde Unit 1 and Unit 2, but as a "remedy" (punishment) for PNM's imprudence denied PNM future recovery of all decommissioning costs.<sup>6</sup> The Final Order authorized PNM to immediately begin collecting increased rates from customers.

#### **B. The Supreme Court Decision**

"[T]he Commission's determination that PNM's decisions were imprudent was supported by *substantial evidence*." (Opinion, p.24; emphasis supplied) The Court ruled that: "the purpose of a prudence review is to hold ratepayers harmless from any amount imprudently invested, a disallowance should equal the amount of the unreasonable investment." (Opinion, pp.25, 26 and

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<sup>6</sup> There was evidence that 1) PNM had undercollected for decommissioning costs, artificially lowering the actual cost of nuclear, and, 2) purchased the nuclear to shield its shareholders from outsized decommissioning costs because if ratepayers are served by this resource we would be obligated to pay for the (undercollected) unresolved nuclear waste storage problem. CRD pp. 78-79, 82-84, 92, 103-106. Final Order Partial Adopting Corrected Recommended Decision, p. 38, ¶117 (The Commission cannot ignore the apparent role of PNM's self-interest in expanding rate base to benefit shareholders and shifting the burden of decommissioning responsibility from its own shareholders to ratepayers in its decision to move forward on the PV leases without due consideration of alternatives. The Commission notes that a result of this failure is that PNM's actions in renewing and reacquiring the leases have exposed ratepayers to costs associated with decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected. Accordingly, while this Commission finds that these plants may continue in service, the Commission finds that the appropriate remedy to protect the ratepayers from the effect of PNM's imprudence is to shift the future burden of decommissioning related costs from the ratepayers to PNM. [] In the event additional funding is required, PNM shall bear those expenses without recovery from ratepayers.")

p. 29.) The Court acknowledged the possibility of a “*full disallowance*” to insulate ratepayers from the imprudent actions of utility management. *Id.*

The Court also found that the PRC’s remedy to protect ratepayers, “shifting the future burden of decommissioning related costs from the ratepayers to PNM,”<sup>7</sup> did not meet due process requirements (of “notice and an opportunity to be heard”) and so remanded the case back to the PRC for a lawful remedy. (p. 39)

Interestingly, when the Supreme Court rejected the arguments of NEE and the Albuquerque Bernalillo Water Utility Authority opposing the Commission’s decision to “grant recovery for the Palo Verde expenditures” it did NOT use the same unequivocal language as it did with regard to the Commission’s finding of imprudence – stating that that Commission determination was based on *substantial evidence*. When the high Court reviewed the Commission determination to allow PV to serve ratepayers, it stated: “Viewed in the light most favorable to the Commission’s decision, this evidence is sufficient for a reasonable mind to conclude that Palo Verde Units 1 and 2 are used-and-useful.” This is a critical difference, allowing for *this* Commission to *in fact* determine *if* Palo Verde provides efficient and *economical* service. (Opinion, p. 33.)

If the remedy to PNM’s imprudence has been rejected, then how will this Commission hold ratepayers harmless? “[A]cknowledging the possibility of a full disallowance while concluding that ‘a disallowance should equal the amount of the unreasonable investment.’” (Opinion, p. 29.) The only way to hold ratepayers harmless therefore is to revisit the remedy by sending this case back to Hearing Examiner Glick for her to conduct the analysis that was never

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<sup>7</sup> Opinion, p. 37

done in the first place: require PNM to prove, if they can, that its PV investments are the most cost effective among feasible alternatives, including, of course, the cost of decommissioning.

Further, the Supreme Court upheld the Commission's entire denial of cost recovery for balanced draft pollution controls stating that "[s]uch a decision is squarely within the authority of the Commission under Section 62-6-4(A) to regulate the rates of public utilities and the obligation of the Commission under Section 62-8-1 to ensure that those rates are just and reasonable." (Opinion, pp. 54-55.)

## II. ARGUMENT

PNM received a rate increase pursuant to the Commission's Final Order in 15-00261-UT, on September 28, 2016, that allowed PNM to recover \$19.9 million per year of costs<sup>8</sup> associated with its purchase of 64 megawatts ("MW") and the lease extension of 114 MW<sup>9</sup> investment in the Palo Verde Nuclear Generating Station.

The Hearing Examiner,<sup>10</sup> the Commission,<sup>11</sup> and subsequently the New Mexico Supreme Court found that PNM was imprudent when it invested in the PV interests.<sup>12</sup>

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<sup>8</sup> See Exhibit A, Affidavit of PNM's Stella Chan, 12/2/2016. According to PNM's "calculation of an average monthly bill for a residential customer using 600kWh per month" the impact would be approximately \$0.75 per month. (PNM estimated that it would be \$1.46 per month for both the \$19.9M for PV interests and \$19.5M for Four Corners Coal Supply Agreement. So, \$0.75 is approximately ½ the \$1.46 per month.)

<sup>9</sup> This 114 MW investment is the subject of a *Joint Petition for Expedited Investigation Regarding PNM's Purchase of Palo Verde Nuclear Generating Station Unit 1 & 2 Leases and the Financial Impact on Ratepayers*, pending before this Commission, Case No. 19-00102-UT.

<sup>10</sup> According to the Hearing Examiner, "PNM's decisions to extend the five PV leases and purchase the 64.1 MW PV were imprudent because it failed to show by a preponderance of the evidence that it reasonably examined alternative courses of action and that its decisions to extend the leases and purchase the 64.1 MW were its most cost effective resource choices. . . ." Corrected Recommended Decision ("CRD"), August 15, 2016, p. 89.

<sup>11</sup> The PRC similarly found PNM's investment decisions regarding Palo Verde to be imprudent. The PRC concluded that PNM did not act prudently in that it failed to establish a FMV (fair

As the Supreme Court made clear, “ratepayers are not to be charged for negligent, wasteful or improvident expenditures, or for the cost of management decisions which are not made in good faith.” Opinion, p. 13.

