

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.)
)

**PUBLIC SERVICE COMPANY OF NEW MEXICO'S MOTION FOR
REHEARING ON ORDER PARTIALLY ADOPTING CERTIFICATION OF
STIPULATION AND LEGAL MEMORANDUM IN SUPPORT OF REHEARING
AND REQUEST FOR ORAL ARGUMENT**

December 28, 2017

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Public Service Company of New Mexico (“PNM”) hereby moves for rehearing, pursuant to 1.2.2.37(F) NMAC¹, of the *Order Partially Adopting Certification of Stipulation* (“Modification Order”) issued on December 20, 2017, by the New Mexico Public Regulation Commission (“Commission”). No new evidence is necessary for the Commission to reconsider portions of its decision. PNM requests that the Commission reconsider its Modification Order and instead issue a new final order approving the Revised Stipulation without modification and without the need for further litigation.

PNM further requests that the Commission confirm that no Signatory will be precluded from litigation of any of the issues presented in PNM’s Application and supporting testimonies, exhibits and schedules if further litigated hearings are ordered by the Commission.

Counsel for PNM requested the position of parties on this Motion and was advised as follows:

- As parties to the stipulation, Bernalillo County (“County”), Renewable Energy Industries Association, Wal-Mart Stores East, LP and Sam’s East, Inc., Coalition for Clean Affordable Energy (“CCAEC”) and Western Resource Advocates (“WRA”) support the relief requested in this Motion for approval of the Revised Stipulation without modification, though they do not necessarily agree with all the arguments made in support of this Motion.
- As noted in the response of the Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”) filed contemporaneous with this Motion for Rehearing, ABCWUA supports approval of the Revised Stipulation without modification, but cannot entirely support the grounds for such relief contained in the Motion.

¹ Pursuant to 1.2.2.37(F) NMAC, response to Motions for Rehearing are due within five (5) days.

- Utility Division Staff (“Staff”) supports approval of the Revised Stipulation without modification and reserves the right to file a separate response.
- The City of Albuquerque (“City”) supports approval of the Revised Stipulation without modification; however, the City cannot support PNM’s grounds for approval in their entirety as the City intends instead to reserve its right to present its litigated position at any evidentiary hearing on the merits.
- Sierra Club does not join the arguments asserted in the Motion or in PNM's Legal Memorandum. However, Sierra Club continues to support the Revised Stipulation without modification or condition for the reasons provided by Mr. Pierce in his testimony.
- The New Mexico Attorney General (“AG”) takes no position on this Motion.
- New Mexico Industrial Energy Consumers (“NMIEC”) states that it will file its own pleading in this matter.
- Kroger Co. does not take a position on the Motion for Rehearing.
- No other parties provided their position on this Motion prior to its filing.

PNM’s Legal Memorandum in support of the Motion, which follows thereon, sets forth PNM’s arguments in support of rehearing.

I. PNM'S MOTION AND SUMMARY OF GROUNDS FOR REHEARING

PNM respectfully requests the Commission to reconsider portions of its decision on the grounds that the Revised Stipulation fully meets the standard for approval of settlements established by law and Commission precedents and will advance the Commission's policy of encouraging settlements. PNM respectfully submits that the Commission reconsider the utility of reaching findings relating to the prudence of certain investments in Four Corners Power Plant ("Four Corners") and San Juan Generating Station ("San Juan"), and reconsider the Commission's directive to impose uniform revenue allocations without accommodation for cost causation among rate classes. A piecemeal dismantling of the Revised Stipulation is not required to determine whether the Revised Stipulation satisfies the legal standards for approval of settlements. In contrast, the rejection of the Revised Stipulation in the face of overwhelming support across many parties and interests will chill future settlement of Commission cases.

The Modification Order has ramifications beyond the present proceeding. While each of the legal and precedential elements of the standard for approval of stipulations has been satisfied, PNM asks that the Commission also recognize and give weight to the strategic and long-term importance of the Revised Stipulation in promoting a public interest in retiring coal generation without foreclosing future input of stakeholders and communities in that process. Given the potentially contentious resource planning processes that ultimately will be brought before the Commission, the Signatories believe that the Commission should not overturn the stakeholders' efforts to forge a collaborative path forward in this process. Approving the Revised Stipulation encourages this long-term planning effort while resulting in fair, just and reasonable rates in the near term.

It is concerning to PNM that the Modification Order appears to completely discredit the opinions of strong public interest advocates and elected representatives of residential and other customer classes such as the AG, the City, and the County, as well as the Commission's own Utility Division Staff. Environmental organizations and renewable energy interest groups also support the Revised Stipulation. The only party opposing the Revised Stipulation is New Energy Economy ("NEE") with its singular focus on the immediate shutdown of New Mexico's coal generation. PNM therefore request that the Commission give reconsideration to the extensive work by the Signatories during the settlement negotiations.

Knowledgeable, Broad-Based Support for the Revised Stipulation

The Certification of Stipulation ("Certification") issued on October 31, 2017, failed to give recognition to the overwhelming support for, and the many benefits of, the Revised Stipulation. The Modification Order similarly overlooks these issues. When the broad-based support and benefits of the Revised Stipulation are properly considered, the Revised Stipulation should be approved. The Revised Stipulation has very strong support among diverse interests. Representatives from across the spectrum of customer classes – from residential and small business customers to large industrial and institutional customers - have approved and support the Revised Stipulation.

The Revised Stipulation was crafted to chart an orderly and collaborative stakeholder path forward as the utility industry transitions from a traditional resource mix reliant on baseload generation to expanded options for supply-side and demand-side resources, including innovative approaches to rate design that respond to changing customer usage patterns. To avoid prejudgment of future cases that may come before the Commission, the interests of environmental advocates to move to cleaner energy options were balanced against the policies of

the Public Utility Act to promote investments in infrastructure that are both economic and avoid duplication of already existing resources. The stipulated treatment of investments in Four Corners and San Juan reflect the Signatories' differing views relating to reliability, customer rate impacts, the avoidance of duplicative replacement investments where possible, and environmental concerns. The Revised Stipulation accounts for and quantifies differing positions among the Signatories on the prudence of an early abandonment of Four Corners, without locking parties and the Commission into specific outcomes in other proceedings. The Signatories followed the Commission's standards for approval of stipulations to resolve these otherwise contentious issues without binding the hands of future commissions. The Commission can therefore approve the Revised Stipulation without modification, and set new rates based on the policies and precedent the Commission applied in PNM's most recent rate case.

