

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 RATEMAKING)
PRINCIPLES AND TREATMENT)
)
PUBLIC SERVICE COMPANY OF NEW MEXICO)
)
Applicant)
_____)

Case No. 13-00390-UT

NEW MEXICO
PUBLIC REGULATION
COMMISSION
FILED
2015 APR 20 PM 4:09

STAFF'S EXCEPTIONS TO CERTIFICATION OF STIPULATION

COMES NOW the Staff of the Utility Division (Staff) of the New Mexico Public Regulation Commission (Commission or NMPRC) and, pursuant to 1.2.2.20(B)(5)(b) NMAC, hereby files its Exceptions to the Certification of Stipulation issued on April 8, 2015 (Certification).

I. SUMMARY OF AGRUMENT

Staff respectfully takes exception to the Certification, as it eliminates fundamental terms of the Stipulation which provide, known, reliable, and economic replacement capacity, resulting in a net benefit to the public, in the context of the early retirement of San Juan Units 2 and 3. Staff continues to support the Stipulation as a whole, subject to

PNM's concessions for the inclusion of conditions to the CCN for additional capacity for San Juan Unit 4. PNM Main Brief, p. 6. While Staff does not acquiesce to any of the terms of the Certification not specifically addressed herein, Staff addresses two primary concerns: (1) the denial of a Certificate of Public Convenience and Necessity (CCN) for the acquisition of additional capacity in San Juan Unit 4; and (2) the Certification's valuation of Palo Verde 3 (PV 3).

II. SAN JUAN UNIT 4

While there is no question that the Commission has the authority to modify Stipulations, the Certification's wholesale denial of a CCN for San Juan Unit 4, eliminates the most significant source of replacement power in the wake of the early retirement of San Juan Units 2 and 3. The denial of a CCN for San Juan Unit 4 leaves PNM in the precarious position of attempting to negotiate a coal contract without any assurances that it will be able to fulfill the terms of the contract. In addition, nothing in the record in this case offers a viable alternative for replacement power.

The Commission has historically promoted a policy of settling cases through stipulation. Both the Commission and the Supreme Court have held that stipulations must be in the public interest. *Attorney General v. N.M. Pub. Serv. Comm.*, 111 NM 630, 808 P.2d 606 (1991). The denial of a CCN for San Juan Unit 4 fails to serve the public interest, and undermines the sustainability of the entire Stipulation.

III. PALO VERDE UNIT 3 VALUATION

The Stipulation contemplates that PNM should be granted a CCN to include its 10.2% ownership share of Palo Verde Unit 3, having a capacity of 134 MW, in rate base at an initial value of \$221,200,000, i.e., \$1,650 per kW. Stipulation, Paragraph 17.

However, the Certification of Stipulation recommends that the stipulating parties agree to a valuation for PNM's 134 MW interest in Palo Verde 3 at the unit's net book value at the time it is placed into rate base. Certification, p. 129. The net book value of Palo Verde 3 at the time it is placed into rate base is estimated to be \$1,071 per kW, or \$143,447,783. Therefore, under the Certification, Palo Verde 3 would be valued at an amount \$77,752,217 lower than the value provided by the Stipulation.

The agreed upon value of \$1,650 per kW is one of numerous elements of the Stipulation that, taken together and as a whole, provide significant benefits to ratepayers and PNM alike. In its testimony in support of the Stipulation, Staff described the many ways that the RSIP under the Stipulation would benefit ratepayers even with the PV 3 valuation at \$1,650 per kW. The Commission unquestionably has the authority to modify stipulations to bring about a result that the Commission believes is in the public interest; however, the agreement in the Stipulation to value Palo Verde 3 at \$1,650 per kW is a major, key element of the settlement reached by the stipulating parties. The Hearing Examiner's recommendation to reduce this value by 35% is extreme and would radically upset the overall balance of agreements embodied within the Stipulation.

The Certification states that it "recommends establishing the value of Palo Verde 3 on an independent basis without regard to any compromises in the Stipulation." Certification, p. 129. The Certification also states that "the valuation of Palo Verde 3 at its net book value of \$1,071 per kW will produce a fair resolution of the overall issues in this case and fairly balances investor and ratepayer interests." Certification, p. 129. Staff believes it is erroneous and unrealistic to consider the valuation of Palo Verde 3 "without regard to any compromises in the Stipulation." The rate base value agreed to in the

Stipulation reflects compromises and give-and-take on numerous elements in the case. Although the recommendation to value Palo Verde 3 at book value will be advantageous to ratepayers, the Certification does not recommend any compensation to PNM in exchange for reducing the value of Palo Verde 3 by almost \$77.8 million. Therefore, it is Staff's view that the recommendation will not produce a fair and reasonable resolution of the entirety of issues in the case, nor a fair balancing of ratepayer and investor interests.