Similarly, PRC precedent, including cases specifically regarding Palo Verde, requires that a utility provide evidence that its expenditures are prudent before it is entitled to recover those expenditures from the ratepayers. A utility must produce a financial evaluation to prove that a given resource is the most cost effective alternative among feasible options, will result in a net public benefit, and the concomitant rate increase will not create economic waste for ratepayers. *In re Petition of PNM Gas Servs.*, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383, 390, 391 (2000); *Morningstar Water Users v. Pub. Util.*, 1995-NMSC, 904 P.2d 28, 40<sup>13</sup>; *In re Public*

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market value) for the 64.1 MW purchase at the PV2 nuclear plant (Final Order, 9-28-2016, p. 36 ¶¶ 112, 113) and had “failed to justify a finding that it acted prudently in renewing the PV1 and [PV2] leases.” Final Order, 9-28-2016, p. 37 ¶116. With regard to the purchase at the PV2 nuclear plant, the PRC stated:

PNM acknowledges that it failed to do any meaningful comparative pricing or obtain any appraisal [before purchase or lease extensions]. . . . With regard to the two prior sale transactions in 2008 and 2011 relied upon by PNM, the Commission finds that in addition to the concerns about timing and comparability of those sales noted by the HE, PNM failed to provide sufficient information or analysis concerning the terms and circumstances of those purchases — something an appraisal by a disinterested third party professional may have provided — to justify its asserted FMV and purchase price.

Final Order, 9-28-2016, pp. 33, 34 ¶107.

The PRC also found that PNM had failed to demonstrate that the lease extensions and lease re-acquisitions were the least cost alternatives, Final Order, 9-28-2016, p. 32, ¶101.

<sup>12</sup> Opinion, at p. 24. (“[T]he Commission’s determination that PNM’s decisions were imprudent was supported by substantial evidence.”)

<sup>13</sup> Regulation also serves the New Mexico statutory purpose of preventing “unnecessary duplication and economic waste.” Regulatory oversight prevents overinvestment in high fixed costs. Furthermore, regulation protects the utility’s consumers. Because it is a monopoly the utility must be regulated so that it cannot take advantage of its position or its customers. In

*Service Co. of New Mexico*, Case No. 2382, Recommended Decision, p. 38, adopted by Final Order, 166 P.U.R. 4<sup>th</sup> 318 (1995); *Attorney General v. New Mexico Pub. Serv. Comm'n*, 101 N.M. 549, 553, 685 P.2d 957, 961 (1984); Case No. 2567, Final Order (11/28/1994);<sup>14</sup> Case No. 2444 (1992);<sup>15</sup> Case No. 2087, Final Order (3/6/90);<sup>16</sup> Case No. 2019 Phase I (1986);<sup>17</sup> *see* NMSA 1978, § 62-8-1 (“Every rate made, demanded or received by any public utility shall be just and reasonable.”)

Yet, here, PNM utterly failed to do so:

**PNM has not performed any Strategist<sup>®</sup> runs, economic modeling or financial analysis with respect to the acquisition of the interest in Palo Verde 2 at the valuation cited.**<sup>18</sup>

The evidence showed that PNM’s Board of Directors made the decision to purchase the PV2 interests without even knowing the sales price.<sup>19</sup> And why did PNM’s Board decide to purchase the PV2 interests? As PNM’s Board briefing of December 2013 plainly states:

**“Purchasing the other three Unit 2 leases will increase rate base, allowing shareholders to**

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exchange for submitting to oversight by the Commission, the utility is permitted to operate as a monopoly within its service area.

<sup>14</sup> At p. 50: “[T]he conferral of ‘used and useful’ status on PVGNS Units 1 and 2 at this juncture will not give these units any more insulation from the normal vicissitudes of economics, regulation, or the other circumstances to which they are subject, than they now have.”

<sup>15</sup> The 58 MW from PV Unit 1 and 2 would *lower* customer rates.

<sup>16</sup> “Effectively, under the Final Stipulation, all of the energy from PNM’s share of PVNGS Units 1 and 2 would serve PNM customers, but at a *reduced cost* due to this disallowance.” Final Order 40. (emphasis supplied.)

<sup>17</sup> At ¶16: “[N]othing contained herein shall be considered as a determination by the Commission of the value of any of the Company’s properties, [...] the propriety of including any item in the Company’s cost of service or other ratemaking determination. The Commission retains full authority over the Facilities [...] including the authority to disallow any or all of the lease expenses and transaction costs on a used-and-useful basis.”

<sup>18</sup> Opinion, p. 22; 4/11/2016 Tr., Ortiz, page 94; Also, See, 4/18/2016 Tr., Olson, page 1411; NEE Exhibit #20, DVW-15; 4/19/2016

<sup>19</sup> *See* Exhibit B, p. 2, attached and incorporated herein. *See also* 4/19/2016 TR., Eden, pp. 1681, 1691, 1692, 1693.

earn a return on the assets.”<sup>20</sup> In fact, PNM openly acknowledged that the criterion they employed was what was necessary to meet dollar capital targets to assure the company enjoyed a hefty rate of return for its shareholders.<sup>21</sup> The evidence showed that PNM’s Board knew what constituted prudence for the PV2 acquisition (appraisal, negotiation, a fair market value evaluation process) but deliberately chose *not* to exercise these industry-accepted standards of care; the only “alternatives” to the PV lease purchases that PNM ever considered were “renewing all the leases and buying the leases”<sup>22</sup> – it never compared its “chosen generation resource”<sup>23</sup> against any other resource.<sup>24</sup> As the New Mexico Supreme Court observed, **“The goal of the consideration of alternatives is, of course, to reasonably protect ratepayers from wasteful expenditure. The failure to reasonably consider alternatives was a *fundamental flaw* in PNM’s decision-making process.”** Opinion at p. 19 (citations omitted) (emphasis supplied).

#### A. Imprudence

**PNM admitted that there was NO evidence that the PV2 investment is reasonable or prudent for ratepayers.** When questioned about the prudence and reasonableness of the PV2 investment for ratepayers, PNM witnesses<sup>25</sup> deferred to Mr. Olson. (At the time of Mr. Olson’s

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<sup>20</sup> See Exhibit B, p. 2. See also 4/11/2016 TR., Ortiz, p. 138; NEE Exhibit 20, Van Winkle testimony DVW-14.

<sup>21</sup> 4/12/2016 TR., Buchanan, p. 466.

<sup>22</sup> See Exhibit B, p. 2.

<sup>23</sup> Opinion at p. 19.

<sup>24</sup> There was no evidence in the record that PNM adequately considered ending its use of PV following the initial expiration of the leases or that PNM considered alternatives to extending the leases or purchasing the lease assets. For this reason, the Hearing Examiner, *who attended both hearings and heard all the evidence*, determined that “PNM’s decisions to extend the 5 PV leases and purchase the 64.1 MW PV were imprudent because it failed to show by a preponderance of the evidence that it reasonably examined alternative courses of action and that its decisions to extend the leases and purchase the 64.1 MW were its most cost effective resource choices . . .” CRD at p. 89.