With regard to the stipulated rate design, the AG and Staff, along with other consumer advocates such as CCAE, obtained extensive rate concessions for residential and other small customers. Governmental entities in PNM's service territory support the Revised Stipulation; they bargained for non-residential rates, including water and sewer and streetlight rates, that apply to municipalities/counties throughout PNM's entire service area. It is difficult to understand how the support of this broad spectrum can be characterized as self-serving or a "buy-out" of the public interest. In past cases, the Commission has applauded such a comprehensive rate case settlement as "remarkable" rather than lamentable, because agreement was reached among a "wide disparity in the interest of the parties to the Stipulation and their differing constituencies"; the Commission emphasized that settlement was a more effective process than litigation would have been.²

² Case No. 2567, *Final Order*, at 47 (citing *NMIEC v. NMPRC*, 1986-NMSC-059, ¶ 21). The Commission approved a stipulation in Case No. 2567 that did not result in a pure pro-rata allocation of the rate increase across all parties.

Fair and Certain Resolution of the Case

The Revised Stipulation fully and fairly resolved all matters at issue in this proceeding with respect to PNM's application for a \$99.2 million non-fuel, retail rate increase. Undoing the global outcome negotiated among the twelve Signatories to the Revised Stipulation **does not lower the annual revenue requirement, nor significantly change residential customers' rates** during the time they will be in effect beyond what is provided under the Revised Stipulation. Instead, the Modification Order would force this case to proceed to litigation on PNM's original rate application. The outcome of a litigated case is not assured; there is no guarantee that the results will be as beneficial for customers as the Revised Stipulation with respect to rates or rate design. Moreover, the litigation of PNM's original Application would likely be expedited in order for the Commission to further consider whether an annual revenue requirement and rates should differ from PNM's originally proposed Advice Notice, in accordance with the ratemaking provisions of Section 62-8-7 of the Public Utility Act.

Consistency with Precedent and the Commission's Earlier Directives to the Parties

In the Commission's initial order, the Commission provided direction to the parties on reaching settlement prior to advancing to litigation on PNM's Application.³ After the Signatories reached an original stipulation, the Hearing Examiners gave the Signatories direction on the stipulation's components that would prevent them from recommending approval of that stipulation in its entirety.⁴ The Hearing Examiners gave the following specific reasons for rejecting the original stipulation as being contrary to the Commission's regulatory principles:

³ Case No. 16-00276-UT, *Order Suspending Rates, Setting Intervention Deadline, Settlement Conference Date and Appointing Hearing Examiner*, ¶ 8 at 2-3 (Dec. 14, 2016) ("Initial Order").

⁴ Case No. 16-000276-UT, *Order Rejecting Stipulation in its Current Form* (May 12, 2017).

- 1) The stipulated two-phase hearing process to hear energy efficiency and Time-Of-Use issues in a second phase was unworkable, and if not litigated those issues should be reserved for future proceedings;
- 2) The agreement for PNM to accelerate depreciation dollars for San Juan Generating Station (“San Juan”) and Four Corners Power Plant (“Four Corners”) appeared to be designed to encourage early plant retirement and could constitute prejudgment by the Commission on whether the plants should be retired early, because PNM has not yet filed for and does not have permission of the Commission to retire the plants; and
- 3) Because the stipulated water and sewer rate increases were less than half of the average increase and stipulated streetlight rates for municipalities received no rate increase, the proposed revenue allocation did not follow recent “banding” principles adopted by the Commission, where the lower band for PNM rate class increases was 65% of the average increase.

The Hearing Examiners gave the parties the opportunity to eliminate the problems that were cited, and the Signatories did so in the Revised Stipulation. The Signatories revised the agreements so there would be no inference of prejudgment by the Commission on whether PNM should abandon its existing interests in San Juan and Four Corners, and to apply the lower band of 65% to public water and sewer and streetlight rates. After their review of the Revised Stipulation and consideration of NEE’s statement in opposition, the Hearing Examiners ruled that the case should move forward on the merits of the Revised Stipulation.⁵

The Commission has the ability to reconsider the totality of the record as a whole to reach a final outcome in this case without further litigation of individual issues in this case. Rather than focusing on whether specific provisions could be further modified beyond the terms negotiated by the Signatories, the Commission can reconsider whether the Signatories justified the reasonableness of the agreement as a whole. There is substantial evidence in the record that supports approving, rather than rejecting, the Revised Stipulation. In contrast, there is not

⁵ Case No. 16-00276-UT, *Order Establishing Procedural Schedule for Hearing the Revised Stipulation and Shortening Time to Response to Discovery*, ¶ 16 at 7 (June 1, 2017).

substantial evidence in the record to support the ordered modifications to the Revised Stipulation.

Request for Oral Argument

Because of the number of parties to the Revised Stipulation and the complex issues that are central to the resolution of this Motion, PNM respectfully submits that oral argument will assist the Commission and hereby requests that the Commission schedule oral argument to consider this Motion.

WHEREFORE, PNM requests that the Commission schedule oral arguments on the Motion, issue an order granting rehearing and vacating the Modification Order, and issue a new final order that approves the Revised Stipulation without modifications. The Signatories further request that the Commission confirm that if this matter proceeds to further litigation on PNM's Application, that the Signatories are not precluded from litigating any of the issues presented in PNM's Application and supporting testimonies, exhibits and schedules.

II. PNM'S LEGAL MEMORANDUM IN SUPPORT OF RECONSIDERATION

A. The Revised Stipulation Meets All Commission Criteria For Approval.

The Commission should not overlook certain of the standards it has set for signatories of a stipulation. All of the requisite elements for approval of a contested stipulation have been met:

- 1) all parties, including the sole opponent to the Revised Stipulation, received notice and an opportunity to be heard on both the Revised Stipulation and PNM's direct case in support of its original Application;
- 2) the Revised Stipulation is the product of serious and knowledgeable bargaining that results in substantial benefits to customers;
- 3) the Revised Stipulation resolves all matters in the case in a way that is fair, just and reasonable, and in the public interest, and is supported by substantial evidence in the record; and
- 4) the Revised Stipulation is in accordance with applicable law and regulatory principles.

The Certification and the Modification Order deconstruct individual elements of the Revised Stipulation, rather than considering the Revised Stipulation *as a whole*, which is the more relevant inquiry.⁶ The forest should not be lost in the trees. The testimony filed on behalf of NEE, the lone opponent to the Revised Stipulation, failed to refute the evidence on the Commission's stipulation standards and the merits of the Revised Stipulation and focused instead on re-litigating components of PNM's Application relating to coal generation.

1. Notice and Opportunity to be Heard was Provided.

The Commission has found that notice and an opportunity to be heard on the Revised Stipulation was provided.⁷

⁶ 1991 Attorney Gen., 1991-NMSC-028, ¶ 14-15, 111 N.M. 636; see also 17.1.210.11(B)(2) NMAC; 17.1.2.10 NMAC (requiring a notice of hearing and a notice to ratepayers for applications for new rates); 17.9.530 NMAC;

⁷ Case No. 16-00276-UT, Certification, ¶ 2 at 183.

