

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. 533)**

Case No. 16-00276-UT

**PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)**

Applicant.)

**ORDER ESTABLISHING PROCEDURAL SCHEDULE
FOR HEARING THE REVISED STIPULATION
AND SHORTENING TIME TO RESPOND TO DISCOVERY**

THIS MATTER comes before the Hearing Examiners on their motion pursuant to 1.2.2.20(B) and 1.2.2.24 NMAC and certain pending motions addressed below.¹ The Hearing Examiners **FIND** and **CONCLUDE** as follows:

1. On May 1, 2017, the Hearing Examiners issued an Order Establishing New Procedural Schedule (Scheduling Order) that provided a procedural schedule for hearing a settlement stipulation that Public Service Company of New Mexico (PNM), several intervenors, and Staff had reportedly reached in principle, were attempting to complete and aiming to file soon.

2. On May 3, 2017, New Energy Economy (NEE) filed a motion to shorten the time for PNM to respond to discovery propounded by NEE. NEE requests in its motion that the time for

¹ There are two pending and related procedural and discovery motions disposed of by this Order. The first is the "Joint Motion to Establish New Procedural Dates After the Filing of the Revised Stipulation on May 23, 2017 and PNM's Acceptance of Conditions in Commission's May 24 Order" filed on May 31, 2017. The second is New Energy Economy's May 3, 2017 "Motion of New Energy Economy to Shorten the Response Time from the Public Service Company of New Mexico to Answer Interrogatories and Requests for Production of Documents and Answers to Requests for Admissions to Seven (7) Calendar Days and for an Order Shortening Deadline for Response to this Motion to Three Days." The deadline for responding to NEE's motion was shortened to five calendar days (May 8, 2017) by Order issued May 4, 2017.

PNM to respond to written discovery be shortened from fifteen days as required under 1.2.2.25(E)(3)-(4) (interrogatories), (F)(4)-(5) (production of documents), and (G)(2)-(3) (requests for admissions) NMAC to seven calendar days. NEE's request is premised on the June 14, 2014 deadline set in the Hearing Examiner's May 1, 2017 Scheduling Order for filing testimony in opposition to a stipulation to be submitted, if at all, by PNM and other parties on May 5, 2017. NEE argues that, facing what it framed at the time as an "extremely short window" to prepare opposition testimony and present its issues with the stipulation, "due process and fairness" call for shortening the period for PNM to respond to discovery propounded by NEE and presumably other parties. NEE Motion at 1.

3. On May 5, 2017, PNM filed a response urging that NEE's motion to shorten the discovery response time be denied. PNM asserts among other reasons that there is no basis to be found in the circumstances of this case "to impose an unreasonably short response period" on PNM. PNM Response at 2. PNM also points out that NEE has offered no justification for imposing the "unwarranted and prejudicial" response time solely on PNM, particularly where any stipulation filed in this case would involve the participation of parties other than PNM and, indeed, the Comprehensive Stipulation (Stipulation) filed on May 5, 2017 included PNM, seven intervenors, and Staff. *Id.* at 3. Nevertheless, its objections aside, PNM proposes that to the extent a shortened discovery response might be adopted, it should be set at no less than ten calendar days and it should be made applicable to all parties equally. *Id.*

4. On May 5, 2017, PNM also filed on behalf of itself and eight other party signatories² a Comprehensive Settlement Stipulation.

² In addition to PNM, the settling parties (collectively with PNM the "signatories") included the New Mexico Attorney General, the Coalition for Clean Affordable Energy, Kroger Co., the Renewable Energy Industries Association, the Sierra Club, Wal-Mart, Western Resource Advocates, and Staff. Additional

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5. On May 12, 2017, the Hearing Examiners issued an order rejecting the stipulation as presented. The Order Rejecting Stipulation in Current Form (May 12th Order) emphasized, however, that it did not dismiss the case; that it provided only that the stipulation, as written, should not be heard; that the signatories still had the opportunity to revise the stipulation to eliminate the problems found in the order; but that if the stipulation was not revised, this matter would proceed to hearing on PNM's original Application as scheduled in the Scheduling Order; and, finally, that any further requests for extending the procedural schedule for this case must be directed to the Commission for its approval of any extension of the suspension period. *See* May 12th Order at 10-11.

6. On May 16, 2017, the signatories filed a joint motion requesting from the Commission an extension of the suspension period in this case by one month through December 6, 2017 to allow for revisions to the stipulation and for the Hearing Examiners to establish revised procedural dates.

7. On May 17, 2017, the Hearing Examiners issued two related orders on motions directed at them, one granting the May 15, 2017 motion of New Energy Economy (NEE) to extend the time for filing testimony in opposition to PNM's Application and the other addressing the signatories' joint motion of May 15, 2017 to vacate the May 17, 2017 deadline for filing testimony in support of a stipulation (or alternatively intervenor testimony addressing PNM's Application) and to schedule a status conference to set further procedural dates. Collectively, the May 17th orders vacated the deadline for testimony in support of a stipulation,

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signatories included Bernalillo County and the New Mexico Industrial Consumers, who filed notices of joinder in the stipulation on May 10, 2017, and the Albuquerque Bernalillo County Water Utility Authority filed, who filed a notice of joinder on May 16, 2017.

extended the deadline for Staff and intervenor testimony responsive to PNM's Application to June 7, 2017, and established a deadline of June 21, 2017 for rebuttal testimony.

