

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
GENERATING STATION UNITS 1 AND 4)**

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S)
CONSOLIDATED APPLICATION FOR)
APPROVALS FOR THE ABANDONMENT,) Case No. 19-00195-UT
FINANCING, AND RESOURCE REPLACEMENT)
FOR SAN JUAN GENERATING STATION)
PURSUANT TO THE ENERGY TRANSITION ACT)**

CORRECTED ORDER ON CONSOLIDATED APPLICATION

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) on Public Service Company of New Mexico’s (“PNM”) July 1, 2019 *Consolidated Application For Approvals for the Abandonment, Financing, and Resource Replacement for San Juan Generating Station Pursuant to the Energy Transition Act* (“Consolidated Application”) filed in Case No. 19-00195-UT. The Commission, having reviewed the Consolidated Application and being otherwise duly informed, **FINDS:**

1. A proceeding under NMSA 1978 §62-9-5 of the Public Utility Act was previously initiated in Case 19-00018-UT to address the abandonment of PNM’s interest in San Juan Generating Station (SJGS) Units 1 and 4.

2. The Commission’s January 30, 2019 Order (“1/30 Order”) in Case 19-00018-UT required PNM to file an application with supporting testimony by March 1, 2019 in support of its planned abandonment addressing all relevant issues, including, inter alia, all reasons justifying PNM’s decision to abandon its ownership interests in SJGS Units 1 and 4; PNM’s actions such

as notice to its partners regarding termination of the SJGS related coal contract and write-offs taken; PNM's identification of the amount of costs associated with the abandonment; PNM's identification of the amount of costs it seeks to recover associated the abandonment; and PNM's proposed treatment and financing of undepreciated investments, decommissioning costs and reclamation costs. The 1/30 Order provided that the scope of that proceeding would include all issues relevant to an abandonment proceeding under NMSA 1978, §62-9-5 *and any other applicable statutes and NMPRC rules.* (emphasis added).

3. In response, PNM filed an Emergency Petition for Writ of Mandamus and Request for Emergency Stay with the New Mexico Supreme Court on February 27, 2019 seeking to nullify the Commission's 1/30 Order.

4. By order issued March 1, 2019, the New Mexico Supreme Court ordered responses to the Petition for Writ by March 19, 2019 while at the same time granting the Request for Emergency Stay.

5. PNM's Petition for Writ expressly sought to delay the abandonment filing required by the Commission's 1/30 Order until after an anticipated June 14, 2019 effective date of proposed legislation that might apply to PNM's abandonment of SJGS.

6. Governor Michelle Lujan Grisham subsequently signed into law Senate Bill 489 – the Energy Transition Act (“ETA”), on March 22, 2019, with an asserted effective date of June 14, 2019.

7. On June 26, 2019, the New Mexico Supreme Court issued an Order *sua sponte* that denied PNM's Petition for Writ and lifted the stay of the Commission's 1/30 Order.

8. On July 1, 2019, PNM filed its Consolidated Application in a new docket - Case 19-00195-UT, rather than the existing docket in Case 19-00018-UT.

9. PNM's Consolidated Application seeks approvals for, *inter alia*, abandonment of its remaining interest in San Juan Generating Station as of July 1, 2022; the issuance of a Financing Order under the ETA approving the issuance of bonds secured by a non-bypassable customer charge; and approval of replacement resources to replace the 497MW of generating capacity retired through its requested abandonment of SJGS.

10. As the stay of the Commission's 1/30 Order in Case 19-00018-UT had been lifted at the time of PNM's filing of its Consolidated Application, the Commission's 1/3 Order was effective and PNM's Consolidated Application should have been filed in Case No. 19-00018-UT.

11. That portion of PNM's Consolidated Application seeking abandonment of SJGS continues to be governed by Section 62-9-5. However, under Section 62-18-4 (E), the timeframes of the ETA would apply to consolidated abandonment and financing order applications. Therefore, Section 62-18-5 (A) would provide the Commission with six (6) months (plus three (3) month extension) from the date of filing to rule on the Consolidated Application.

12. Similarly, under Section 62-18-4(C), where an application for a financing order under the ETA is accompanied by a request for approval of new resources, the six-month timeframe of section 62-18-4(A) would govern, unless the Commission acts to defer the replacement resource application to a separate proceeding as provided by section 62-18-4 (D). Upon deferral, the normal nine (9) month (plus six (6) month extension) timeframe of section 62-9-1 would apply.

13. Prior to issuing the 1/30 Order, the Commission's January 10, 2019 *Order Requesting Response to PNM's 12/31/18 Verified Compliance Filing Concerning Continued*

Use of SJGS requested that the respondents address whether the Commission should handle the issue of replacement resources in a separate bifurcated proceeding.