2. The Revised Stipulation is the Result of Serious Bargaining Among Knowledgeable Parties.

Based on the overwhelming support of all but one party and the substantial evidence in the record, the Commission should reconsider the lack of weight it accorded this fundamental requirement for approval of a stipulated settlement. The Certification and Modification Order appear to reject the evidence that the Signatories engaged in serious and good faith bargaining. The Revised Stipulation was the product of protracted negotiations that required significant give-and-take on numerous important issues in order to reach consensus across a spectrum of often competing interests.⁸ Collectively, the Signatories' experts have many decades of experience in utility regulation and more specifically with regulatory matters relating to PNM's rates, certificated facilities and services.⁹ The fact that these experts reached a comprehensive settlement is a strong indication of the reasonableness of the outcome, not a basis to suspect the motivations of the Signatories.

The testimony of expert witnesses such as AG Witness Andrea Crane and ABCWUA Witness Jim Dittmer, who have long been recognized by the Commission as capable and knowledgeable experts, appears to have been ignored altogether. All of the Signatories' experts fully analyzed PNM's proposed non-fuel revenue requirements, rates, and rate design.¹⁰ The Signatories had available to them all information and data required by the Commission's Rule 530¹¹ and the FTY Rule,¹² comprising several thousands of pages and electronic data in cost of service and rate design models and spreadsheets as well as extensive data produced in discovery. The majority of the Signatories were active intervenors in the 2015 Rate Case, PNM's most

⁸ PNM Ex. 7 (Ortiz Stip. Dir.) at 7-8.

⁹ Tr. Vol. I (Ortiz) at 290-91.

¹⁰ AG Ex. 1 (Crane Dir.) at 7; ABCWUA Ex. 1 (Dittmer) at 8-9.

¹¹ 17.9.530 NMAC.

¹² 17.1.3 NMAC.

recent rate case, and as a result began this case with a great deal of knowledge regarding PNM's current cost of service and rate structures.

While no single Signatory achieved its preferred outcome, the Revised Stipulation nonetheless presents a consensus resolution that balances the utility's interests with the interests of and among PNM's customers and stakeholders, as well as the overall public interest.¹³ The Signatories knowledgeably identified areas of PNM's proposed non-fuel revenue requirement and rate design that they may have challenged through litigation in order to develop just and reasonable rates for customers.¹⁴ As a result, the Signatories achieved significant verifiable benefits compared to the potential outcome of a litigated case, including:

- **Reduced Non-Fuel, Base Revenue Requirements.** The stipulated non-fuel, base rate revenue increase is \$62.3 million representing a savings of \$36.9 million from PNM's proposed \$99.2 million increase.
- **Reduced ROE.** The stipulated return on equity ("ROE") of 9.575%, unchanged from the ROE recently set by the Commission in Case No. 15-00261-UT ("2015 Rate Case"), is reduced compared to PNM's requested ROE of 10.125%.
- **Reduced Customer Rate Increase Phased in Over Two Years.** The Revised Stipulation retains PNM's original proposal to phase-in rate changes over two years to mitigate the rate impact to customers. This means that half of the rate increase is deferred for one year resulting in substantial savings to customers.
- **Debt Only Return on Four Corners SCR.** PNM's recovery for the costs of PNM's required investment in the Selective Catalytic Reduction ("SCR") emissions controls at Four Corners is limited to a return on PNM's investment based on its embedded cost of debt, rather than PNM's authorized weighted average cost of capital. The stipulated limitation on PNM's opportunity to earn a reasonable return results in an estimated benefit to customers of approximately \$3.1 million in the Test Period.
- **Benefits Related to State and Federal Income Tax Changes.** Under the Revised Stipulation PNM will accelerate the amortization of approximately \$25 million in excess deferred state income taxes from the twenty years proposed in its Application to just three

¹³ PNM Ex. 7 (Ortiz Stip. Dir.) at 3-5.

¹⁴ *Timberon Water Co., Inc. v. New Mexico Pub. Serv. Comm'n*, 1992-NMSC-047, ¶ 29; 1986 NMIEC, 1986-NMSC-059, ¶ 30 (citing *Hobbs Gas Co.*); see also *New Mexico Indus. Energy Consumers v. New Mexico Public Regulation Comm'n*, 2007-NMSC-053, ¶ 30, 142 N.M. 533.

years. This reduces PNM's revenue requirement from that requested in its Application by \$6.1 million. PNM will also adjust its rates to provide any benefit to customers resulting from the Federal corporate income tax reductions.

- **Moderation of Rate Impacts to Residential Customers.** The rate design under the Revised Stipulation adheres to the Commission's banding principles and moderates the impact of rates to customers, particularly residential customers. The rate design also fulfills the Commission's objective of gradually moving toward cost-based rates.
- **Limit on the Timing of a Future Rate Case.** Under the Revised Stipulation, PNM is restricted from seeking any future rate increase with an effective date prior to January 1, 2020.
- **Review of the Useful Life of Four Corners.** Environmental groups wish to pursue a possible "glide path" for reducing reliance on coal generation, and bargained to obtain specific additional information to examine whether it is appropriate to consider retirement of Four Corners no later than 2031, when the present coal supply agreement ("2016 CSA") expires.
- **Future Proceeding on Energy Efficiency Disincentives.** The Revised Stipulation provides an agreed process to address the demonstrated utility disincentives associated with energy efficiency programs. The Efficient Use of Energy Act requires the Commission to address these disincentives.

The Signatories' experts and counsel determined that they could achieve a more certain and balanced outcome by settling rather than litigating. The Signatories request that the Commission rely on the greater weight of the overwhelming majority of the experts' testimony and opinion that supports approval of the Revised the Stipulation as a reasonable outcome.