8. Regarding the signatories' May 15th request for a status conference, the Hearing Examiners found it was premature to hold one for the purpose of establishing a procedural schedule to consider a revised stipulation. The Hearing Examiners noted the signatories had filed the previous day a joint motion with the Commission requesting that it extend the suspension period in this case by one month. Pending the Commission's ruling on the signatories' request for extension of the suspension period, the Hearing Examiners found it prudent to establish and maintain a hearing schedule going to the merits of PNM's original Application until both a revised stipulation was filed that eliminated the issues identified in the findings of the May 12th Order and the Commission acted to extend or toll the suspension period for a period of time sufficient to address a revised stipulation. The Hearing Examiners observed that depending on the date any revised stipulation might be filed, the length of the extension or tolling requested of the Commission might not be sufficient to adequately consider a revised stipulation. Nevertheless, the Hearing Examiners found there was nothing preventing the parties from seeking further changes to the procedural schedule in the event they entered into a revised stipulation that eliminated the issues identified in the findings of the May 12th Order and received Commission approval to extend or toll the suspension period for a period of time sufficient to address the revised stipulation.³

9. On May 23, 2017 PNM, nine intervenors, and Staff submitted a Revised Stipulation to the Commission.

³ See Order Addressing Joint Motion to Vacate Deadline for Staff and Intervenor Testimony and Requesting Hearing Examiners to Set Status Conference on Further Procedural dates, at 3-4; see also Order Granting NEE Motion to Extend the Time for Intervenor to File Opposition Testimony, at 2-3.

10. On May 24, 2017 the Commission issued its Order on the original signatories' joint motion to extend the suspension period. The Commission's Order tolled the existing suspension period and halted the running of the suspension period for two months to (1) correspond with the period of time by which the parties exceeded the March 27, 2017 deadline for filing a stipulation established in the Commission's December 14, 2016 Initial Order and (2) provide the Commission an adequate opportunity to review the terms of the Revised Stipulation. The tolling scheme was expressly conditioned, however, on PNM's unconditional acceptance of the conditions set forth in the Order. PNM unequivocally accepted the Commission's conditions in its May 26, 2017 response to the Commission's May 24th Order. PNM's response states in pertinent part:

PNM unconditionally accepts the conditions of the May 24 Order to toll the existing suspension period for PNM's Advice Notice No. 533 by a period of two (2) months, and as a result, to set the expiration date of the current suspension period on January 6, 2018, in order to provide for consideration of a revised Settlement Stipulation.

PNM Resp. to May 24th Order at 1.

11. The Commission also reaffirmed that the Hearing Examiners should continue to exercise their discretion to issue revisions to governing procedural provisions and requirements in this proceeding "as they deem necessary consistent with concluding this case in accordance with the suspension period established by this order." *Id.* at 2.

12. On May 30, 2017, NEE filed a statement in opposition to the Revised Stipulation.

13. In the wake of PNM's acceptance of the Commission's conditions in the May 24th Order, the City of Albuquerque filed on behalf of itself and nine other Movants⁴ a joint motion

⁴The joint motion was filed by the City of Albuquerque for itself and, in the order presented in the joint motion, the New Mexico Attorney General, the New Mexico Industrial Energy Consumers, the

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on May 31, 2017 requesting that the Hearing Examiners establish a new procedural schedule to address the Revised Stipulation. Quoting the joint motion, the Movants propose the following schedule:

- a. Statements opposing the Revised Stipulation five days after service of the stipulation. Section 1.2.2.20(B)(2) NMAC (2008) [this deadline has elapsed];
- b. Responses to any statements opposing the Revised Stipulation, as authorized by Section 1.2.2.20(B)(2) NMAC (2008), should be filed at the same time as testimony in support of the Revised Stipulation; and these should be filed by June 16, 2017;
- c. In addition or in the alternative, Staff/Intervenor direct testimony should be filed by June 16, 2017;
- d. Testimony in opposition to the Revised Stipulation or rebuttal testimony by June 30, 2017;
- e. [Revised] Stipulation rebuttal testimony by July 7, 2017;
- f. The prehearing conference should occur on July 10, 2017;
- g. The hearing on the merits should begin on July 12, 2017; and
- h. Oral in-person public comment should be taken on July 11, 2017.

Joint motion at 2-3.

14. The Movants assert their proposed schedule would “provide adequate time for the Parties to present testimony and legal authority regarding the Revised Stipulation and for the Commission to consider such testimony and legal authority; *yet maintain July 12, 2017* as the date on which the hearing on the merits will begin”. *Id.* at 2 (emphasis in original). The Hearing Examiners disagree. While they appreciate the Movants’ good faith efforts to get the Revised Stipulation to hearing expeditiously, consistent with findings in the May 1, 2017

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Albuquerque Bernalillo County Water Utility Authority, Western Resource Advocates, Coalition for Clean Affordable Energy, Bernalillo County, Wal-Mart Stores East, LP and Sam’s East, Inc., the Utility Division Staff, and Public Service Company of New Mexico (referred to collectively as the “Movants”).

