

**LEWIS ROCA  
ROTHGERBER**

Lewis Roca Rothgerber LLP  
201 Third Street NW, Suite 1950  
P. O. Box 1027  
Albuquerque, NM 87103-1027

**Jeffrey H. Albright**  
**Partner**  
Admitted in: New Mexico  
Direct Dial: 505.764.5435 | Fax: 505.764.5462  
JAlbright@LRRLaw.com

Our File Number: 144281-00029

**HAND-DELIVERY**

April 20, 2015

Ms. Melanie Sandoval  
Records Management Bureau  
NM Public Regulation Commission  
P. O. Box 1269  
Santa Fe, NM 87504

Re: *In the Matter of the Application of the Public Service Company of New Mexico for Approval to Abandon San Juan Generation Station Units 2 and 3 Issuance of Certificates of Public Convenience and Necessity for Replacement Power Resources, Issuance of Accounting Order and Determination of Related Rate Making Principles and Treatment.*  
Case No. 13-00390-UT

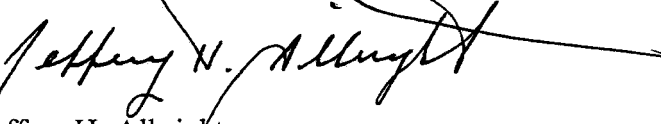
Dear Melanie:

Enclosed are the original and six (6) copies of the City of Santa Fe, County of Santa Fe and Bernalillo County's Limited Exceptions to Recommended Decision Regarding Stipulation with a Certificate of Service in the above-referenced matter. Please return one endorsed stamped copy of the filing with our courier.

Thank you for your assistance.

Very truly yours,

LEWIS ROCA ROTHGERBER LLP

  
Jeffrey H. Albright

JHA:age

Encl.:

cc: All names on service list

5515627\_1

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF NEW )  
MEXICO FOR APPROVAL TO ABANDON )  
SAN JUAN GENERATING STATION UNITS )  
2 AND 3, ISSUANCE OF CERTIFICATES OF )  
PUBLIC CONVENIENCE AND NECESSITY )  
FOR REPLACEMENT POWER RESOURCES, )  
ISSUANCE OF ACCOUNTING ORDERS AND )  
DETERMINATION OF RELATED RATE- )  
MAKING PRINCIPLES AND TREATMENT, )  
 )  
PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, )  
 )  
Applicant. )  
\_\_\_\_\_ )

Case No. 13-00390-UT

**CITY OF SANTA FE, COUNTY OF SANTA FE  
AND BERNALILLO COUNTY LIMITED EXCEPTION  
TO CERTIFICATION OF STIPULATION OF APRIL 8, 2015**

Presented By

LEWIS ROCA ROTHGERBER LLP  
Jeffrey H. Albright  
201 Third Street NW, Suite 1950  
Albuquerque, New Mexico 87102  
(505)-764-5435 (Direct)  
(505)-764-5468 (Direct Facsimile)  
E-mail: [JAlbright@LRRLaw.com](mailto:JAlbright@LRRLaw.com)  
*Attorneys for City of Santa Fe, County of Santa Fe  
And Bernalillo County*

April 20, 2015

The County of Santa Fe, the City of Santa Fe (“City) and Bernalillo County (collectively City/Counties) support the Hearing Examiner’s well-reasoned determination and thorough analysis that the Stipulation, as proposed, does not provide net benefits to the public and should not be approved.<sup>1</sup> The City/Counties also reaffirm their support for the abandonment of San Juan Generating Stations (“SJGS”) Units 2 and 3.<sup>2</sup>

The City/Counties take exception to the Hearing Examiner’s recommendation that PNM be allowed to recover one-half of PNM’s undepreciated investment in San Juan Units 2 and 3 as proposed in the Stipulation and in the proposed amendments to the Stipulation. The Hearing Examiner cites to Case No. 2146 Pt. 11 as the basis for the Commission allowing recovery in rate base for plant that was not used and useful. Quoting from the Certification of Stipulation, the Hearing Examiner states that the “used and useful status of a plant is not the only factor to be used when evaluating whether the plant should be included in rate base:

Our case law confirms that the “used and useful” concept is but one factor among many to be considered by the Commission in its rate base analysis. We have consistently construed the statute broadly rather than to limit the Commission to any one particular method; the touchstone is the reasonableness of the ultimate decision.

