

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

**COALITION FOR CLEAN AFFORDABLE ENERGY'S
EXCEPTIONS TO CERTIFICATION OF CONTESTED STIPULATION**

The Coalition for Clean Affordable Energy (“CCAЕ”) hereby submits these Exceptions to the Certification of Stipulation in this proceeding, pursuant to 1.2.2.20.B(5)(b) NMAC.

Summary of Exceptions

CCAЕ believes that the Certification of Stipulation in this matter is well reasoned, logical and strongly supported by a preponderance of the evidence produced in the case. In particular, the Hearing Examiner implicitly and explicitly recognized that resource acquisitions that benefit PNM’s shareholders are not necessarily the most beneficial for ratepayers, given the risks and costs involved, and the Commission has an obligation to balance the interests of ratepayers and the public interest as well as the utilities’ investors.¹ NMSA 1978 §62-3-1 (2008). While the Stipulation no doubt benefits PNM’s shareholders, it subjects ratepayers to unnecessary costs

¹ Certification of Stipulation, p. 90-91.

and risks of future costs and reliability problems. Other alternatives are available that will provide greater reliability with equivalent or less cost, as the Hearing Examiner recognized. Certification, p. 123.

Though it agrees with the recommended outcome,² CCAE believes that the Certification 1) incorrectly found that PNM performed an adequate alternatives analysis,³ and 2) needs clarification on the burden of proof applicable to a case where PNM is seeking recovery of an extraordinary cost, such as the Balanced Draft cost.⁴

Finally, CCAE urges the Commission to act expeditiously. As the City of Farmington stated, the protracted nature of the negotiations for coal resources and a plant partnership agreement was harming the City's ability to develop alternate sources of generation capacity to replace the existing capacity. Olson Supp. (Jan. 14, 2015), PNM Ex. CMO-1 Supp (January 7, 2015 Letter from Michael R. Sims, Electric Utility Director, City of Farmington to San Juan owners). Delay will harm PNM's ability to develop alternative resources as well. In September of 2014, PNM stated that it could develop alternative resource plans (assuming its filed plan was not approved) if a Commission decision was made by April 15, 2015.⁵ Therefore, time is of the essence, and any delay may reduce the number of cost-effective and feasible options available to the company for replacement capacity needed in 2018.

Exceptions

A. PNM's Analysis of Alternative Resource Plans Was Inadequate.

² CCAE agrees that a CCN for adding 132 MW of additional capacity from San Juan should not be granted.

³ Certification, p. 114 - 115.

⁴ Certification, p. 138 - 139.

⁵ The Certification references this PNM statement on p. 10 of the Certification, but has a typo indicating the date of the statement as September 16, 2016.

In its Application in this case, and in its testimony in support of the Stipulation, PNM analyzed various alternatives to develop the best resource mix to replace the lost capacity from San Juan units 2 & 3, and used Strategist® to determine the costs of the various alternatives over the next 20 years. In its initial filing, PNM analyzed the costs of 4 different alternatives – but though it was requesting a CCN for 78 MW of additional capacity from San Juan unit 4, it did not analyze any alternatives that did *not* include adding more capacity from San Juan 4.⁶ PNM Ex. 28, PJO-3. PNM later decided, when no one else would do so, that it would acquire another 54MW of San Juan 4 rather than the initial 78MW it proposed (132 MW total). PNM analyzed the cost difference between adding 78 MW and 132 MW, but still did not analyze the cost of not adding any capacity from San Juan 4. PNM Ex. 30, O’Connell May 22 Supp, PJO-1. Only after being ordered to update its modeling by the Hearing Examiner did PNM analyze an alternative that did not include additional capacity from San Juan 4. PNM Ex. 31, PJO-2 July 1 Supp. However, this updated modeling had not been updated for new load forecasts. When PNM updated for the new load forecasts, on July 15, it again did not include a scenario showing the cost of not including additional capacity at San Juan 4. PNM Ex. 32, O’Connell July 15 Supp, p. 2-3. This is important, because the load forecast change resulted in the cost of PNM’s proposed resource mix increasing by \$222 million (NPV) since the original filing in the case. NEE Ex. 67, Van Winkle Direct, p. 5. Thus when the Stipulation was filed, on October 1, parties were unaware of any updated modeling results that did not include additional San Juan 4 capacity, and were unable to compare the cost of adding versus not adding the additional capacity from San Juan. On November 25, Dr. Fisher, on behalf of NEE, filed testimony noting that PNM had used incorrect coal price forecasts in its modeling. NEE Ex. 43, Fisher Direct in Opposition.

⁶ Each alternative included adding an additional 78MW from SJ-4, except for a 4-unit shut down alternative.