<sup>25</sup> Ortiz points to Eden in his direct testimony, PNM Exhibit 1, Ortiz Direct, pages 13 and 28. Eden points to Olson 4/19/2016 TR., Eden, pages 1679, 1680; PNM Exhibit 41, Eden direct,



testimony he was Vice President of Generation and in February 2018 he was promoted to Senior Vice President, Utility Operations, see below, Summary Compensation Table.) However, Mr. Olson could not justify, explain, or substantiate putting the cost of PV2 into rate base:

**Q: And what in your testimony indicates or proves or substantiates that PV2 is a prudent investment for ratepayers?**

**A: Can you refer to my testimony, and I can look at that and see the context of that?**

**Q: Well, I didn't find any. That's -- that's what I'm asking you.**

**A: Oh. Well, if I didn't testify to it, then I'm not willing to testify to it on the stand.**

**Q: If -- if PNM did no financial analysis, how can this Commission determine that this resource is a prudent or reasonable investment?**

**A: I -- I didn't testify to that. I don't know the answer to that question.<sup>26</sup>**

The email string, that memorializes the contemporaneous “negotiation” for the purchase of 31 MW at PV2, omits any comparison to any other pricing or any other resource and shows a rather cavalier and quick December “negotiation” in what former NM Supreme Court Justice Chavez dubbed the “Christmas email.” The email string below clearly illustrates that PNM had no qualms about playing with other people’s (the ratepayer’s) money and did not seriously attempt to secure a lower price for this resource. When asked if this email string reflected the details of the “negotiation,” PNM acknowledged that it did.<sup>27</sup> Read from bottom to top:

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pages 24, 25 (Peters also does not claim to support, justify or explain the cost-effectiveness of the purchase of PV2, 4/20/2016, TR., Peters, page 1913)

<sup>26</sup> 4/18/2016, TR., Olson, page 1412

<sup>27</sup> TR., 6/28/2016. Eden, 4061.

**From:** Eldred, Charles  
**Sent:** Monday, December 30, 2013 11:08 AM  
**To:** Horn, Terry  
**Subject:** RE: PV unit 2 purchase of Citibank lease update

Great –come see me so I can get my mind wrapped around this ? thx

**From:** Horn, Terry  
**Sent:** Monday, December 30, 2013 10:44 AM  
**To:** Eldred, Charles  
**Subject:** RE: PV unit 2 purchase of Citibank lease update

Chuck, I had further conversations with Brian Whalen at Citibank this morning regarding our purchase of their Palo Verde Unit 2 lease interest. After further discussion and negotiation, Brian and I have settled on \$2500/kw. Brian has some internal approvals to be gained but he is hopeful he can get those. He said it would take a few days and certainly would not happen this week. The formal notice to purchase the Unit 2 interests, both that of Citibank (31MWs) and the two of Cypress (33MWs) will need PNM Board approval and will go out in the next week along with an 8-k. Assuming Brian is successful in getting his internal approvals for the sale at 2500/kw, we will document the transaction (January 15, 2016 purchase date) during January. The final purchase documents would be filed as exhibits to the 10-k. I will begin negotiations with Cypress regarding a purchase price after the formal notice to purchase their interest is delivered next week.

We all went to see American Hustle. As you said, it was good.

Terry

**From:** Eldred, Charles  
**Sent:** Thursday, December 26, 2013 10:16 AM  
**To:** Horn, Terry  
**Subject:** Re: PV unit 2 purchase of Citibank lease update

If we settle with him remind me the timetable and next steps? We can discuss when you are in the office - thx

Glad to hear that Ryan and Kelly are with you guys - tell them hello and happy new year! If you are looking for any good movies - American Hustler is good.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

**From:** Horn, Terry  
**Sent:** Thursday, December 26, 2013 10:05 AM  
**To:** Eldred, Charles  
**Subject:** PV unit 2 purchase of Citibank lease update

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Morning, Chuck. I hope you and the family have been having a great holiday. Ryan and Kelly are still here and all is good. I will be in the office on Monday.

As you know, I offered Citi (Brian Whalen) \$2300/kw for their 31MWs of Unit 2. After discussing internally at Citi, Brian came back with \$2700/kw. From the discussion with Brian, I am sure that it is not his best and final offer. I think there is a chance we could settle on \$2500/kw, although never know till it is done. I am confident I can reach agreement with Brian shortly which will only leave the two leases (33 MWs) owned by Cypress to negotiate. An agreement with Citi will hopefully set a good precedent for the Cypress negotiation. The one 10MW lease with JP will be renewed shortly to 2024.

Happy holidays.  
Terry

Lastly, PNM lied to the PRC about the book value of the PV Interests. On February 22, 2016, PNM's Jason Peters, Director of General Accounting for PNM Resources, filed sworn testimony in response to a February 17, 2016 bench request specifically regarding the accounting PNM had conducted to determine the net book value of the purchased PV2 lease interests: "The correct net book value PNM used to project the value of the 64.1 MW of Palo Verde Unit 2 leases purchased ("PV2 Interests") is \$1,596/kW,"<sup>28</sup> and this testimony was reviewed by Peters' superior.<sup>29</sup> This was the *only* issue addressed in Peters' February 22, 2016 testimony. Yet, in cross-examination by NEE, it was revealed that \$1596 per kW was NOT the net book value, and that it included a PNM preferred "write-up" amount,<sup>30</sup> and the actual "more accurate" book value is \$1306/kW.<sup>31</sup> PNM's revisions "reveal material changes in PNM's asserted net book value (NBV) for the 64 MW of PV2 that PNM repurchased as well as the related acquisition premium it seeks to recover in rates." PRC Order, May 18, 2016, at ¶5. These "significant [] discrepancies"<sup>32</sup> are *material*.

It is critical that this Commission understand that the above-stated actions are that of a

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<sup>28</sup> PNM Exhibit 48, Peters, Rebuttal, 2/22/2016, pp. 1, 2

<sup>29</sup> PNM's Peters apparently failed to do the "research" before he filed the testimony on February 22, 2016. Further, Mr. Monroy admitted that he reviewed Peters' testimony before it was filed. TR., 6/27/2016, Monroy, p. 3868

<sup>30</sup> 4/20/2016 TR., Peters, pp. 1925, 1926.