*New Mexico Industrial Energy Consumers v. New Mexico Public Service Commission*, 1986-NMSAC-059, ¶ 29, 104 N.M. 565, 569-570.

The Hearing Examiner in this proceeding then goes on to cite to the decision this Commission made in Case No. 2146 Pt. II where the Commission determined that the proper balancing of interests required *some amount of excess capacity* to be included in rate base. *Re Public Service Company of New Mexico*, Case No. 2146, Pt. II, 101 P.U.R. 4<sup>th</sup> 126, 176, 179 (1989).

---

<sup>1</sup> Cert of Stipulation, p. 146, para 6.

<sup>2</sup> City/Counties Response Brief of February 27, 2015, p. 1.

The situation in Case No. 2146 was not analogous to this proceeding. While it is true that the Commission determined in that case that a partial recovery of the costs of *excess capacity* was justified, even though the capacity was not used and useful, that situation is not analogous to this proceeding. In that case, the costs were associated with both present and future potential use. Here, there is *no future use* - none. The plants are being abandoned prior to the end of their useful life. As stated in the City/Counties Response Brief and referred to by the Hearing Examiner, PNM ratepayers throughout the entire state receive zero benefit (now or in the future) – not a single kw of electricity – from those two plants for the remainder of their original used or useful life at a cost of approximately \$15,753 per day for 20 years (per PNM witness Darnell).<sup>3</sup>

Even if the Commission were to acknowledge that an apportionment of some value of the stranded costs of the plants should be allocated between the ratepayers and PNM for the undepreciated net book value of the plants, the Hearing Examiner omits the fact that investors have been compensated in previous rate cases for that risk. PNM's argument that the risk premium does not include the risk of some plant becoming uneconomic or obsolete does not match SEC reports that PNM and other companies have filed at the SEC. There is clear language in the PNM SEC Form 10-K Annual Report (with similar language in other SEC 10-Q reports filed by other companies) that includes the discussion of risk due to potential early retirement or obsolescence.<sup>4</sup> PNM investors have been compensated for assuming part of that risk. A 50-50 split of the stranded costs merely shifts part of the risk from shareholders to ratepayers, while ratepayers continue to get their return on investment and ratepayers throughout all of PNM's service area, in all rate classes, get nothing. A 25-75 apportionment between ratepayers and shareholders would be more appropriate.

---

<sup>3</sup> 1/7/15 TR at 475 (Darnell)

<sup>4</sup> See SWG Exhibits 1, 2 and 3 (Risk Factors).

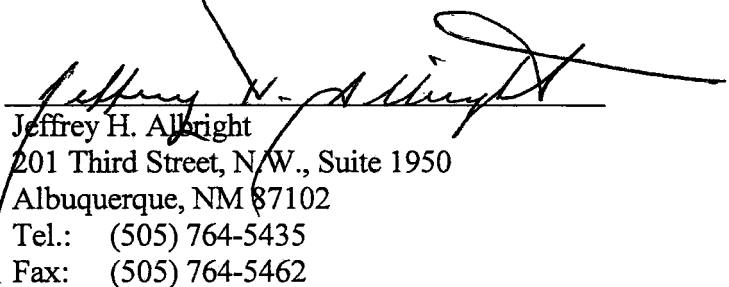
With this one exception, the City/Counties encourage the Commission to adopt the Hearing Examiner's Certification of Stipulation, even with the alternative recommendations, but take no position on the IRP or what the appropriate mix of alternative generation should be and will leave those arguments to other opponents to the Stipulation.