Correcting this error had the effect of increasing the costs of PNM's scenario of adding 132MW from San Juan 4 by another \$334 million. Fisher Dec. 29 Surrebuttal, p. 3. PNM admitted this error. PNM Ex. 34, Rebuttal in Support, p. 11. However, PNM again did not provide updated scenario comparisons showing the cost of not adding an additional 132MW from San Juan 4 versus adding the capacity. It was left to other parties to find out through discovery that the net present value of NOT adding 132 MW of SJGS Unit 4 to the replacement portfolio was \$47 million less than the portfolio including the San Juan capacity, based on the Strategist results. NEE Ex. 9, p. 15 of 34. However, this information wasn't known until long after the Stipulation had been signed.

This Commission set forth its policy and standard for the demonstration of "need" required for the granting of a Certificates of Public Convenience and Necessity in Case No. 2382. In that case, PNM applied for a CCN to construct a transmission line, known as the OLE transmission line, across the Jemez Mountains. In that case, the Commission explicitly rejected the argument that a utility must only demonstrate that there is a need for the project and that the proposed project meets that need. Recommended Decision, p. 48, approved by Final Order dated Nov. 20, 1995. Instead, the Commission determined that **"[i]t would not be in the public interest for the Commission to grant a CCN for a proposed project which might meet needs but is the worst among a range of alternatives. Such determinations cannot be made in a vacuum."** *Id.* p. 49 (emphasis added). The Commission denied PNM's request for the CCN in that case because PNM's alternatives analysis was not sufficiently reliable to determine that its proposed alternative was in fact the best alternative. *Id.*, p. 98. The Commission's Integrated Resource Plan rule is consistent with this, and requires the utility to submit its determination of the most cost-effective resource portfolio and alternate portfolios. 17.3.3.9.B(7) NMAC.

The Certification states, “The opponents are correct that the analysis performed for a CCN should show the proposed project’s cost effectiveness in comparison to other feasible alternatives.” Certification, p. 114. However, the Certification fails to discuss the inadequate and flawed alternatives analysis presented by PNM and instead focuses only on the issue of whether PNM should have included the cost benefits from the stipulation in its alternatives analysis. It concludes that PNM properly included the Stipulation benefits in its analysis. But there is no discussion regarding the more important issue: whether PNM presented an adequate analysis of alternatives, when it failed to present a cost analysis of an alternative that did not include adding 132 MW of capacity from San Juan 4 for which it is seeking a CCN? Though PNM updated and corrected other alternatives, PNM did not present an updated alternatives analysis showing the cost of not adding the 132 MW for which the CCN was being requested. Despite this, the evidence regarding the cost of such an alternative came out, and the Certification correctly states, “Based on the evidence in the record, however, the hearing Examiner cannot find that the combination of resources proposed for CCN’s in the Stipulation is the most cost-effective. The alternatives analysis shows that the 134 MW of Palo Verde Unit 3 is the most cost-effective resource of the alternatives modeled. *The evidence, however, is insufficient to determine that the additional 132 MW of San Juan Unit 4 is similarly cost-effective. As discussed above, the costs associated with the acquisition of the additional 132 MW of capacity in San Juan 4 are not clear.*” Certification, p. 116 (emphasis added).

PNM did not meet its obligation to present an adequate alternatives analysis from the beginning. Though PNM was requesting a CCN for additional San Juan capacity, it did not present an analysis of the cost of an alternative that didn’t include that capacity.⁷ It only

⁷ PNM has never claimed that there are not feasible alternatives to adding the 132 MW of San Juan capacity.

presented such an analysis when ordered to do so, and didn't update the information when corrections and mistakes were found. When the evidence finally came out, through the efforts of others, it showed that PNM's proposal to add the capacity from San Juan may not be the most cost-effective. Indeed, the Certification finds, "PNM's Strategist results show that the net present value for the portfolio that includes Palo Verde Unit 3 and no additional capacity in San Juan Unit 4 is \$47 million less (\$7,609 million) than the Stipulation portfolio that includes Palo Verde Unit 3 and the additional 132 MW of capacity in San Juan Unit 4 (\$7,656 million). NEE Ex. 9, p. 15." Certification, p. 54 (footnote omitted).

CCAIE urges the Commission to make clear that when seeking a CCN, a utility must present an adequate alternatives analysis, and should update those analyses as conditions change or mistakes are found. It should also find that the evidence demonstrates that PNM did not do so in this case. The record in this case is clear that while PNM made the updates internally, it did not present them to the Commission or other parties for their consideration. CCAIE thus requests the following finding and conclusion: "PNM failed to provide an adequate analysis of alternatives to its request for the CCN for 132 MW of San Juan Unit 4."