<sup>31</sup> PNM's BR-5, April 28, 2016; 6/27/16 TR., Ortiz, p. 3626; NEE Exhibit # 31

<sup>32</sup> Order, May 18, 2016, at ¶6.

rogue utility, one that has been found by multiple tribunals to be out-of-compliance with the law. These significant and deliberate deceptions and omissions that occurred during the utility's decision-making process<sup>33</sup> (conducting no financial analysis, producing no comparative evaluation of resources, offering no appraisal, committing perjury about the book value of its acquired asset), are highly relevant factors that should be considered by the Commission when it weighs whether to "hold ratepayers harmless from any amount imprudently invested [because] a disallowance should equal the amount of the unreasonable [Palo Verde nuclear] investment."<sup>34</sup>

## **B. Public Interest**

The Legislature delegated to the Public Service Commission the power and authority to regulate utilities. NMSA 1978 § 62-6-4. The Public Utility Act, which establishes both the Commission and all the apparatus for regulating utilities, is set forth in NMSA 1978 § 62-3-1:

B. It is the declared policy of the state that the public interest, the interest of consumers and interest of investors require the regulation and supervision of such public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates, and . . . without unnecessary duplication and economic waste . . . for the rendition of service to the general public and to industry.

Our Supreme Court has held that "[t]he public interest is to be given paramount consideration; desires of a utility are secondary". *Public Service Co. of New Mexico v. New Mexico Public Service Comm'n*, 112 N.M. 379, 815 P.2d 1169, 1173 (1991), citing *Telstar Communications, Inc. v. Rule Radiophone Serv., Inc.*, 621 P.2d 241, 246 (Wyo. 1980).

In the last two general rate cases, 15-00261-UT and 16-00276-UT, the Hearing

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<sup>33</sup> Opinion at p. 19: "[t]he decision-making process of the utility is properly included in the prudence analysis." *Re Cambridge Electric Light Co.*, 86 P.U.R. 4th 574 (Mass. D.P.U. 1987) (the utility must demonstrate that it "went through a reasonable decision making process to arrive at a course of action and, given the fact as they were or should have been known at the time, responded in a reasonable manner.").

<sup>34</sup> Opinion at pp. 25-26.

Examiners and the Commission have found that PNM imprudently acquired PV investments and coal investments, respectively.<sup>35</sup>

A slap on the wrist, or kicking the can down the road to the next rate case for a determination as to possible cost disallowance then is an inadequate remedy for ratepayers because i) this doesn't protect ratepayers now; and ii) perhaps more importantly, it rewards the utility for its imprudent actions rather than holding it accountable. As we can see, if there is no real consequence or "punishment" for utility imprudence then it will continue to disregard the law. "We recognize NEE's and ABCWUA's concerns that a utility should not be rewarded for its imprudent failure to reasonably consider alternatives and acknowledge that total disallowance may be an appropriate remedy for such imprudence in some circumstances." (Opinion, p. 29, citing the Oregon PUC)

In fact, the Oregon P.U.C. cited an example where a utility failed to show a prudent investment in a gas pipeline without a demonstrated need for the project and the P.U.C. excluded the *entire amount* from rate base. 2012 WL 6644237 at \*21. The penalty for imprudence handed down by the Oregon P.U.C. was a partial disallowance from rate base of the cost of environmental controls. Environmental controls, which were federally mandated, are a discrete part of a resource, not the resource itself. Yet, in the case at hand, the question was: should the utility procure and invest in this entire resource for ratepayers without any financial analysis or comparison with alternatives? If ratepayers must pay for a prudently acquired resource, shouldn't the converse be true as well, to protect the public interest? When balancing the harm to public interest against the economic harm to a utility denied anticipated rate recovery, our Court has

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<sup>35</sup> The next rate case will include the issue of prudence and potential cost disallowance for the Four Corners imprudence finding – however the Palo Verde nuclear lease expiration date and planned purchase by PNM this January requires that the Palo Verde imprudent finding be addressed *before* the next rate case.

come out on the side of the ratepayers: “A disallowance due to imprudence is, however, quite different; and to consider financial harm in determining a disallowance founded on the utility being imprudent would, in essence, be rewarding a utility for its imprudent acts.” CRD at p. 110.

The record is replete with evidence that these assets are not “valuable” and “in the public interest.” To the contrary, record evidence demonstrates that PNM purchased and extended these PV nuclear interests because (i) the investor-owned utility did not want to pay for necessary capital expenditures (to make the plant safe and keep it in regulatory compliance) and decommissioning costs, which are an enormous risk and liability (purchasing these assets shifted the costs from shareholders to ratepayers);<sup>36</sup> and (ii) these investments will earn substantial profits for senior management and shareholders,<sup>37</sup> because nuclear assets are *the* most expensive energy resource compared to other supply-side resources (solar and wind),<sup>38</sup> and (iii) these prices are guaranteed to increase substantially. Placing these unprofitable nuclear assets into rate base ensures that PNM’s ratepayers will bear the costs and risks of owning this asset.

### **C. Imprudent Resource Procurement Causes Injury to Ratepayers**

New Mexico is a state in the unfortunately unique economic position where 19.7% of New Mexican households live at the poverty level (\$24,860 for a family of four per year).<sup>39</sup> 27%

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<sup>36</sup> CRD at pp. 104-105.

<sup>37</sup> See Exhibit B, p. 2.

<sup>38</sup> The price for nuclear begins at \$81.00/MWh (4/15/2016 TR., Monroy, pages 1191-1194; 4/26/2016 TR., Van Winkle, page 3322, 3324-3325; 4/26/2016 TR., Dauphinais, pages 2863 - 2865; NEE Exhibit 20 Van Winkle direct, pages 20 and 23; NEE Exhibit 21) — nearly four times that of solar and wind, and PNM has admitted that this price will rise by at least 43% over the next twenty years. (4/15/2016 TR., Monroy, page 1194; NEE Exhibit 20, Van Winkle testimony, DVW-18 (Bench Request 10/20/2015)); compare the \$81.00/MWh to the two cases PNM has pending, Case No. 19-00158-UT, for 50 MW of solar at \$21.73/MWh and Case No. 19-00159-UT, for 140 MW of wind at \$17.48/MWh.