Dated: April 20, 2015

Respectfully Submitted,

LEWIS ROCA ROTHGERBER LLP

By

  
Jeffrey H. Albright

201 Third Street, N.W., Suite 1950  
Albuquerque, NM 87102

Tel.: (505) 764-5435

Fax: (505) 764-5462

Email: [JAlbright@LRRLaw.com](mailto:JAlbright@LRRLaw.com)

*Attorneys for Bernalillo County,  
County of Santa Fe and City of Santa Fe*

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF THE APPLICATION OF )  
PUBLIC SERVICE COMPANY OF NEW )  
MEXICO FOR APPROVAL TO ABANDON )  
SAN JUAN GENERATION STATION UNITS 2 )  
AND 3, ISSUANCE OF CERTIFICATES OF )  
PUBLIC CONVENIENCE AND NECESSITY FOR )  
REPLACEMENT POWER RESOURCES, )  
ISSUANCE OF ACCOUNTING ORDERS AND )  
DETERMINATION OF RELATED )  
RATEMAKING PRINCIPLES )  
AND TREATMENT )  
)  
PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, )  
)  
Applicant )  
\_\_\_\_\_ )

Case No. 13-00390-UT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of City Of Santa Fe, County Of Santa Fe and Bernalillo County's Limited Exceptions to Recommended Decision Regarding Stipulation, was served via Hand Delivery, and/or e-mail on this 20<sup>th</sup> day of April, 2015 to the following parties listed below:

**Via Hand Delivery:**

Elisha Leyba-Tercero  
NMPRC- Utilities Division  
1120 Paseo de Peralta  
Santa Fe, NM 87501

Michael C. Smith, Esq.  
NMPRC- General Counsel  
1120 Paseo de Peralta  
Santa Fe, NM 87501

Dwight Lamberson  
NMPRC- Utilities Division  
1120 Paseo de Peralta  
Santa Fe, NM 87501

Benjamin Phillips  
Bradford Borman  
Mark Fenton  
Steven Michel  
Bruce T. Throne  
Erin Overturf  
Charles Kolberg  
Thomas Wander  
Charles Noble  
David Van Winkle  
Noah Long  
Camilla Feibelman  
Din Hancock  
Megan Anderson  
Mariel Nanasi

[Ben.Phillips@pnmresources.com](mailto:Ben.Phillips@pnmresources.com)  
[Bradford.Borman@pnmresources.com](mailto:Bradford.Borman@pnmresources.com)  
[Mark.fenton@pnmresources.com](mailto:Mark.fenton@pnmresources.com)  
[smichel@westernresources.org](mailto:smichel@westernresources.org)  
[bthroneatty@newmexico.com](mailto:bthroneatty@newmexico.com)  
[erin.overturf@westernresources.org](mailto:erin.overturf@westernresources.org)  
[Ckolberg@abcwua.org](mailto:Ckolberg@abcwua.org)  
[Thomas.wanter@pnmresources.com](mailto:Thomas.wanter@pnmresources.com)  
[Noble.ccae@gmail.com](mailto:Noble.ccae@gmail.com)  
[david@vw77.com](mailto:david@vw77.com)  
[nlong@nrhc.org](mailto:nlong@nrhc.org)  
[Camilla.feibelman@sierraclub.org](mailto:Camilla.feibelman@sierraclub.org)  
[sricdon@westernlaw.com](mailto:sricdon@westernlaw.com)  
[Anderson@westernlaw.org](mailto:Anderson@westernlaw.org)  
[mariel@seedsbeneaththesnow.com](mailto:mariel@seedsbeneaththesnow.com)

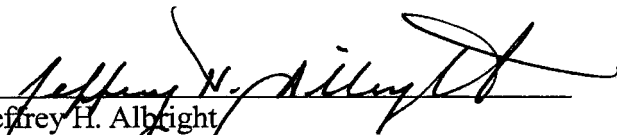
Cholla Khoury  
James R. Dittmer  
Peter Gould  
Nann Winter  
Marcos Martinez  
Nick Schiavo  
Patrick Ortiz  
Tom Singer  
Joseph A. Herz  
Glenda Murphy  
Loretta Martinez  
Dahl Harris  
Andrea Crane  
Michael Dirmeier  
Vincent DeCesare