B. PNM has the Burden of Proof to Affirmatively Demonstrate that Any Extraordinary Costs are Reasonable and Prudent.

PNM is, or is planning on, putting equipment on the remaining San Juan units called a Balanced Draft, which was included in cost estimates of SNCR.⁸ The Stipulation contained language stating that PNM would have the burden of proof to affirmatively support costs in excess of \$90.6 million for the SNCR in a rate case. Stipulation, ¶ 28. The cost of the Balanced Draft equipment is estimated to total \$104.2 million, plus a share of the "project costs" which

⁸ Selective Non-Catalytic Reduction equipment.

total to \$9.3 million. Olson Direct, CMO-3. The cost of the SNCR equipment is \$36.2 million total, plus a share of the project costs. *Id.* PNM’s share of the costs will be 58.7% if PNM pays its share according to the tentative ownership shares (assuming the CCN for 132 MW is granted, but not including the 65 MW additional). The Stipulation, ¶ 28 appears to require PNM to make an affirmative demonstration of the reasonableness and prudence of costs only to the extent the total project costs to PNM exceed \$90.6 million.

The Certification addresses the general presumption of reasonableness for PNM’s expenditures in rate cases, including balanced draft expenditures, and would require PNM to make an affirmative demonstration of the reasonableness and prudence of the Balanced Draft costs. In doing so, the Certification states, “As discussed earlier, utility expenditures are generally presumed reasonable in a rate case until a challenging party presents evidence creating a serious doubt about their reasonableness. After creation of the doubt, the utility then bears the burden of providing their reasonableness.” Certification, p. 138. This statement needs correction to assure that the law on this subject is consistent with Commission precedent and not misstated.⁹ This Commission has previously addressed the issue of the burden of proof regarding recovery of costs in rate cases.

Burden of Proof. GCNM and Southern Union agree that they have the burden of proving their rate request is just and reasonable and that the underlying expense items were prudently incurred. Be that as it may, GCNM and Southern Union assert that GCNM’s Application and the testimony filed in this case by both GCNM and Southern Union make a *prima facie* showing of GCNM’s right to recover the costs at issue. See GCNM Brief, p.6; Southern Union Brief, pp.14, 17. According to GCNM and Southern Union, they only have to show that Southern Union incurred the costs in providing utility service, and that no further proof of the reasonableness or prudence of these particular expenses is required until challenged by Staff and intervenors. See GCNM Brief, p.6; Southern Union Brief, p.14. These arguments rely on a presumption of reasonableness. See GCNM Brief, pp.6, 8-9; Southern Union Brief, pp.16-17. GCNM and Southern

⁹ CCAE was unaware that the Commission had previously addressed the burden of proof issue, and to the extent that it failed to set forth the correct standard in previous briefing, it apologizes.

Union are wrong. There is no legal "presumption" of the reasonableness of costs subject to this proceeding. There may be a presumption of reasonableness of normal and usual expenses in a general rate case which can have literally hundreds of expense items. This is justified because of the otherwise burdensome and probably impossible process of requiring a utility to initially justify every expenditure which is the basis of its request for general rate relief. See Re public Serv. Co., 50 P.U.R. 4th 416, 427. Yet, in a general rate case the utility still has the burden to establish that the end result rates are just and reasonable.

NMPSC Case No. 2361, Recommended Decision, p. 35, approved by Final Order dated February 6, 1992.

The Balanced Draft equipment is not a "normal and usual" expense. Thus, CCAE requests the Commission to make clear the applicable law is that while there may be a general presumption of reasonableness for normal and usual expenses, there is no presumption of reasonableness for costs that are not "normal and usual." In addition, the language requiring a "serious doubt" to be created to overcome a presumption of reasonableness as stated in the Certification apparently has no precedent in New Mexico, and need not be included. CCAE agrees with the conclusion of the Hearing Examiner that PNM should be required to make an affirmative demonstration regarding the entire Balanced Draft cost, and agrees with the language modification proposed by the Certification regarding ¶28. Certification, p. 140.

Conclusion

CCAЕ supports the rejection of the Stipulation, and supports a denial of a CCN for 132 MW of San Juan 4, for the reasons set forth in the Certification and for the reasons set forth in these exceptions. CCAЕ takes exception to the Certification to the extent that CCAЕ requests the Commission to make clear that PNM failed to provide an adequate resource alternatives analysis. In addition, CCAЕ requests the Commission to clarify that it maintains its precedent on

burden of proof for cost recovery of expenses established in Case No. 2361. Finally, CCAE supports the exceptions being filed by Western Resource Advocates in this docket.

Respectfully submitted,

COALITION FOR CLEAN AFFORDABLE ENERGY

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