

Additional Supplemental Testimony as required by the Extension Order by the earlier date of March 11, 2016, and the Staff and intervenors providing their responsive testimony live at the hearing. Alternatively, this case can proceed on March 14, 2016, and the narrow issue raised in the Extension Order can be reserved for a prompt hearing following the conclusion of the initial hearing in a separate docket. In fact, the Commission has already docketed Case No. 16-00016-UT for the express purpose of addressing the issues raised in the Extension Order.

Separately, PNM takes issue with the portions of the order that appear to have predetermined the correctness of PNM's handling of the FPPCAC calculation without any supporting evidence. It is beyond dispute that PNM has included NMWEC purchased power costs in the FPPCAC, with the full knowledge of the Commission, since PNM resumed using a FPPCAC in 2008. Likewise the inclusion of all energy sales, from both renewable and conventional sources, in the calculation of the FPPCAC has been transparent in numerous Commission proceedings since 2008. For the Commission to suddenly conclude that its past decisions must now be reversed because they are somehow prejudicial to customers and result in a potential basis for the abrupt elimination of PNM's FPPCAC is unwarranted and unlawful. The Extension Order focuses on the supplemental testimony that relates to the billing system, and completely ignores PNM's testimony that changing the FPPCAC calculation to segregate renewable and conventional energy does not ultimately change the fuel and purchased power costs paid by customers.

Because relief under this motion can only be granted if the Commission considers this Motion on an expedited basis, PNM respectfully request that the five day response time under 1.2.2.37(F)(2) NMAC be shortened so that any responses are to be filed no later than March 7, 2016, and so that the Commission may act on this Motion at its open meeting on March 9, 2016.

I. BACKGROUND

PNM filed its Application for Revision of Retail Rates, its Advice Notice No. 513 and supporting testimony on August 27, 2015. Since its 2010 rate case, PNM has made significant investments in utility plant and facilities. PNM is requesting a rate increase to cover a deficiency in revenue of \$123,498,612, consisting of a \$121,704,111 increase related to non-fuel revenue, and an increase of \$1,794,501 related to fuel revenue. On September 9, 2015, the Commission issued its *Order Suspending Rates and Appointing a Hearing Examiner*. The Commission suspended the proposed rates filed by PNM for a period of nine months until June 30, 2016. The Hearing Examiner issued her *Procedural Order* (“Procedural Order”) on September 24, 2015, for the timely and orderly disposition of this case and scheduled the hearing on the merits to commence on March 14, 2016. The Procedural Order schedule allows the Commission sufficient time to consider PNM’s Application and issue a final order within the nine month suspension period.

On February 10, 2016, the Commission issued its *Order Directing PNM to File Supplemental Testimony to Address Potential Base Fuel Cost Issues* (“February 10, 2016 Order”). The February 10, 2016 Order required PNM to file supplemental testimony addressing (1) PNM’s apparent inclusion of sales of kilowatt hours generated with renewable energy in its Fuel and Purchased Power Adjustment Clause (“FPPCAC”); and (2) PNM’s inclusion of the costs of the New Mexico Wind Energy Center (“NMWEC”) purchased power agreement (“PPA”) in PNM’s FPPCAC. *Id.* at 6. PNM was also required to revise its calculation of base fuel costs to adjust for these issues and to provide any necessary revisions to its testimony and materials. *Id.* at 6-7. PNM timely filed the Supplemental Testimony of Gerard T. Ortiz, Supplemental Testimony of Susan A. Taylor and Supplemental Testimony of Julio C. Aguirre on

February 24, 2016, in response to the February 10, 2016 Order. Staff was required and other parties were allowed to file responsive testimony to PNM's supplemental testimony by March 2, 2016. No other party filed responsive testimony to PNM's supplemental testimony. Staff received an extension to file responsive testimony to March 8, 2016. *Order Granting Extension of Time to File Response to PNM's Supplemental Testimony.*

On March 2, 2016, twelve days before the commencement of the hearing, the Commission issued its Extension Order, which among other things, extends the suspension period to July 31, 2016, requires the filing of additional supplemental testimony by deadlines that reach beyond the March 14, 2016 hearing date¹, and instructs the Hearing Examiner to establish a new procedural schedule to accommodate the new deadlines for filing the required Additional Supplemental Testimony, in order for the Commission to make a decision on the issues raised in February 10 Order. Extension Order at 5-7. PNM is directed to file additional information concerning PNM's billing system and its capabilities, and certain analyses relating to its fuel costs and its FPPCAC. *Id.* at 5-6.