<sup>39</sup> <https://talkpoverty.org/state-year-report/new-mexico-2018-report/>

of children live below the poverty line.<sup>40</sup> This places New Mexico second highest in overall poverty and highest in child poverty nationwide. Native American and Latinos make up the majority of the people facing poverty.<sup>41</sup> A map by Inside Energy using census and federal energy data shows that [energy expenditures breach 20-50 percent](#) of household incomes in several parts of New Mexico, disproportionately hurting the poor.<sup>42</sup> See, *Joint Petition for Expedited Investigation Regarding PNM's Purchase of Palo Verde Nuclear Generating Station Unit 1 & 2 Leases and the Financial Impact on Ratepayers*, pending before this Commission, Case No. 19-00102-UT, p. 26, ¶32. People of color and senior citizens are disproportionately affected by increased energy costs due to their relatively low household incomes. When the utilities are allowed to spend imprudently without recourse, such as PNM's imprudent investment in higher cost nuclear-generated electricity, our most vulnerable residents bear the costs. Rising electricity rates, which have risen 63% between 2008 and 2018, force our most vulnerable community members to make hard economic choices (i.e., whether to buy food, medicine, or keep the electricity on) that likely will cause long-term hardship. Compare this real-life tenuous economic situation for hundreds of thousands of New Mexicans with the information from the table below that presents a summary of salary and other compensation for the top five PNM Senior Management, from PNM's 2019 Proxy statement filed by PNM with the Securities & Exchange Commission,<sup>43</sup> which equaled \$9,562,944 in 2018.

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> <https://www.theatlantic.com/business/archive/2016/06/energy-poverty-low-income-households/486197/>

<sup>43</sup> <https://www.pnmresources.com/~media/Files/P/PNM-Resources/annual-meeting/2019%20Proxy%20Statement.pdf>



It is manifestly unjust that persons of less economic means should bear the brunt of paying the extra 3.1% rate base increase — or \$19.9 million per annum for the nuclear assets found to be imprudently procured. If the PRC postpones decision-making to determine a fair resolution it will be asking the poorest among us, many of whom are families already stretched to the limit, to come up with extra dollars for electricity (a necessity, not a luxury) at a time when every dollar counts.

**SUMMARY COMPENSATION TABLE**

(a) Name and Principal Position	(b) Year	(c) Salary (\$)	(d) Bonus (\$)	(e) Stock Awards (\$)	(f) Option Awards (\$)	(g) Non-Equity Incentive Plan Compensation (\$)	(h) Change in Pension Value and Non-Qualified Deferred Compensation Earnings (\$)	(i) All Other Compensation (\$)	(j) Total (\$)
		(1)		(2)		(3)	(4)	(5)	
Patricia K. Collawn, Chairman, President and CEO	2018	854,108	—	1,765,078	—	1,332,408	—	802,942	4,754,536
	2017	817,539	—	1,724,548	—	1,144,000	—	739,835	4,425,922
	2016	791,923	—	1,539,856	—	974,050	—	677,328	3,983,157
Charles N. Eldred, EVP and CFO	2018	489,660	—	502,680	—	520,820	—	700,670	2,213,830
	2017	468,695	—	484,957	—	417,362	—	579,349	1,950,363
	2016	452,760	—	441,784	—	351,624	—	396,244	1,642,412
Patrick V. Apodaca, SVP, General Counsel and Secretary	2018	351,054	—	260,053	—	271,746	—	105,238	988,091
	2017	343,725	—	275,787	—	241,354	—	97,006	957,872
	2016	335,776	—	258,624	—	209,319	—	133,249	936,968
Ronald N. Darnell, SVP, Public Policy	2018	282,013	—	198,329	—	219,450	—	150,315	850,107
	2017	269,403	—	203,010	—	183,889	—	149,891	806,193
	2016	255,829	—	173,870	—	159,481	—	144,248	733,428
Chris M. Olson, SVP, Utility Operations	2018	290,577	—	166,865	—	220,500	—	78,438	756,380

In this very real context of inequity, this Commission must decide whether to grant a hearing on the rate increase given PNM's imprudence.



### III. CONCLUSION

If exclusion of all future decommissioning costs is not the appropriate remedy, what is? The Supreme Court in its analysis stated “that it was not inappropriate for the Commission to address whether PNM had demonstrated Palo Verde to be cost-effective. . . . The goal of the consideration of alternatives is, of course, to reasonably protect ratepayers from wasteful expenditure. The failure to reasonably consider alternatives was a *fundamental flaw* in PNM’s decision-making process.” (Opinion, p. 19)

“PNM’s failure to consider alternatives – impaired the Commission’s ability to quantify the potential harm to ratepayers from PNM’s imprudence.” (Opinion, pp. 28-29)

The harm to ratepayers that resulted from the PV lease purchase is evident. *At the expiration of the leases* PNM might not have been able to walk away from ongoing liabilities, but the *ratepayers’ obligations were over*. At that point in time ratepayers could have walked away free: no concern about stranded assets, no vulnerability for catastrophic accidents or plant failure, no costs for future decommissioning, or the innumerable risks tied to operation of an aging nuclear plant. A clean exit is what ratepayers could have had and what the PRC could ensure they have right now— no future liability! NEE can’t stress this point enough.

The PRC has already acknowledged that ratepayers have been adversely impacted by its imprudent decision: “The Commission notes that a result of this failure is that PNM’s actions in renewing and reacquiring the leases have exposed ratepayers to costs associated with decommissioning responsibilities that likely would not have been incurred had an alternative resource other than nuclear been selected.” Final Order Partial Adopting Corrected Recommended Decision, p. 38, ¶117. So, in order to protect ratepayers fully for the imprudent investment the PRC should give PNM a choice, either: (i) PNM must comply with the demand for

an evidentiary hearing to determine if their nuclear investments are prudent, meaning cost effective when analyzed on a consistent and comparable basis with other available energy resources taking into consideration other cost risks, like decommissioning costs, or (ii) the 178 MW of nuclear should be 100% excluded from rates at this time,<sup>44</sup> and ratepayers should be reimbursed for the overcharged amount of the imprudent 178MW from the date of the Final Order, 9/28/2016, to the date of the decision by the PRC. *See*, No. S-1-SC-36115, Order of December 12, 2016.

There is no rush or statutory deadline pending. In order to give full effect to the Remand “[t]he Commission has the obligation to ensure that ‘[e]very rate made, demanded or received by any public utility [is] shall just and reasonable.’ NMSA 1978 § 62-8-1 (1941). In meeting this obligation, the ‘Commission is vested with considerable discretion,’” (Opinion p. 5) including to hold “further proceedings.” (Opinion p. 3 and p. 80.)