3. Substantial Evidence Demonstrates the Revised Stipulation is Fair, Just and Reasonable and in the Public Interest.

The hearing record contains substantial evidence for the Commission to issue findings of fact and conclusions of law ordering that the Revised Stipulation be approved.¹⁵ The traditional elements of the ratemaking process as outlined by the New Mexico Supreme Court have been

¹⁵ NMSA 1978, § 62-10-14 (1941); *see also*, *PNM Gas Servs.*, 2000-NMSC-012, ¶ 40, 129 N.M. 1; *Re Pub. Serv. Co. of New Mexico*, 50 P.U.R.4th 416, 427 (N.M. Pub. Util. Comm'n 1982); *see New Mexico Attorney Gen. v. New Mexico Pub. Serv. Comm'n*, 1984-NMSC-081, ¶ 8, 101 N.M. 549.

followed, in that PNM's operating costs, rate base values and rate of return have been fully scrutinized, and are reasonably established and illustrated in the Revised Stipulation.¹⁶

PNM's testimony and exhibits also detail the reasonableness and prudence of PNM's investments in plant and facilities. PNM provided the same level of detail and support accepted by the Commission in the 2015 Rate Case regarding its process for examining capital projects, for assuring that the specific costs of such projects are reasonable, and for the reasonableness of specific projects undertaken during the capital investment period of this case.¹⁷ The Signatories reviewed the evidence and concluded that the stipulated revenue requirement was reasonable.¹⁸ PNM provided substantial evidence that its proposed rate design and cost allocations were based on the rates and rate design approved in the Commission's Final Order in the 2015 Rate Case and were reasonable.¹⁹ The evidence shows that residential customers account for the majority of costs: PNM originally proposed their rate class increase should be 110% of the system average rate increase. The Attorney General and all of the other Signatories analyzed the proposed rate design and respective rate increases in PNM's Application and agreed to a rate design that confers the majority of the overall benefit of the stipulated reduction in an annual revenue requirement increase to residential customers.²⁰ The uncontested rate design testimony in the record contradicts any view that individual Signatories received unjust benefits in the Revised Stipulation.²¹ The great weight of the evidentiary record supports the unconditional approval of the Revised Stipulation, without modification.

¹⁶ See *Hobbs Gas Co. v. New Mexico Pub. Serv. Comm'n*, 1980-NMSC-005, ¶ 5, 94 N.M. 731 (ratemaking components).

¹⁷ PNM Ex. 11 (Monroy Stip. Dir.) at 4.

¹⁸ Revised Stipulation, Introduction, ¶¶ 1, 31.

¹⁹ PNM Ex. 15 (Aguirre Dir. Stip.) at 6.

²⁰ PNM Ex. 13 (Aguirre Dir.) at 9.

²¹ PNM Ex. 15 (Aguirre Dir.) at 5-23; Revised Stipulation at ¶¶ 11-27.

4. The Revised Stipulation is in Accordance with Applicable Law and Regulatory Principles.

The data and information required in the Commission's ratemaking rules,²² are contained in the evidentiary record.²³ The Revised Stipulation complies with the Commission's directives for reaching a stipulation in this case. The Signatories were cognizant of the outcome of the 2015 Rate Case in crafting a comprehensive settlement, and the directives of the Hearing Examiners when provided the opportunity to revise the original stipulation. The Signatories carefully revised the original stipulation to ensure there was no prejudgment regarding future Commission determinations relating to PNM's coal generation. The Signatories accounted for differing views regarding the continued use of those resources, while bargaining to obtain expanded data and information to aid them in developing positions in future cases. The Signatories also applied the Commission's principles of gradualism to the rate design, and used the banding approach approved in the 2015 Rate Case for allocating revenues among the rate classes. The Revised Stipulation also includes an implementation date based on the date bills are rendered, which has been consistently approved by the Commission for PNM in past cases.

In developing its Base and Test Period cost of service and rate design, PNM used as its starting point the Commission determinations in the 2015 Rate Case. PNM's existing and proposed operating costs, rate base values and rate of return have been provided in accordance with Commission rules. The Revised Stipulation expressly followed the Commission's stipulation requirements for this case in its Initial Order²⁴, including a detailed illustrative cost of service which provides sufficient detail regarding Test Period and stipulated operating expenses,

²² 17.1.3 NMAC and 17.9.530 NMAC.

²³ PNM Ex. 1 (Application) and PNM Ex. 2 (Customer Notice); *see also* Direct Testimonies and Exhibits of PNM witnesses.

²⁴ Initial Order ¶ 8.

rate base values and a single agreed ROE for the Commission to determine the reasonableness of the overall revenue requirement and stipulation as a whole.²⁵

Revised Stipulation Exhibit 2 provides the stipulated rates and proof of revenue to demonstrate that the new rates are designed to produce annual revenues no greater than the just and reasonable revenue requirement. The Signatories applied the Commission's rate design principles and past rate case precedent relating to gradualism and cost causation to fairly allocate revenue requirements among rate classes and to design fair, just and reasonable rates that collect the stipulated revenue requirements for both phases of the stipulated non-fuel base rate increase.

5. The Revised Stipulation is Consistent with the Public Policy Favoring Settlement.

The Commission should not overlook New Mexico's public policy favoring the settlement of disputes.²⁶ The Commission itself has a long-standing, well-established policy that encourages the resolution of cases through settlement rather than litigation and has consistently recognized the strong public policy favoring the settlement of disputes, the benefits of avoiding costly and protracted litigation, and the importance of promoting a cooperative approach that is more effective in reconciling the interests of parties than is polarizing and adversarial litigation.²⁷ The Revised Stipulation meets each of the requirements for approval of a contested stipulation and is consistent with the public policy favoring settlements. On the record in this case, the Revised Stipulation should be approved as presented.

²⁵ Stip. Ex. 1 to the Revised Stipulation.

²⁶ See, e.g., *Quintana v. Motel 6, Inc.*, 1984-NMCA-134, ¶ 11, 102 N.M. 229 (historical and current policy is to favor the settlement of disputed claims).

²⁷ *Re Public Service Company of New Mexico*, Case No. 2082, 110 P.U.R.4th 69 (Mar. 6, 1990); see also *New Mexico Indus. Energy Consumers v. New Mexico Pub. Serv. Comm'n*, 1986-NMSC-059, ¶ 21, 104 N.M. 565; *New Mexico Attorney Gen. v. New Mexico Pub. Serv. Comm'n*, 1991-NMSC-028, ¶ 13, 111 N.M. 636 ("a cooperative approach in reconciling the interests of the parties was consistent with the public policy favoring settlement of disputes.").

B. Approving the Revised Stipulation Does Not Require that the Commission Re-Determine the Prudence of PNM's Decision to not Abandon Four Corners in 2013.

The substantial record supports the reconsideration of the determination that PNM should have abandoned Four Corners in 2013 on grounds it was imprudent for PNM to continue as an owner-participant. Specific prudence determinations are unnecessary under the Commission's standards for the stipulated resolution of a case, create inconsistencies with the Commission's Final Order in the 2015 Rate Case, and will create a precedent associated with approval of the Revised Stipulation that was not intended or sought by the Signatories.