II. GROUNDS IN SUPPORT OF REHEARING

A. *PNM and Other Parties Will Be Unduly Prejudiced By Delaying the Hearing.*

This is a large and complicated case. There are 21 parties in this case, including the Company, the Commission Staff and multiple intervenors, and forty five witnesses. PNM alone has twenty witnesses, five of whom are from out of state. Staff and the intervenors have submitted testimony from twenty five witnesses, fifteen of whom are also from out of state. This case has been set for hearing since the Procedural Order was issued on September 24, 2015 –

¹ PNM is ordered to file Additional Supplemental Testimony on or before March 14, 2016; Staff and Intervenors are encouraged to file testimony responding to PNM's Additional Supplemental Testimony by March 23, 2016, and PNM may file Reply Testimony on or before March 30, 2016. Extension Order at 7.

nearly six months ago. The parties and their respective counsel and witnesses have relied on the March 14, 2016, hearing date and, with less than two weeks out from the hearing, have arranged their schedules and made travel arrangements so that they can be available to appear and testify. Vacating the hearing at this late date is extremely disruptive and costly to PNM and the other parties. It is also unnecessary because the Commission's need for additional information can be accommodated in the current schedule.

While the Commission has extended the suspension period by thirty days, it may be difficult to reschedule the commencement of the hearing as contemplated by the Commission due to the number of parties and witnesses in this case. The Southwestern Public Service Company ("SPS") rate case in Case No. 15-00296-UT is scheduled to commence on April 28, 2016, and last through May 11, 2016. There is overlap between some of the counsel and witnesses participating in this case and the SPS rate case, and those parties and witnesses may be prejudiced in their ability to prepare and appear in the SPS rate case. If the SPS rate case is accommodated, which PNM would strenuously oppose, it would likely delay this case into late May or June at the earliest.

Further, PNM is seeking in this case to make up a significant revenue deficiency. On an average basis, PNM's revenue deficiency accrues at approximately \$10 million per month. A delay in hearing PNM's Application only exacerbates the revenue deficiency and deprives PNM of timely recovery of its investments in plant and facilities and related expenses necessary to serve its customers. The delay caused by the Extension Order is highly prejudicial to PNM and other parties and is unnecessary because the limited and narrow issues encompassed by the Extension Order have already been raised through the Commission's earlier order. To avoid

unnecessary delay and prejudice to all of the parties, the Commission should reconsider its March 2 Order and permit the March 14, 2016 hearing to commence as scheduled.

There are less disruptive and prejudicial means of addressing the issues in the Extension Order without delaying the hearing. PNM can provide the Additional Supplemental Testimony required under the Extension Order by March 9, 2016. This will allow the hearing in this matter to proceed as scheduled on March 14, 2016. Staff and the intervenors can respond to PNM's Additional Supplemental Testimony with live testimony during the presentation of their witnesses in this case. As discussed below, other parties to date have chosen not to file responsive testimony regarding PNM's existing and proposed continued method of rate treatment for its renewable resources. Allowing parties and Staff to address this discrete issue through live testimony during the course of the hearing will not prejudice their ability to weigh in on PNM's supplement testimonies and will result in a full and complete record for the Commission's consideration.

Alternatively, the Commission can proceed with the hearing on all issues in this case as scheduled, with the exception of the limited issues identified in the Extension Order which can be addressed in a supplemental proceeding to follow promptly after the conclusion of the initial phase of this case. Either of these options is a workable solution that avoids unnecessary delay and allows this case to move forward as scheduled. This is also in keeping with the intent of the Public Utility Act which requires that "[t]he commission shall hear and decide cases with reasonable promptness." NMSA 1978, Section 62-8-7(C) (2011).

B. The Additional Information Required Under the Extension Order Can be Addressed During the Hearing without Prejudice to Any Party

PNM does not object to the Commission's review of PNM's calculation and implementation of its base fuel rates or PNM's administration of its FPPCAC relative to

renewable resources. PNM objects only to the delay in the commencement of the long-scheduled hearing in the case. The discrete issues relating to PNM's base fuel calculations and administration of its FPPCAC should not overshadow the other issues set to proceed to hearing as scheduled on March 14, 2016. As noted above, non-fuel revenue requirements account for \$121,704,111 of PNM proposed rate increase.