New Energy Economy has expended time and resources over the course of more than four years in an effort to hold PNM accountable for its failure to follow industry norms that require utilities to make prudent investment decisions before they are entitled to reimbursement from ratepayers. Three distinct tribunals, including our highest court, have concluded that NEE is right: PNM failed to prove by substantial evidence that its investment in Palo Verde was prudent. In fact, its investment was motivated by increasing company profits. If PNM ultimately prevails by recovering its PV investment costs without the PRC requiring an evidentiary hearing as to whether these nuclear investments were *in fact* prudent, meaning cost effective when analyzed

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<sup>44</sup> The Commission has the authority to exclude the lease extensions and purchase from serving customers, (Case No. 1995, at 7, ¶ 24; Case No. 2019, Phase I, p. 12 ¶ 16.), the obligation to protect ratepayers from waste and unreasonable and unjust rates, (NMSA §62-3-2 A (2)), and customers should not be burdened with these assets when we have no idea, because there is no evidence, if these nuclear assets are the best choice among alternatives to serve customers. “It would not be in the public interest for the Commission to grant [recovery for an asset] which might meet needs but is the worst among a range of alternatives. Such determinations cannot be made in a vacuum.” NMPRC Case No. 2382, *supra*, at p. 49.

on a consistent and comparable basis with other available energy resources, then our advocacy system has failed and there is little incentive for any party to waste time and money to see that the laws and regulations are followed. Such a result would be a great disservice to the administrative law process, to consumer advocates, such as NEE and others, and to the ratepayers of New Mexico.

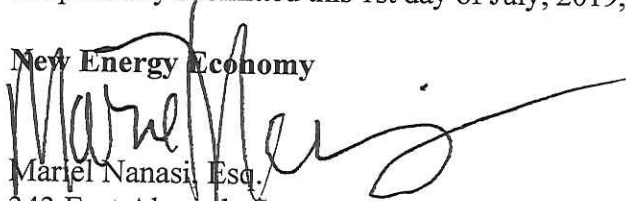
WHEREFORE, consistent with the New Mexico Supreme Court's Opinion to set "further proceedings," and the public interest that favors sending this case to a Hearing Examiner, NEE requests that a determination be made as to (i) whether the PV interests are the most cost effective among feasible alternatives, (ii) if the PV interests are found *not* the most cost effective among feasible alternatives, then the "overcharge" amount that ratepayers have suffered must be calculated and the amount reimbursed to ratepayers determined, consistent with the New Mexico Supreme Court's Order of December 12, 2016 (attached as Exhibit A to NEE's *Motion to Request Oral Argument, 6/18/2019*); and (iii) if the PV interests are found *not* the most cost effective among feasible alternatives, then the PRC must issue an Order to decertify the 178MW PV interests, excluding these assets from being used to serve retail customers.<sup>45</sup>

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<sup>45</sup> The Commission retained full authority in the earlier sale/leaseback case "over all issues of ratemaking treatment" for *these* assets, including to disallow these assets "*on a used-and-useful basis, on the basis of imprudency in the cost of the Facilities, or on any other lawful basis*" (Case No. 2019, Phase I, p. 12, ¶ 16). Additionally, because PNM failed to prove that Palo Verde lease extensions and the purchase would *provide efficient and economical service* these assets should also not serve customers because they are not "used and useful" and to decide otherwise would fail to hold ratepayers harmless. *See* Case No. 2567, Final Order 50-52, and 73; *See also* Case No. 2019 Phase I (1986) pp. 76-77. In the high Court's Opinion, at p. 33, it stated; "The used-and-useful standard additionally recognizes a utility's obligation to "provide efficient and economical service." If the PV interests are not the most cost-effective resource among feasible alternatives than it can't be argued that that resource *provides efficient and economical service*.

Respectfully submitted this 1st day of July, 2019,

**New Energy Economy**

  
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**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**No. S-1-SC-36115**

**PUBLIC SERVICE COMPANY OF NEW  
MEXICO,**

**Appellant,**

**NEW MEXICO PUBLIC REGULATION  
COMMISSION,**

**Appellee,**

**and**

**NEW ENERGY ECONOMY, INC.,  
NEW MEXICO INDUSTRIAL ENERGY CONSUMERS, and  
ALBUQUERQUE BERNALILLO COUNTY WATER  
UTILITY AUTHORITY,**

**Interveners-Appellees/Cross-Appellants,**

**and**

**WESTERN RESOURCES ADVOCATES,**

**Intervenor-Appellee.**

**IN THE MATTER OF THE APPLICATION OF  
PUBLIC SERVICE COMPANY OF NEW MEXICO  
FOR REVISION OF ITS RETAIL ELECTRIC RATES  
PURSUANT TO ADVICE NOTICE NO. 513,  
NMPRC CASE NO. 15-00261-UT**

**AFFIDAVIT OF STELLA CHAN IN SUPPORT OF RESPONSE  
IN OPPOSITION OF APPELLANT PUBLIC SERVICE COMPANY  
OF NEW MEXICO TO EMERGENCY MOTION FOR A PARTIAL  
STAY OF PRC'S FINAL ORDER OF SEPTEMBER 28, 2016  
APPROVING PNM'S RATE CASE**

**EXHIBIT A**

I, Stella Chan, having been first duly sworn up oath, depose and state as follows:

1. I am the Executive Director of Strategic Marketing and Product Management for PNMR Services Company and I am competent to testify concerning the matters in this affidavit. A copy of my resume is attached as Exhibit A. I am submitting this affidavit on behalf of Public Service Company of New Mexico ("PNM").

2. I have reviewed the *Emergency Motion for Partial Stay of PRC's Final Order of September 28, 2016 Approving PNM's Rate Case* ("*Motion for Stay*"). Based on the *Motion for Stay*, it is my understanding that NEE is requesting a stay of portions of the September 28, 2016 *Final Order Partially Adopting Corrected Recommended Decision* ("*Final Order*") issued by the New Mexico Public Regulation Commission ("Commission"). Specifically, it appears that NEE is seeking a stay that would suspend PNM's collection of: (1) \$19.9 million per year of costs associated with PNM's recent investments in repurchasing certain ownership interests in Unit 2 of the Palo Verde Nuclear Generating Station ("PVNGS"), and renewing certain leases for continued capacity from PVNGS Units 1 and 2 (collectively "PV Investments"); and (2) \$19.5 million in annual costs for the purchase of fuel for the Four Corners Power Plant under the Four Corners Coal Supply Agreement ("Four Corners CSA").

3. In connection with the *Motion for Stay*, PNM has calculated the estimated monthly bill impacts for residential customers in the event a stay is granted as requested. PNM has also calculated the estimated impacts to PNM's monthly revenues in the event the stay is granted.