[ckhoury@nmag.gov](mailto:ckhoury@nmag.gov)  
[jdittmer@utilitech.net](mailto:jdittmer@utilitech.net)  
[pgouldlaw@gmail.com](mailto:pgouldlaw@gmail.com)  
[nwinter@stelznerlaw.com](mailto:nwinter@stelznerlaw.com)  
[mdmartinez@santafenm.gov](mailto:mdmartinez@santafenm.gov)  
[naschiavo@santafenm.gov](mailto:naschiavo@santafenm.gov)  
[Portiz@cuddymccarthy.com](mailto:Portiz@cuddymccarthy.com)  
[singer@westernlaw.org](mailto:singer@westernlaw.org)  
[jaherz@sawvel.com](mailto:jaherz@sawvel.com)  
[gmurphy@westernresources.org](mailto:gmurphy@westernresources.org)  
[lmartinez@nmag.gov](mailto:lmartinez@nmag.gov)  
[mdirmeie@gmail.com](mailto:mdirmeie@gmail.com)  
[ctcolumbia@aol.com](mailto:ctcolumbia@aol.com)  
[mdirmeie@gmail.com](mailto:mdirmeie@gmail.com)  
[Vicent.deceaare@state.nm.us](mailto:Vicent.deceaare@state.nm.us)