14. Most respondents to the Commission's January 10, 2019 Order at that time did not support conducting separate proceedings on the issue of replacement resources on grounds of efficiency and preservation of the parties' resources. However, in Case 13-00390-UT, the Commission contemplated proceeding with a determination on abandonment pending a separate proceeding on replacement resources. Moreover, the ETA would now expressly afford the Commission the discretion to defer consideration of a replacement resource application to a separate proceeding.

15. The Commission further notes that at least one entity, Western Resource Advocates (WRA), has filed a motion to intervene which includes a protest pursuant to section 62-18-5 asserting challenges to "the resource mix and locations proposed by PNM, including whether the amount of renewable energy, storage and natural gas proposed by PNM is a mix that best serves the public interest "as well as "the location of resource replacement, particularly the amount to be located in the Central Consolidated School District, where SJGS 3 currently operates and provides tax revenues to the district. PNM's proposed regulatory asset to allow for immediate expenditures on workforce severance and training, in anticipation of the plant's closure, is also of importance and should likely be evaluated against an earlier bond issuance to recover those particular costs which will pre-date the plant's closure."

16. WRA's protest constitutes good cause to proceed with a hearing on PNM's Consolidated Application.

17. The Commission's six-month time limit for approval of long-term purchase power agreements under 17.9.551.10 NMAC may apply to the Consolidated Application's

request for approval of replacement resources. As the timeframe of 17.9.551.10 NMAC appears to conflict with the timeframe provisions provided by the ETA, the applicability of 17.9.551.10 NMAC to this matter should be waived in order to permit consideration of all potential replacement resources in a single proceeding.

18. The Commission will treat PNM's Consolidated Application as responsive to the Commission's 1/30 Order. Those portions of newly docketed matter 19-00195-UT seeking approval of the abandonment of SJGS and a Financing Order should be consolidated with Case 19-00018-UT and shall proceed under Case No 19-00018-UT subject to the existing orders issued in that case and the six-month timeframe for review of PNM's application under Section 62-18-5. Good cause exists to extend that timeframe by an additional three months due to the complexity and novelty of the matters contained in PNM's application, resulting in a nine-month timeframe for review.

19. Those portions of the Consolidated Application seeking approval of replacement resources shall be deferred and bifurcated from the Consolidated Application for consideration as a separate proceeding to be conducted under Case No. 19-00195-UT. Due to the fact that this matter will proceed at the same time as the abandonment and financing order applications, good cause exists at the outset of this matter to extend the timeframe for review of PNM's application by an additional six months for a total review period of 15 months.

20. All motions to intervene filed in either docket as of the date of this order shall be accepted and treated as motions to intervene in both cases.

IT IS THEREFORE ORDERED:

A. Two separate proceedings concerning PNM's Consolidated Application shall be conducted in Case 19-00018-UT and Case 19-00195-UT respectively in accordance with and

pursuant to the findings and terms established above which are incorporated here as orders of the Commission.

B. Pursuant to NMSA 1978, §8-8-14 and the Commission's Utility Division Procedural Rules, 17.1.2.1 NMAC, *et seq.*, **Ashley Schannauer** and **Anthony Medeiros** are appointed as Hearing Examiners jointly to preside, take all actions necessary and convenient within the limits of the Hearing Examiners' authority, conduct any necessary hearings and take such other action in Case No. 19-00018-UT and in Case No. 19-00195-UT as is consistent with Commission procedure and the Commission's prior orders in Case 19-00018-UT. The Hearing Examiners shall endeavor to issue recommended decisions for consideration by the Commission in sufficient time for the Commission to render a decision within the timeframes sought by PNM where appropriate, but definitely within the applicable statutory timeframes and as established by this Order.

C. The Hearing Examiners shall issue procedural orders at their earliest convenience establishing, *inter alia*, the terms by which notice of PNM's applications shall be made and establishing a timeframe for intervention by interested parties.

D. The procedural orders shall include a timeframe requiring PNM to conduct face-to-face public community meetings with affected local government entities, including specifically the Nenahnezad Chapter, the Tse daa K'aan (Hogback) Chapter, the Shiprock Chapter, the San Juan Chapter and the Navajo Nation Council, to educate and provide answers to the public, including affected coal miners, concerning PNM's plans and intentions with regard to the proposed shutdown of the San Juan Generating Station.

E. A copy of this Order shall be served upon all persons listed on the attached Certificate of Service by e-mail, if e-mail addresses are known, or by regular mail only if e-mail addresses are not known.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 10th day
of July 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION



CYNTHIA HALL, COMMISSIONER



JEFFERSON L. BYRD, COMMISSIONER

TELEPHONICALLY APPROVED

VALERIE ESPINOZA, VICE-CHAIR



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Concerning Consolidated Application** issued by the New Mexico Public Regulation Commission on July 10, 2019, was sent via email on July 10, 2019 to the parties indicated below:

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DATED this 10th day of July, 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION



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