The issues that are the subject of the Commission's Extension Order and requirement for Additional Supplemental Testimony are known to the parties and the appropriateness of PNM's rate treatment of renewable energy resources was presented in PNM's filing package. PNM's August 27, 2015 Application filing package indicated that the NMWEC PPA costs would continue to be recovered under the FPPCAC rather than under PNM's Renewable Rider. Direct Testimony of Gerard T. Ortiz at 49. Parties have already been provided an opportunity to address PNM's rate treatment of its renewable resources in response to both PNM's Direct and Supplemental Testimonies filed by PNM, and will have an additional opportunity to do so in the course of the hearing, and the implications of this rate treatment have been raised in other past cases in which these parties have participated or had the opportunity to participate.

The regulatory history confirms that as a result of a series of past cases, PNM has recovered certain costs associated with RPS compliance and the NMWEC PPA through the FPPCAC with full Commission knowledge and approval for many years, since the inception of the FPPCAC.² PNM's proposed treatment of base fuel costs and its FPPCAC in this case is in conformity with that long-standing and established Commission precedent. PNM has included the costs of the NMWEC PPA in its FPPCAC calculations since PNM was granted an emergency fuel clause in Case No. 08-00092-UT. The continued inclusion of the NMWEC PPA

² PNM calculates its FPPCAC in a manner consistent with calculations that have been reviewed and approved by the Commission in numerous proceedings and in PNM's monthly reports since PNM's FPPCAC was implemented in 2008.

costs in the FPPCAC was re-confirmed by the Commission in Case No. 10-00086-UT, when PNM's current base fuel rate was set. PNM's Renewable Rider was originally approved by the Commission in Case No. 12-00007-UT such that renewable resources being recovered in base rates or the FPPCAC would not be included in the Renewable Rider; the Commission reset the Renewable Rider in Case No. 15-00166-UT in its *Final Order Superseding Vacated Final Order Issued on November 18, 2015* ("February 3, 2016 Order"). The Commission has previously acknowledged and accepted the problems associated with applying fuel adjustment charges to only a portion of each customer's consumption in Case No. 08-00229-UT, which involved PNM's Sky Blue premium, and the Commission determined the correct methodology to be used by PNM to account for this renewable energy. Moreover, PNM's method of calculating its FPPCAC was not challenged or found to be violative of any regulatory principle and was ultimately approved by the Commission in PNM's fuel clause continuation filing in Case No 13-00187-UT. *See also* February 24, 2016 Supplemental Testimony of Gerard Ortiz at 2 and 6.

In light of this regulatory history, the Commission's apparent predetermination at page 3 of the Extension Order that "PNM's current method of calculating its FPPCAC does not serve 'the goal of providing reasonable an proper service at fair, just and reasonable rates to **all customer classes**' which would be cause for the Commission to eliminate PNM's FPPCAC" (emphasis in original) is contrary to long-standing Commission precedent and its implementation would be contrary to law. *See Hobbs Gas v. New Mexico Pub. Serv. Comm'n*, 1993-NMSC-032, ¶¶ 5, 12, 13, 115 N.M. 678, 858 P.2d 54. In the *Hobbs Gas* case, the New Mexico Supreme Court determined that the Commission had "tacitly" approved the methodology used by Hobbs Gas for its purchased gas adjustment clause and the NMPSC could not change its position without good cause and prior notice.

In its Extension Order, the Commission acknowledges that “[t]he potential base fuel cost issues came to the Commission’s attention in PNM’s recent renewable energy plan case, Case No. 15-00166-UT, filed June 1, 2015, which considered whether PNM’s Exempt and Large Capped Customers received a so-called ‘disproportionate avoided fuel benefit’ (DAFB).” Extension Order at 2. The Hearing Examiner in that case issued her *Recommended Decision* (“RD”) on October 20, 2015, and noted that PNM confirmed that “while the amount that Large Capped Customers pay for RPS compliance is capped, the fuel savings benefit they receive is not capped *because the fuel savings associated with RPS procurements flow through PNM’s FPPCAC.*” 2016 Plan Case RD at 39 (emphasis added). In its *Final Order* issued on November 18, 2015 (“November 18, 2015 Order”), the Commission initially adopted the RD which included a mechanism to address the DAFB. However, on December 23, 2015, following the filing of a motion for rehearing, the Commission granted the motion and vacated the November 18, 2015 Order. *Order Setting Procedural Schedule and Granting New Mexico Industrial Energy Consumers’ and Albuquerque Bernalillo County Water Utility Authority’s Motion for Rehearing.*