Lisa Thormoen	<a href="mailto:lisahickey@coloradolawyer.com">lisahickey@coloradolawyer.com</a>	Charles Gunter	<a href="mailto:Charles.gunter@state.nm.us">Charles.gunter@state.nm.us</a>
Kickey			
Sarah Cottrell Propst	<a href="mailto:propst@interwest.org">propst@interwest.org</a>	Jocelyn Torres	<a href="mailto:Jocelyn.torres@state.nm.us">Jocelyn.torres@state.nm.us</a>
John W. Boyd	<a href="mailto:jwb@fbdlaw.com">jwb@fbdlaw.com</a>	Cydney Beadles	<a href="mailto:Cydney.beadles@state.nm.us">Cydney.beadles@state.nm.us</a>
Josh Ewing	<a href="mailto:je@fbdlaw.com">je@fbdlaw.com</a>	Louis Rose	<a href="mailto:lrose@montand.com">lrose@montand.com</a>
Nancy Burns	<a href="mailto:Nancy.burns@state.nm.us">Nancy.burns@state.nm.us</a>	John M. Stomp III	<a href="mailto:jstomp@abcwua.org">jstomp@abcwua.org</a>
Dwight Lamberson	<a href="mailto:Dwight.lamberson@state.nm.us">Dwight.lamberson@state.nm.us</a>	Donald	<a href="mailto:degruen@sawvel.com">degruen@sawvel.com</a>
		Gruenemeyer	
Anthony Sisneros	<a href="mailto:Anthony.sisneros@state.nm.us">Anthony.sisneros@state.nm.us</a>	Laura Sanchez	<a href="mailto:Larua.e.sanches@comcast.net">Larua.e.sanches@comcast.net</a>
Jack Sidler	<a href="mailto:Jack.sidler@state.nm.us">Jack.sidler@state.nm.us</a>	Randy S. Bartell	<a href="mailto:rbartell@montand.com">rbartell@montand.com</a>
Rob Witwer	<a href="mailto:witwerr@southwestgen.com">witwerr@southwestgen.com</a>	Steve Gross	<a href="mailto:gross@portesimon.com">gross@portesimon.com</a>
David Rhodes	<a href="mailto:Rhodes@southwestgen.com">Rhodes@southwestgen.com</a>	Martin R. Hopper	<a href="mailto:mhopper@msrpwoer.org">mhopper@msrpwoer.org</a>
Daniel Dolan	<a href="mailto:dan@lobo.net">dan@lobo.net</a>	Maurice Brubaker	<a href="mailto:mbrubaker@consultbai.com">mbrubaker@consultbai.com</a>
Rachel Brown	<a href="mailto:rbrown@santafecounty.gov">rbrown@santafecounty.gov</a>	Jim Dauphinais	<a href="mailto:jdauphinais@consultbai.com">jdauphinais@consultbai.com</a>
Michael I. Garcia	<a href="mailto:mikgarica@gernco.gov">mikgarica@gernco.gov</a>	Daniel Dolan	<a href="mailto:dan@lobo.net">dan@lobo.net</a>
Susan Kery	<a href="mailto:sck@sheehansheehan.com">sck@sheehansheehan.com</a>	Adam Baker	<a href="mailto:abaker@bakerlawoffice.net">abaker@bakerlawoffice.net</a>
Robb Hirsch	<a href="mailto:rhisrsh@edlconsulting.us">rhisrsh@edlconsulting.us</a>	REIA of NM	<a href="mailto:praction@reia-nm.org">praction@reia-nm.org</a>
Benjamin Phillips	<a href="mailto:Ben.Phillips@pnmresources.com">Ben.Phillips@pnmresources.com</a>	Adam Baker	<a href="mailto:abaker@bakerlawoffice.net">abaker@bakerlawoffice.net</a>
Bradford Borman	<a href="mailto:Bradford.Borman@pnmresources.com">Bradford.Borman@pnmresources.com</a>	Rachel Brown	<a href="mailto:rbrown@santafecounty.gov">rbrown@santafecounty.gov</a>
Mark Fenton	<a href="mailto:Mark.fenton@pnmresources.com">Mark.fenton@pnmresources.com</a>	Michael I. Garcia	<a href="mailto:mikgarica@gernco.gov">mikgarica@gernco.gov</a>
Steven Michel	<a href="mailto:smichel@westernresources.org">smichel@westernresources.org</a>	Susan Kery	<a href="mailto:sck@sheehansheehan.com">sck@sheehansheehan.com</a>
Bruce T. Throne	<a href="mailto:bthroneatty@newmexico.com">bthroneatty@newmexico.com</a>	Lisa Thormoen	<a href="mailto:lisahickey@coloradolawyer.com">lisahickey@coloradolawyer.com</a>
		Kickey	
Erin Overturf	<a href="mailto:erin.overturf@westernresources.org">erin.overturf@westernresources.org</a>	Sarah Cottrell Propst	<a href="mailto:propst@interwest.org">propst@interwest.org</a>
Charles Kolberg	<a href="mailto:Ckolberg@abcwua.org">Ckolberg@abcwua.org</a>	John W. Boyd	<a href="mailto:jwb@fbdlaw.com">jwb@fbdlaw.com</a>
Thomas Wander	<a href="mailto:Thomas.wanter@pnmresources.com">Thomas.wanter@pnmresources.com</a>	Josh Ewing	<a href="mailto:je@fbdlaw.com">je@fbdlaw.com</a>
Charles Noble	<a href="mailto:noble@energyenvironmentlaw.com">noble@energyenvironmentlaw.com</a>	Nancy Burns	<a href="mailto:Nancy.burns@state.nm.us">Nancy.burns@state.nm.us</a>
David Van Winkle	<a href="mailto:david@vw77.com">david@vw77.com</a>	Dwight Lamberson	<a href="mailto:Dwight.lamberson@state.nm.us">Dwight.lamberson@state.nm.us</a>
Noah Long	<a href="mailto:nlong@nrdc.org">nlong@nrdc.org</a>	Robb Hirsch	<a href="mailto:rhisrsh@edlconsulting.us">rhisrsh@edlconsulting.us</a>
Camilla Feibelman	<a href="mailto:Camilla.feibelman@sierraclub.org">Camilla.feibelman@sierraclub.org</a>	Jack Sidler	<a href="mailto:Jack.sidler@state.nm.us">Jack.sidler@state.nm.us</a>
Din Hancock	<a href="mailto:sricdon@westernlaw.com">sricdon@westernlaw.com</a>	Rob Witwer	<a href="mailto:witwerr@southwestgen.com">witwerr@southwestgen.com</a>
Megan Anderson	<a href="mailto:Anderson@westernlaw.org">Anderson@westernlaw.org</a>	David Rhodes	<a href="mailto:Rhodes@southwestgen.com">Rhodes@southwestgen.com</a>
Mariel Nanasi	<a href="mailto:mariel@seedsbeneaththesnow.com">mariel@seedsbeneaththesnow.com</a>		

Respectfully Submitted,

LEWIS ROCA ROTHGERBER LLP

By   
Jeffrey H. Albright  
201 Third Street, N.W., Suite 1950  
Albuquerque, NM 87102  
Tel.: (505) 764-5435  
Fax: (505) 764-5462  
Email: [jalbright@lrrlaw.com](mailto:jalbright@lrrlaw.com)  
*Attorneys for Bernalillo County,  
County of Santa Fe and City of Santa Fe*