4. PNM has eighteen (18) Commission-approved retail customer rate schedules and the impacts resulting from any stay to each schedule will vary.

5. The charges that are reflected on customer bills are made up of various cost components including, in very general terms and by way of example, non-fuel costs, fuel costs, rate riders and fees. The PV Investments are classified in general terms as non-fuel costs. The fuel costs under the Four Corners CSA are classified in general terms as fuel costs.

6. Based on general cost allocations, the proposed reduction to PNM's recovery of costs associated with the PV Investments, as non-fuel costs, would be allocated approximately 48% to residential customers. The fuel costs under the Four Corners CSA are charged through PNM's Fuel and Purchased Power Cost Clause ("FPPCAC"), and the residential customer class is responsible for approximately 39% of those costs. However, under the Commission-approved rate design, the residential class receives a subsidy from other classes of \$26 million, and therefore may not receive a rate reduction for non-fuel costs. A potential

impact to customer bills for residential customers due to granting the *Motion to Stay* would be as follows in Table 1:

**Table 1**

<b>Ave. Residential Bill- (Monthly Seasonally Weighted)</b>				
<b>Usage Level (kWh per month)</b>	<b>Current Bill (As Approved 15- 00261-UT)</b>	<b>Adjusted Bill (\$19.5M reduction to FPPCAC)</b>	<b>\$ Differenc e</b>	<b>% Difference</b>
250	\$26.09	\$25.60	(\$0.49)	-1.87%
450	\$49.94	\$48.85	(\$1.10)	-2.19%
<b>600</b>	<b>\$69.18</b>	<b>\$67.72</b>	<b>(\$1.46)</b>	<b>-2.11%</b>
900	\$107.66	\$105.46	(\$2.19)	-2.04%
1,200	\$151.27	\$148.34	(\$2.92)	-1.93%

7. The average PNM residential customer uses approximately 600 kWh per month and this level of usage is often used to estimate the average bill impact for residential customers for illustrative purposes in rate cases and other proceedings. Monthly customer usage varies over the year and charges can also vary depending on amount and time of usage. To arrive at a representative average monthly customer bill it is necessary to seasonally adjust and weight the estimated use and charges to reflect representative usage. Under the rates approved in the *Final Order*, the average monthly bill for a residential customer using 600 kWh per month is \$69.18. If PNM's recovery for the costs associated with the PV



Interests and the fuel purchased under the Four Corners CSA is reduced by the amounts sought in the *Motion for Stay*, PNM's has performed a calculation of an average monthly bill for a residential customer using 600 kWh per month that results in a bill of \$67.72, for a difference of \$1.46 per month.

8. It is important to note that a suspension of PNM's collection of the costs associated with the PV Investments and the Four Corners CSA can affect rate classes differently and the residential class is already subsidized by other classes. The current rate design approved by the Commission was based on the approved revenue requirements in the *Final Order*. There are different ways to implement a reduction in the revenue requirements as proposed by NEE, which would likely impact the rate design that was approved by the Commission.

9. PNM has generally calculated the impacts to its monthly revenues if PNM's collection of the costs associated with the PV Investment and the Four Corners CSA is suspended. Granting the *Motion to Stay* requested by NEE is estimated to reduce PNM's revenues by \$39.4 million over a 12 month period, or approximately \$3.3 million on average per month. If PNM's collection of these costs is suspended by the Court, PNM will still have to pay the costs associated with the renewal of the PVNGS leases as well as for the cost of fuel under the Four Corners CSA for Four Corners. It is also possible that PNM will be required to take an accounting write down if a stay is approved as proposed by NEE.

10. A significant reduction in PNM's revenues as proposed by NEE will be viewed negatively by the credit rating agencies that review PNM. PNM's cost of borrowing is dependent in part on its credit rating by these agencies. A reduction in PNM's credit rating as a result of a suspension of PNM's recovery for the costs of the PV Investments and the Four Corners CSA could raise PNM's cost of borrowing, which in turn could result in higher rates for customers.

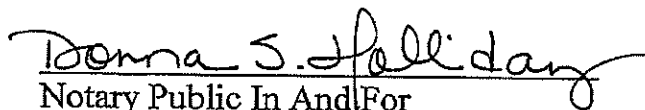
FURTHER AFFIANT SAYETH NAUGHT

Dated this 2<sup>nd</sup> of December, 2016.



\_\_\_\_\_  
Stella Chan

SUBSCRIBED AND SWORN to before me this 2<sup>nd</sup> day of December 2016.



\_\_\_\_\_  
Notary Public In And For  
The State Of New Mexico

My Commission Expires: 1-21-2020

**PUBLIC SERVICE COMPANY OF NEW MEXICO**  
**Finance Committee / Board of Directors**  
**Briefing Memo**  
**Palo Verde Nuclear Generating Station Unit 2 Leases**  
**December 3, 2013**

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**ISSUE:**

Public Service Company of New Mexico ("PNM") has four leases for Palo Verde Nuclear Generating Station ("PVNGS") Unit 2. By January 15, 2014 PNM must provide irrevocable notices to the Unit 2 lessors to either renew the leases or to purchase the leases at fair market value ("FMV") upon expiration of the initial lease terms on January 15, 2016.

**RECOMMENDATION:**

Management recommends that PNM management be granted authority to:

- Deliver a notice to one Unit 2 lessor (a JPMorgan Chase entity) to renew that lease upon its expiration in January 2016 through its Maximum Option Period ("MOP") up to January 2024, at 50% of the current lease rate; and
- Deliver notices to the other Unit 2 lessors (entities of Citigroup and Cypress Capital Management LLC or "Cypress") that PNM will exercise its FMV purchase option upon expiration of the initial lease term at January 2016.

**BACKGROUND:**

As part of its overall generation mix, PNM is seeking to secure ongoing PVNGS generation capacity in the most cost-effective manner for customers and shareholders. Previously, PNM gave notice to its Unit 1 lessors, representing 104 MW of generation capacity, that it was renewing those leases until January 2023 at 50% of the current lease payments, reducing payments by approximately \$16.5 million per year beginning in 2015. PNM is completing the documentation of those renewals currently.