The testimony opposing approval of the Revised Stipulation ignored the overall merits of the Revised Stipulation and instead repeated arguments in the 2015 Rate Case objecting to PNM's decision in 2013 to continue, along with Arizona Public Service Company ("APS"), Tucson Electric Power and Salt River Project as a participant in Four Corners beyond 2016. This focus is not surprising given NEE's goal of closing all of New Mexico's coal generation. NEE has consistently sought to exclude *all* of Four Corners as a jurisdictional generation resource.²⁸ The Commission already considered essentially the same arguments and evidence in PNM's 2015 Rate Case. NEE's Witness Van Winkle testified that much of NEE's issues and testimony, including some of his tables and NEE's reliance on El Paso Electric's ("EPE") resource decisions, were repeats of NEE's evidence in the 2015 Rate Case, where NEE argued that PNM's decision to enter into the 2016 CSA was imprudent.²⁹ The Commission rejected NEE's arguments and expressly found that Four Corners is a certificated plant and part of PNM's resource portfolio, that Four Corners needed a coal supply to operate, and that the 2016 CSA was necessary and its terms were reasonable.³⁰ The Commission also found that decisions

²⁸ Tr. 6 (Van Winkle) 1315-16.

²⁹ Tr. Vol. 6 (Van Winkle) at 1378-79; PNM Ex. 8 (Ortiz) at 29-30.

³⁰ Case No. 15-00261-UT, *Final Order* at ¶ 200, p. 70 (Sept. 28, 2016).

by EPE could not be relied on as a basis for reviewing PNM's decisions because EPE and PNM have different customers and operations, and PNM has a different resource portfolio with different resource needs.³¹

The Commission's current rejection of the Revised Stipulation is in part based on a finding that PNM imprudently decided to maintain rather than abandon its interest in Four Corners. This conclusion is directly at odds with its Four Corners findings in the 2015 Rate Case that PNM needed to secure the fuel supply to keep the plant running, and that the 2016 CSA coal prices are reasonable. The record in this case supports the conclusion that PNM entered into the various operating agreements that were negotiated along with the 2016 CSA in 2012 and 2013 because its analysis showed the plant could be reasonably operated in light of the projected coal prices.

In rejecting the Revised Stipulation and requiring material modifications for approval, the Hearing Examiners gave no weight to the evidence regarding PNM's resource planning processes and analyses. The Commission, however, should not so completely discount the series of evaluations that PNM conducted when PNM decided it should not abandon Four Corners when the prior coal agreement expired in 2016. The Commission can reconsider approval of the Revised Stipulation without passing final judgment on Four Corners by giving consideration to the following evidence:

- In its 2008 IRP, PNM analyzed the potential impact of retiring 240 MW of its coal production, a significant amount of baseload generation. Four Corners remained a part of the most cost effective resource portfolio with a post-2030 retirement date, because high fuel volatility and capital costs for new resources meant that Commission-required carbon costs did not justify retiring coal resources in favor of more nuclear or combined-cycle natural gas resources.³²

³¹ *Id.* at ¶ 199, pp. 68-69.

³² PNM Ex. 12 (O'Connell Stip. Reb.) at 8, PNM Ex. PJO-4 Rebuttal.

- In 2009, PNM evaluated the potential sale of its interest in Four Corners and replacing it with another resource type. PNM determined that unless it could offer Unit 3 of the Palo Verde Nuclear Generating Station as a jurisdictional resource at a discounted price, retaining PNM's interest in Four Corners resulted in the lowest net present value ("NPV") revenue requirement among resources available at the time. It was unlikely that PNM could theoretically sell its Four Corners interest at the threshold price of \$750/kW and get approval for more nuclear generation, given that Southern California Edison ("SCE") sold its 793 MW share of Four Corners to APS for \$294 million, or \$370/kW.³³ The 2009 evaluation also noted that there would be rate shock from abandoning and replacing Four Corners under typical rate base treatment for new replacement facilities.³⁴ PNM reasonably concluded that the cost to customers to replace Four Corners would exceed any benefits.³⁵
- In its 2011 IRP, PNM modeled the retirement of 200 MW of coal resources, to consider the expiration of the existing coal agreement for Four Corners in 2016. The IRP showed that retiring 200 MW of coal generation in 2017 required that a new combined-cycle gas plant be added, costing approximately \$200 million more on an NPV basis than maintaining PNM's interest in Four Corners. Four Corners remained part of the more cost effective resource portfolio, even with APS' estimates for new pollution controls and coal prices.³⁶
- In May 2012, PNM updated the 2011 IRP analysis for Four Corners using the pricing estimates from APS under the proposed new coal supply agreement. PNM used high, medium and low coal price forecasts to test Four Corners against the combined cycle gas plant identified as part of the next least cost resource portfolio in the 2011 IRP. Most of the estimated coal prices used in the May 2012 analysis were higher than the actual price under the 2016 CSA.³⁷ PNM also used current prices for natural gas, a significant tax based on its carbon emissions, coal ash handling costs, and capital cost estimates used in its most recent Renewable Energy Plan.³⁸ Using Commission-established assumptions, purely theoretical carbon taxes added approximately \$170 million to the cost of Four Corners compared to scenarios where Four Corners was replaced by a combined cycle gas plant.³⁹ The May 2012 analysis showed that replacing Four Corners with a combined cycle gas plant would be between \$33.5 and \$44 million more costly for customers on an NPV basis.⁴⁰

³³ *Id.* at 10-11; *id.* at PNM Ex. PJO-5 Rebuttal.

³⁴ PNM Ex. 12 at PNM Ex. PJO-5 Rebuttal, p. 19.

³⁵ PNM Ex. 23 (Olson Stip. Reb.) at 5.

³⁶ PNM Ex. 12 (O'Connell Stip. Reb.) at 7-9, PNM Ex. PJO-4 Rebuttal.

³⁷ *Id.* at 5-6, 12.

³⁸ *Id.* at 5-7, 10, PNM Ex. PJO-2 Rebuttal.

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 10; PNM Ex. 23 (Olson Stip. Reb.) at 5; PNM Ex. 22 (Olson Stip. Dir.) at PNM Ex. CMO-3 Stip.

- In October 2013, PNM's Board authorized PNM to sign the Four Corners 2016 CSA and the amendments to the Four Corners project agreements.⁴¹ The PNM Board considered: the sale of the Navajo Mine by BHP to the Navajo Nation and the need for a post-2016 coal supply; EPA's Regional Haze Rule and the need to install pollution controls on Four Corners Units 4 and 5; and APS's purchase of SCE's interest in Four Corners.⁴² The PNM Board was aware that while there could be other potential costs associated with future environmental compliance and federal regulations,⁴³ in light of other resource portfolio changes, PNM expected it would be more costly to customers to abandon Four Corners.⁴⁴
- In January 2014, PNM updated the May 2012 analysis using the actual coal prices from the Four Corners 2016 CSA. The January 2014 analysis confirmed that Four Corners was more cost effective for PNM's customers than replacing it with a gas plant. The January 2014 analysis assumed that PNM would retire San Juan Units 2 and 3, used updated market assumptions from PNM's 2014 IRP process and found that maintaining Four Corners would cost approximately \$132 million less on an NPV basis than a replacement plant scenario.⁴⁵ Given the proposed retirement of two San Juan units, the abandonment of an additional 200 MW of Four Corners would have required the procurement of even more replacement baseload generation at a higher cost to customers.⁴⁶

The numerous analyses that PNM conducted were consistent with past resource planning processes accepted by the Commission and provide evidence that PNM found Four Corners to be part of its most cost effective resource mix. Four Corners remained cost effective when PNM took into account projected increases in coal costs and estimated environmental compliance costs.⁴⁷ PNM followed planning analyses and processes accepted by the Commission. PNM based its decisions on material facts and circumstances known at the time, when it entered into the 2016 CSA and other Four Corners project agreements.