Scheduling Order, the proposed schedule would not afford the Hearing Examiners and the Commission sufficient time to analyze and synthesize all the testimony and related aspects of the record necessary to adequately prepare for a hearing and ultimately reach a confidently reasoned determination as to whether the Revised Stipulation meets the Commission's standards for approval of contested stipulations. Indicative of this judgment is the Revised Stipulation itself, which in paragraph 30 provides for the stipulated admission of practically everything into the evidentiary record but the proverbial kitchen sink:

this Revised Stipulation and its attached exhibits; PNM's pre-filed direct and supplemental testimonies, exhibits, schedules and any errata notices thereto for background and informational purposes and to provide underlying data from which this Revised Stipulation was developed; and all Signatories' testimonies filed in support of this Revised Stipulation.

Consequently, assuming as held below that the Revised Stipulation should be heard in its current form, the procedural schedule established in this Order will provide all involved adequate time to prepare for a hearing on the merits of the Revised Stipulation.

15. As to the matter of reducing the time for responding to discovery NEE requested in its May 3, 2017 motion, the foregoing discussion should make it abundantly clear that time is of the essence for all concerned in preparing for the hearing on the Revised Stipulation, which as provided below is set to start just eight weeks from now on August 2, 2017. The Hearing Examiners therefore find it reasonable to shorten the period for responding to written discovery to ten calendar days. And regarding NEE's request that the abbreviated response time be applied solely to PNM, the motion gives no reason for such unprecedented treatment. Thus seeing no basis to hold otherwise, the Hearing Examiners find the shortened response time provided herein should apply to all interested parties.

16. Finally, and in sum, having considered the Revised Stipulation, NEE's statement in opposition, the record as a whole and the totality of circumstances, the Hearing Examiners have

determined the Revised Stipulation should be scheduled for public hearing and Commission review. Accordingly, the procedural schedule, abbreviated discovery response period, and related matters set forth below should be adopted for this proceeding.

IT IS THEREFORE ORDERED:

A. The procedural schedule in the May 1, 2017 Scheduling Order as amended by the May 17, 2017 Order Granting NEE Motion to Extend the Time for Intervenors to File Opposition Testimony is **VACATED**.

B. The period of time to respond to written discovery in this case pursuant to 1.2.2.25(E)(3)-(4), (F)(4)-(5), and (G)(2)-(3) NMAC shall be within ten calendar days of service of such discovery.

C. The procedural schedule for hearing the Revised Stipulation shall be as follows:

1. Testimony of PNM, Staff, and intervenors in support of the Revised Stipulation and addressing NEE's Statement of Opposition shall be filed by June 16, 2017.
2. Parties may file responses to any statements opposing the Revised Stipulation pursuant to 1.2.2.20(B)(2) NMAC no later than June 16, 2017.
3. Testimony in opposition to the Stipulation shall be filed by July 7, 2017.
4. Rebuttal testimony shall be filed by July 21, 2017.
5. A prehearing conference shall be held on August 2, 2017 in the Ground Floor Hearing Room of the P.E.R.A. Building starting at 2:00 p.m. to address, among other things, the following matters:
 - a. The order of presentation of the parties and their respective witnesses.
 - b. Designation by each party of the witnesses to be cross-examined and the requested length of time of cross-examination.
 - c. Any potential prehearing motions or other pleadings.
 - d. Any other matters that may expedite the order conduct and disposition of this proceeding.

The prehearing conference may be vacated if the Hearing Examiners determine the conference is not necessary.

6. A hearing on the merits shall be held August 8-18, 2017 in the Ground Floor Hearing Room of the P.E.R.A. Building starting at 9:00 a.m. each day unless ordered otherwise.
7. Oral in-person public comment shall be taken on August 7, 2017 in the Ground Floor Board Room of the P.E.R.A. Building starting at 9:00 a.m. Comments shall be limited to three minutes per person.

D. Except as expressly provided above, all findings, conclusions, and ordering clauses contained in all other orders of the Hearing Examiners and Commission that have not been amended or otherwise superseded remain in full force and effect.

ISSUED at Santa Fe, New Mexico, this 1st day of **June 2017**.

NEW MEXICO PUBLIC REGULATION COMMISSION



Anthony F. Medeiros
Ashley C. Schannauer
Hearing Examiners

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. 533.)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO, APPLICANT)

Case No. 16-00276-UT

OFFICIAL CERTIFICATE OF SERVICE

I CERTIFY that on this day I sent to the parties listed below, via email only, a true and correct copy of the **Order Establishing Procedural Schedule for Hearing the Revised Stipulation and Shortening Time to Respond to Discovery.**

Via Email:

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DATED this 1st day of June 2017.

NEW MEXICO PUBLIC REGULATION COMMISSION


Ana C. Kippenbrock, Law Clerk

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