PNM has four remaining Unit 2 leases for PVNGS Unit 2 representing 74 MW of generation capacity, consisting of one lease with a JPMorgan Chase entity (10 MW), one lease with CGI Capital, Inc. (31 MW), and two leases with Cypress entities (33 MW). In January 2013, PNM provided these lessors with irrevocable notices that it would retain control of the lease interests upon expiration of the initial lease terms in January 2016. By January 15, 2014, PNM must specify how it will retain control of each lease – whether it will renew the lease at 50% of the current lease payment, or purchase the lease interest in 2016 at FMV via an appraisal process that would be initiated in 2014. Three of the Unit 2 leases, representing 64 MW, have contractual lease renewal periods only to January 2018. The one Unit 2 lease representing 10 MWs has a lease renewal period up to January 2024 at 50% of its current lease payments.



**DISCUSSION:**

By previously renewing the Unit 1 leases to 2023, PNM has reduced lease payments by \$16.5 million per year, as well as created significant optionality. PNM can buy the leases at FMV in 2023, or earlier if so desired and if a transaction can be negotiated with the lessor. If circumstances warrant, PNM can also abandon the assets to the lessors in 2023. The 10 MW Unit 2 lease that can be renewed up to 2024 has essentially the same characteristics as the Unit 1 leases and management recommends renewing that lease, reducing lease payments by another \$1.6 million per year.

The three remaining 64 MW of Unit 2 leases that expire in 2016 have renewal terms of only 2 years, until January 2018. Therefore, buying these leases in today's low power price environment will secure 64 MW in a manner which diversifies the price risk away from 2023 and 2024, when the other PVNGS leases will be expiring.

The notices to either renew the leases or purchase at FMV are irrevocable. In addition, although the lease renewal price is known, 50% of current lease payments, the FMV price required to buy the leases is not. The purchase price is either negotiated within 90 days of giving notice or, if not achieved, then determined by a process in which PNM hires an appraiser, the lessor hires an appraiser and if they cannot agree on a price, then they hire a third appraiser. The process is designed to take approximately six months but could possibly take longer to establish a FMV purchase price.

As part of its regular BART updates, the New Mexico Public Regulation Commission ("NMPRC") asked PNM to discuss the strategy it was considering for the PVNGS leases, which PNM presented at the October 30, 2013 open meeting. The commissioners made numerous positive comments during the meeting and were very supportive of the strategy. NMPRC approval to renew or purchase the Unit 2 leases was received in 1986. However, adjustments to PNM's revenue requirements reflecting the new lease payments and costs of ownerships will need to be included in the next rate case.

**ALTERNATIVES CONSIDERED:**

PNM considered two alternatives:

- Renewing all the leases (10 MW Unit 2 lease to 2024 and the other three Unit 2 leases to 2018), and
- Buying all four Unit 2 leases at January 2016.

**IMPACT TO THE COMPANY:**

Renewing the 10 MW Unit 2 lease will reduce lease payments by \$1.6 million annually during the renewal period from 2016 up to 2024. Purchasing the other three Unit 2 leases will increase rate base, allowing shareholders to earn a return on the assets. However, the purchase price is not currently known, nor is the rate making treatment ultimately granted by the NMPRC.

**TIMING ISSUES:**

If PNM receives approval from the PNMR Board of Directors, Management will deliver notices to the Unit 2 lessors by January 15, 2014. While the process to obtain appraisals and complete the FMV purchase process is designed to take approximately six months, it could take longer, with the purchase taking place at the expiration of the initial lease term on January 15, 2016.

**ACTION RECOMMENDED:**

Management requests that the PNMR Finance Committee recommend to the full PNMR Board to approve that PNM:

- Renew the Unit 2 lease with JPMorgan Chase upon its expiration on January 15, 2016 through the MOP up to January 15, 2024 at 50% of current lease payments; and
- Exercise its irrevocable purchase options on the three Unit 2 leases with Cypress and Citigroup to buy the lease interests at FMV upon expiration of the initial lease terms on January 15, 2016.

**FILING/REPORTING REQUIRED:**

No regulatory approvals are needed. PNM's ability to exercise the lease renewals or FMV purchase options under the provisions of each lease was previously approved by the NMPRC as part of the approval for the original Unit 2 leases in 1986. The elections to renew the lease interests or exercise the FMV purchase options will be reported to the SEC in the normal course of business through an 8-K when the notices are delivered, and subsequently reported in the 10-Q and the 10-K. PNM will also notify the Nuclear Regulatory Commission of its pending purchase of the leases near the time of the purchase.



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION OF PUBLIC )  
SERVICE COMPANY OF NEW MEXICO FOR )  
REVISION OF ITS RETAIL ELECTRIC RATES )  
PURSUANT TO ADVICE NOTICE NO. 513 )

Case No. 15-00261-UT

PUBLIC SERVICE COMPANY OF NEW MEXICO, )  
APPLICANT )

I HEREBY CERTIFY that a true and correct copy of:

**NEW ENERGY ECONOMY'S FILING PURSUANT TO  
COMMISSION ORDER OF JUNE 26, 2019**

filed on July 1, 2019, was sent by me on the same date as indicated below to the following individuals:

**Via Email**

Benjamin Phillips  
Stacey J. Goodwin  
Mark Fenton  
Carey Salaz  
Jennifer Hall  
Raymond L. Gifford  
James D. Albright  
Debra M. Terwilliger  
Steven S. Michel  
Douglas Howe  
Glenda Murphy  
**Charles F. Noble**  
*Megan O'Reilly*  
*Adam Bickford*  
*Ramona Blaber*  
*Don Hancock*  
*Noah Long*  
*Ralph Cavanagh*  
*John Howat*  
*Howard Geller*  
Daniel A. Najjar  
Justin Lesky  
Michael McElrath  
Kevin Higgins  
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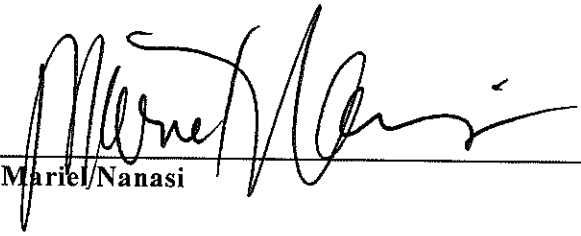
Peter Gould  
Richard C. Mertz  
James R. Dauphinais  
Jane Yee  
Nann Winter  
Jeffrey Albright  
L. Baca  
Michael I. Garcia  
Amanda Edwards  
Robin Gomez  
Jessica Nance  
Thomas Domme  
Rebecca Carter  
Clyde Worthen  
John Boyd  
David Van Winkle  
Joe Herz  
William Templeman  
Rob Witwer  
Kurt J. Boehm  
Dahl Harris  
Samuel Roberts  
Shannon A. Parden  
William Dunkel  
Bruce Throne  
Christine Wright  
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