⁴¹ PNM Ex. 23 (Olson Reb. Stip.) at 7; CMO-2 Rebuttal at 2.

⁴² *Id.* at PNM Ex. CMO-2 Rebuttal at 1.

⁴³ *Id.* at CMO-2 Rebuttal at 2.

⁴⁴ *Id.*

⁴⁵ *Id.* at 17.

⁴⁶ PNM Ex. 8 (Ortiz Reb. Stip.) at 13-14.

⁴⁷ PNM Ex. 12 (O'Connell Reb. Stip.) at 6 and 10.

Under the utility prudence standard,⁴⁸ utility management is expected to exercise the degree of care that a reasonable person would exercise under the same circumstances encountered by management at the time the decision had to be made.⁴⁹ The Modification Order relies on the Certification's findings that the May 2012 evaluation was stale, and that if PNM's analyses were redone to include an estimated \$88.5 million capital costs associated with Four Corners, PNM potentially would have decided that abandoning Four Corners may have saved \$55 million. The Certification also questioned the reliability record for Four Corners.

Evidence in the record, however, also supports alternative findings. The May 2012 Analysis was not stale when the 2016 CSA was signed in October 2013, because APS, as the plant operator, controlled the timing for finalizing the CSA and other agreements.⁵⁰ Additionally, PNM's assumption there would be \$170 million in carbon costs more than accounted for not including \$88.5 million in estimated capital costs.⁵¹ Further, in the 2015 Rate Case, the Commission found that Four Corners is an existing and certificated generation resource that is needed to provide reliable and cost effective baseload energy and capacity to PNM's customers, and coal costs and plant reliability were examined in that case.

In reconsidering the Modification Order, the Commission can find that modifications to the Revised Stipulation are not required because it is not necessary to reach all of the Certification's findings at this time. Differing views or evidence to the contrary, there is substantial evidence to support a conclusion that PNM reasonably decided in the 2012-2013 time

⁴⁸ Prudence is the standard of care which a reasonable person would be expected to exercise under the same circumstances encountered by utility management at the time decisions had to be made. In determining whether a judgment was prudently made, only those facts available at the time the judgment was exercised can be considered; hindsight review is impermissible. A finding of imprudence cannot be sustained by substituting one person's judgment for that of another, because the prudence standard recognizes that reasonable persons can have honest differences of opinion without one or the other necessarily being imprudent. NMPRC Case No. 15-00261-UT, *Corrected Recommended Decision* at 58 (Aug. 15, 2016)

⁴⁹ 2015 Rate Case Corrected Recommended Decision at 89; *see* PNM Ex. 23 (Ortiz Reb. Stip.) at 12.

⁵⁰ Tr. Vol. 1 (Ortiz) at 208-10.

⁵¹ PNM Ex. 12 (O'Connell Reb. Stip.) at 17.

period not to abandon Four Corners by 2016, based on its resource planning and the Commission's abandonment criteria. Even considering the Certification's concerns, the weight of the record allows the Commission to find either that: 1) PNM acted reasonably in 2012-2013 when it decided not to abandon Four Corners before the 2016 CSA approved in the 2015 Rate Case became effective; or 2) the Revised Stipulation accounts for the Certification's concerns without the need in this case for a legal determination on prudence and a further disallowance that causes PNM to write-down approximately \$62 million rather than the \$20 million that already results from the Revised Stipulation.

C. The Revised Stipulation Already Accounts for Any Disallowance Associated with Four Corners and Assists Parties in Developing Future Positions on Rate Treatment.

The Modification Order, based on the Certification's finding of imprudence, would limit PNM's recovery of the SCR and other Four Corners expenditures requested for the capital investment period in this case to only a return of, and not on, these investments. No party advocated for this change to the Revised Stipulation, and there is no record evidence on the merits of this further disallowance. The further disallowances do not result in a lower revenue requirement, *or rates*, than stipulated by the Signatories. These determinations are contrary to the whole purpose of the rate case's settlement, where the Signatories factored into the reduction of the revenue requirements requested in the original application the amount of potential investment disallowances along with potential other cost of service adjustments. The Modification Order also proposes that any further consequences of PNM's investment in Four Corners be considered in a future rate case or in the later phase of this case if it is litigated on the merits of PNM's application. Such a finding is unnecessary based on the Commission's regulatory authority to examine the reasonableness of any future capital investments for which PNM seeks recovery.

The Commission should also reconsider the Modification Order's disallowance findings, in light of the Commission's recent 2015 decision that Four Corners is a used and useful facility and that PNM reasonably secured the long-term 2016 CSA in order to keep Four Corners operating; and given that a continuous series of analyses showed that Four Corners was more cost effective than it would have been to abandon and replace it with feasible replacement resources prior to 2016.

Under the Revised Stipulation, PNM agreed to forego recovery of more than \$36 million of its non-fuel revenues requested in its Application to account for litigation risks, including but not limited to the risks associated with potential re-litigation of the prudence of Four Corners. As part of the total revenue concessions negotiated among the Signatories, PNM agreed to limit its recovery of its Four Corners SCR to the return of the investment and its cost of debt. Even after dollar values are assigned to the quantifiable terms of the Revised Stipulation, including approximately \$3 million for limited SCR recovery, there remains over \$16 million in unspecified reductions to PNM's annual revenue requirement. As a result of quantifying a limit on recovery of the SCR investment in the illustrative cost service, PNM also will realize a significant financial impact to PNM's equity in the form of a write-down of approximately \$20 million.

In reaching a comprehensive settlement, the Signatories recognized that certain of the parties would have challenged the prudence of Four Corners.⁵² The record shows that the litigation risks associated with this issue are accounted for in the Settlement Stipulation. Sierra Club is opposed to coal generation and its expert witness, Mr. Pierce, was critical of PNM's resource analysis with respect to Four Corners. However, he agrees that the non-fuel revenue

⁵² PNM Ex. 8 (Ortiz Reb. Stip.) at 37.

requirement under the Revised Stipulation represents a fair balance of the ratepayer and shareholder interests regarding the treatment of depreciation and capital expenses for Four Corners.⁵³ Similarly, CCAE and WRA both seek to reduce coal generation and their expert witness, Mr. Effross, acknowledges the value of PNM's concessions relating to Four Corners and that approval of the Revised Stipulation is in the public interest.⁵⁴ There is no proper basis to support a further reduction to the stipulated revenue requirements in this case.