In its February 3, 2016 Order, the Commission ultimately rejected the concept of the DAFB as an avoided cost that should be accounted for. February 3, 2016 Order at 8. The Commission found that “opening a separate docket to gather information and consider potential adjustments to PNM’s FPPCAC is the most promising way to proceed with regard to these issues.” *Id.* at 10, and on the same date docketed Case No. 16-00016-UT and issued an *Order to Show Cause* (“OSC”) requiring PNM to address specific questions concerning its FPPCAC and Renewable Rider, among other things, within ninety days. OSC at 6-7. The Commission also

found that PNM should be required to address whether it is including renewable energy sales units in its FPPCAC in this case, and PNM has done so. *Id.* at 4.

The issue of the recovery of renewable energy costs through the FPPCAC came under extensive Commission review many months back in the 2016 Plan Case. The Commission appropriately established the OSC case to address these issues. PNM and the other parties to this proceeding were not alerted until thirty days ago that the Commission intended to address any issues related to PNM's 2016 Plan Case in the context of the present rate case. It was only twenty-one days ago that the Commission sought information from PNM concerning these issues. It was only yesterday, less than two weeks before the hearing on PNM's Application was scheduled to commence, that the Commission determined that these issues required that the hearing be vacated so that the Commission can pursue further information from PNM on these issues rather than the OSC docket. The Commission need not disrupt this case, however, to fully investigate the issues present in the OSC case. Regardless, the Commission's requirement that these discrete issues be more fully developed in this case, at this late stage of the proceedings, should be accomplished in a manner that minimizes the impact on the schedule and on parties' resources in preparing for hearing, and allows the hearing to commence on March 14, 2016.

III. POSITIONS OF THE PARTIES ON MOTION

PNM has inquired of Staff and the intervenors in this case with respect to their respective positions on the relief sought in this motion to retain the current hearing schedule and allow other parties to present live testimony at hearing on the issues outlined in the March 2 Order. The following parties have provided these positions:

- New Mexico Industrial Energy Consumers supports this motion.
- Citizens for Fair Rates and the Environment states, "In citing PNM's statement that "This

is a large and complicated case,' Citizens for Fair Rates and the Environment opposes this motion, and thinks the case deserves the time needed to thoroughly explore the issues.”

- Coalition for Clean Affordable Energy is not opposed to PNM’s request to maintain the existing hearing schedule and to accommodate necessary changes to consider the issues identified by the Commission.
- Commission Staff opposes the motion and states, “The Extension Order issued by the Commission on March 2, 2016 requires significant additional matters to be considered, therefore the additional time is necessary for adequate analysis by Staff and other experts and to develop a clear record for the Commission
- Western Resource Advocates supports preserving the existing hearing dates and schedule, with reasonable adjustments along the lines identified by PNM to accommodate the added fuel issues.
- Bernalillo County, City of Albuquerque, New Energy Economy oppose this motion.

IV. CONCLUSION

There are less prejudicial and disruptive means for the Commission to elicit the information sought under the Extension Order than the extension of the suspension period and the delay of the commencement of the hearing in this case. The hearing in this case can proceed as originally scheduled with the early filing of PNM’s Additional Supplemental Testimony and the presentation of live responsive evidence on the narrow issues identified in the Extension Order. Alternatively, this case may proceed on the merits with the issues identified in the Extension Order to be severed and considered in a separate docket. The delay occasioned by the Extension Order is likely to be lengthy due to the number of parties, counsel and witnesses and

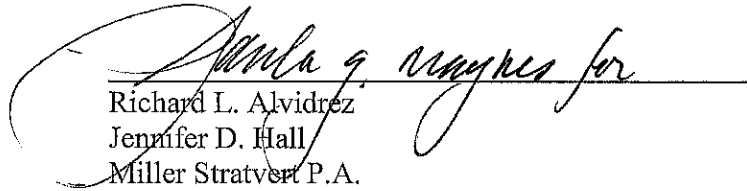
the conflicts presented by the SPS rate case. A delay in the March 14, 2016, hearing will unduly prejudice PNM and the other parties with respect to witness availability and rate case costs. PNM will be further prejudiced by being deprived of timely rate recovery of its investments and operating costs. PNM further requests that the five day response time under 1.2.2.37(F)(2) NMAC be shortened so that any responses to this Motion are to be filed no later than March 7, 2016.

Dated: March 3, 2016.

Respectfully submitted,

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