Furthermore, the remedy imposed by the Commission – limiting PNM's recovery to only a return of, and not on its Four Corners capital investments – was not advocated by any party to this proceeding and is not supported by substantial evidence. To support the remedy, the Certification and Modification Order rely on figures generated by PNM for illustrative purposes in response to bench requests, but not otherwise supported by PNM or any other witness.⁵⁵ The Commission may not properly rely on data which is selectively extracted from the record, but which is not otherwise supported by any witness. The New Mexico Supreme Court reversed a final order rejecting a settlement stipulation under similar circumstances in *Attorney General v. New Mexico Pub. Util. Comm'n*.⁵⁶

Additionally, there is also no reason to modify or delete Paragraph 8 of the Revised Stipulation. The Certification and Modification Order acknowledge that the elimination of Paragraph 8 of the Revised Stipulation does not provide greater discretion to the Commission in making future decisions. It does, however, require the Signatories to forego the benefit of their

⁵³ Sierra Club Ex. 1 (Pierce Dir. Stip.) at 1, 3 and 10.

⁵⁴ WRA Ex. 2 (Effross Dir. Stip.) at 4, 6, 9-11, 14.

⁵⁵ See Certification at 67-68 and 173-175 extrapolating potential disallowance amounts based on PNM's responses to Commission Bench requests.

⁵⁶ 2000-NMSC-008, ¶¶ 9-11, 128 N.M. 747. (Commission's use of a witness's mere discussion of an issue and data taken "totally out of testimonial context", does not constitute substantial evidence to support a Commission ruling.).

bargain to receive data and information regarding depreciation rate alternatives and other information relating to options for future ratemaking proposals for Four Corners.

D. It is Unnecessary to Exclude San Juan Capital Expenditures from the Illustrative Cost of Service

The original stipulation was rejected in order to ensure there was no such prejudgment on whether San Juan should or will be abandoned.⁵⁷ Now, however, the Modification Order requires a reduction from \$46 million capital investments in San Juan to \$9.6 million because PNM may seek to retire the remaining units in another few years. This limitation does not further reduce the stipulated revenue requirement. This temporary disallowance is not based on imprudence findings. The weight of the evidence shows that the San Juan capital costs included in the Test Period are necessary, near-term investments that will keep the plant running reliably, efficiently, safely and in compliance with environmental regulations through 2022.⁵⁸ The limitation on recovery therefore appears to be premised solely upon an assumption that San Juan Units 1 and 4 will be retired in 2022. PNM is required to safely and reliably operate San Juan until such time as it is authorized to abandon the remaining two units. San Juan capital expenditures are not incurred without a rigorous assessment both of the necessity of incurring such costs and the reasonableness of those costs; PNM acknowledged that the need for these capital investments have been scrutinized by PNM and the other owners in light of a potential abandonment of the remaining two units.⁵⁹

The elimination of San Juan capital investments from the stipulated rate base presumes that San Juan should be abandoned, which is inconsistent with other portions of the Certification

⁵⁷ *Order Rejecting Stipulation in Current Form*, at 6-9.

⁵⁸ The San Juan Project Participation Agreement, the agreement under which San Juan is operated and maintained, presently continues in effect through July 1, 2022. PNM Ex. 23 (Olson Stip. Reb.) at 14-15, 16-17.

⁵⁹ *Id.* at 15.

that warn against such pre-judgment. The Hearing Examiners rejected the original stipulation filed in this case in part because it provided for an additional \$10 million per year to reduce PNM's undepreciated investment to facilitate the future abandonment of San Juan. The Hearing Examiners indicated that approval of that provision would constitute improper prejudgment by the Commission on the issue of San Juan abandonment. Disallowing San Juan capital investments based on the assumed abandonment of San Juan is no less a prejudgment.⁶⁰

The Commission has ordered PNM to file a proceeding between July and December of 2018, to address PNM's future plans regarding the operation of San Juan Units 1 and 4. No petition for abandonment has been filed and the Commission has not ruled that PNM may abandon San Juan in 2022, or any other year. In the absence of a Commission ruling granting abandonment, PNM will not presuppose that San Juan will discontinue serving customers in 2022. The proposed capital investments are necessary to keep San Juan during the period the rates are expected to be in effect, and through 2022. Because San Juan Units 1 and 4 will continue to serve customers, PNM must make prudent investments necessary for its continued safe and efficient operation. For this reason, \$46 million in capital investments for San Juan should not be eliminated.

E. The Stipulated Rate Design Conforms with the 2015 Rate Case and the Hearing Examiners' Directives to Apply Banding Principles to the Revenue Allocation

The Signatories request that the Commission leave unchanged the stipulated allocation of revenues and resulting rate design for customer rate schedules. The Revised Stipulation meets past rate case standards applied by the Commission in approving negotiated revenue allocations

⁶⁰ Case No. 16-00276-UT, *Order Rejecting Stipulation in Current Form*, 2017 WL 2213360, *4, *5 (NMPRC May 12, 2017).

among rate schedules.⁶¹ The stipulated rate design limits the rate increase for residential customers to barely above the system average increase, rather than the as-filed 110% of the system average increase; without any banding, residential customers potentially could have seen a rate increase of 123% above the system average increase.⁶² The AG, Staff and other signatories were adamant that the settlement agreement include this downward adjustment for residential customers to just above the stipulated system average increase.

The Signatories all agreed that three of PNM's fifteen rate classes would receive a pro-rata allocation below the system average increase of 9.04% for Phase II rates.⁶³ Rate 11B (Water & Sewage) and Rate 20 (Streetlighting), primarily serve municipal customers throughout PNM's service area, receive a 5.87% increase compared to the 9.04% system average.⁶⁴ Rate class 3B is set just below the system average increase at an 8.79% increase.⁶⁵ The evidence at hearing shows that this continued application of banding to Rates 3B, 11B and 20 meets the Commission's standards relating to cost causation principles.⁶⁶ The Revised Stipulation revenue allocation and rate design are also consistent with the Final Order in the 2015 Rate Case, where the Commission set rates based on the fact that each of these rate classes provided subsidies to other classes far above the revenue requirement supported by cost causation.

⁶¹ In response to a Hearing Bench Request issued on August 8, 2017, PNM provided a representative list of rate cases in which the Commission approved revenue allocations on other than a *pro rata* basis. See PNM Exhibit 37.

⁶² PNM Ex. 13 (Aguirre Dir.) at JCA-3.

⁶³ PNM Ex. 3 (Rev. Stip.) at ¶¶ 11; PNM Ex. 15 (Aguirre Dir. Stip.) at 5 and PNM Table JCA-1 Stip.

⁶⁴ The difference between the 9.04% system average and the lower band's 5.87% increase for Rates 11B and 20 is allocated to other customer classes. PNM also has agreed to provide a contribution to these rate classes similar to the Commission's past requirement for approval of a stipulation.

⁶⁵ The difference between the 9.04% system average and the lower band's 8.79% increase for Rate 3B is allocated to other customer classes.

⁶⁶ PNM Brief in Chief at 106-15.

<u>2015 Rate Case Final Order</u>	
Percent Increase [or Decrease] Under Cost Causation Principle	Percent Increase Under Banding Gradualism Principle
3B: [5.05]%*	3B: 7.18%*
11B: [0.33]%	11B: 6.20%
20: 2.61%	20: 6.20%
*Rates 3B and 3C were combined in the 2015 Rate Case. Source: Advice Notice No. 530, Revised Attachment E, at 2-3 (filed Sept. 30 2016)	

In response to a Bench Request during the hearing, PNM provided several examples of Commission decisions that expressly approved non-pro-rata revenue allocations in negotiated settlements for all of the electric investor-owned utilities.⁶⁷ The Commission has been clear that rate design agreements can allocate revenues differently among rate classes; in a recent case the Commission found that a non-uniform revenue distribution was consistent with the inter-class gradualism method the Commission used to distribute a rate increase in the utility's prior case.⁶⁸

The suggestion that Signatories were somehow “bought off” through an unfair revenue allocation⁶⁹ has no record support and fails to acknowledge that many of the Signatories are public representatives and staunch defenders of residential customers. The uncontested record thoroughly refutes any suggestion of bad motive by any Signatory. Far from violating regulatory principles, the “deal-making”⁷⁰ and compromise for which the Signatories have been unfairly criticized, has until now been encouraged by the Commission and the Courts.⁷¹

For the stipulating parties who represented residential customers, the fundamental principle at stake was whether the Revised Stipulation, taken as a whole, would achieve a

⁶⁷ PNM Exhibit 37 (Response to Bench Request).

⁶⁸ Case No. 15-00296-UT, *Certification of Stipulation*, at 27, 29.

⁶⁹ Certification at 109.

⁷⁰ See, e.g., Certification at 108-09.

⁷¹ See *supra* fn. 176; Case No. 09-00171, *Final Order Conditionally Approving and Clarifying Unopposed Stipulation*, at 22 (citing Case No. 2567, *Final Order*, at 17; *New Mexico Indust. Energy Consumers v. New Mexico Pub. Reg. Comm'n*, 1986-NMSC-059, ¶¶ 19-21; *Attorney Gen. v. New Mexico Pub. Serv. Comm'n*, 1991-NMSC-028, ¶ 13, 111 N.M. 636, 640 1991).

reasonable result when compared to the potential outcomes from contentious litigation.⁷² Although the Certification and Modification Order's requirement that there be an across-the-board pure pro-rata revenue allocation at the system average increase appears intended to benefit residential customers,⁷³ this change exposes residential rate classes to the risk of greater rate increases and revenue allocations if this matter is litigated. The record shows that the Signatories carefully considered these potential outcomes for residential and other customers from the application of the banding approaches approved in the 2015 Rate Case, and proposed in PNM Application.⁷⁴ The Commission should therefore reconsider the requirement to change the stipulated revenue allocation and rate design and should find that the weight of the record supports approval of the Revised Stipulation without modification.

III. CONCLUSION

PNM respectfully requests that the Commission reconsider the portions of its Modification Order that grant conditional approval of the Revised Stipulation with modifications. The Signatories to the Revised Stipulation applied regulatory principles of the Commission that were laid out in the 2015 Rate Case, and that are found in past orders. The evidence shows the Signatories: avoided prejudgment of issues for future PNM cases as directed by the Hearing Examiners; bargained for the development of data that can assist in informed

⁷² The AG's residential class expert witness Crane stated that "[t]he Revised Stipulation provides for a reasonable allocation of the proposed increase among rate classes and limits residential customer charge increases ..." AG Ex. 1 (Crane Dir. Stip.) at 10. Staff testified that "[t]his lower revenue increase for customer classes such as the residential and irrigation classes was made possible through reasonable negotiation with the adjustments outlined in the Revised Stipulation in tandem with a pro-rata revenue allocation." Staff Ex. 1 (Sisneros Dir. Stip.) at 5. NMIEC witness Phillips agreed that interests were balanced because every major rate class receives lower rates compared to PNM's as-filed case and "the resulting revenue increases under the Stipulation reflect a reasonable allocation of costs ... with reasonable mitigation for the residential class and other small customer classes as an appropriate outcome." NMIEC Ex. 2 (Phillips Dir. Stip.) at 10.

⁷³ The total revenue requirement for residential customers is reduced by an average 8 cents per month (a further reduction of 0.14%) and shifts revenue allocation by less than \$500,000. For underlying data, *see* PNM Ex. 3 (Rev. Stip.) at Rev. Stip. Ex. 2. Using Test Period energy sales in PNM Ex. 13 (Aguirre Dir.) at PNM Ex. JCA-4 for residential and the monthly average residential usage of 564 kWh in PNM Ex. 18 (Chan Dir.) at Fig. SC-2, there is an 8 cent difference between the Revised Stipulation and the Certification requirements.

⁷⁴

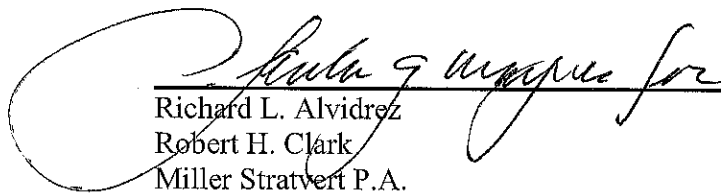
positions of the parties in future cases without prejudice; and reasonably accounted for questions relating to the prudence of Four Corners in establishing the stipulated annual non-fuel, base rate revenue requirement for PNM and specifying certain rate treatment for PNM's investment in SCR at Four Corners.

The evidence also shows that the Signatories fairly allocated the revenue requirement among the rate classes by applying the banding principles approved in the 2015 Rate Case and as directed by the Hearing Examiners; and that the rate classes receiving the lower band for an increase were found to be subsidizers of rates for residential customers in the 2015 Rate Case. Because the unmodified stipulated outcome is fair and confers benefits to residential customers and because the interests of all parties in this case have been considered, the PNM requests that the Commission determine it is unnecessary to expend further resources through litigation. The expertise and judgment of the Signatories consistently has been relied on by the Commission in cases where, as here, a broad range of interests have been present at the bargaining table.

The PNM respectfully asks that the Commission reconsider its Modification Order and approve the Revised Stipulation without modification.

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