The Certification cites the Recommended Decision in NMPRC Case No. 09-00245-UT, in *Re Application of CDS rainmakers Utilities, L.L.C.*, as providing the standards for approving acquisition adjustments. However, as the Certification indicates, the Recommended Decision in that case simply stated that “the Commission determines each case involving an acquisition adjustment request on its own facts” and that “certain standards are compatible with generally acceptable ratemaking standards in New Mexico.” Certification, p. 130 (emphasis added). The Case No. 09-00245-UT Recommended Decision is quoted and states: “Acquisition adjustments are generally excluded from the rate base . . .” Certification, p. 130 (emphasis added). The Case No. 09-00245-UT Recommended Decision lists “[t]he reasons most commonly cited for allowing rate base treatment of acquisition adjustments . . .” Certification, p. 130 (emphasis added). Thus, the standards for approving acquisition adjustments in New Mexico include that acquisition adjustments are approved on a case-by-case basis and are allowed in rate base, based on commonly cited, observed principles that are not absolute or unconditional.

The proposal to include Palo Verde 3 at the agreed upon value of \$1,650 per kW is consistent with the standards for approving acquisition adjustments as discussed in the

Recommended Decision in Case No. 09-00245-UT. PNM is offering but is not required to include Palo Verde 3 as a replacement resource. PNM initially requested that Palo Verde 3 be valued at an estimated “market value” of \$2,500 per kW; Staff and other stipulating parties in pre-Stipulation testimony recommended that Palo Verde 3 be valued at the \$1,071 per kW book value. The \$1,650 per kW value was negotiated by the stipulating parties to be a fair and equitable resolution of this range of values given all other benefits and considerations of the Stipulation. The Stipulation value therefore was established by the stipulating parties given the facts in the case. The standards for approving acquisition adjustments discussed in the Recommended Decision in Case No. 09-00245-UT do not counsel in favor of discarding the value of \$1,650 per kW as agreed by the parties.

The valuation of Palo Verde 3 at \$1,650 per kW as provided under the Stipulation is fair, just and reasonable given the significant benefits of the Stipulation to ratepayers and PNM, and is consistent with the Commission’s standards for approving acquisition adjustments. The Certification’s recommendation that Palo Verde 3 be valued at book value will not produce a fair and reasonable resolution of the entirety of issues in the case, nor a fair balancing of ratepayer and investor interests. The Stipulation, on the other hand, does provide a fair and reasonable resolution of the issues in the case and a fair balancing of ratepayer and investor interests.

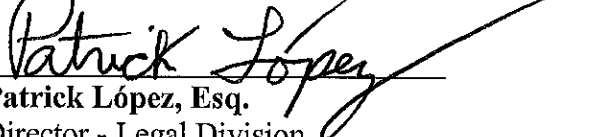
IV. CONCLUSION

The Certification essentially eliminates central terms of the parties’ agreement, and basically renders the Stipulation a nullity. The Commission will serve the best

interest of the public by approving the Stipulation in its entirety, subject to reasonable conditions being placed on a CCN for additional capacity for San Juan Unit 4.

Respectfully Submitted,

**NM PUBLIC REGULATION COMMISSION
UTILITY DIVISION STAFF**

A handwritten signature in black ink that reads "Patrick López". The signature is written in a cursive style and is positioned above a horizontal line.

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Dated this 20th day of April, 2015.

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Case No. 13-00390-UT

PUBLIC SERVICE COMPANY OF)
NEW MEXICO,)
Applicant.)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Staff's Exceptions to Certification of Stipulation*, filed this 20th day of April, 2015, was sent by electronic mail and/or regular mail on April 20, 2015 to the parties listed below:

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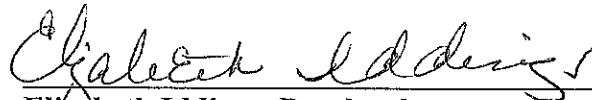
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Dated this **20th** day of April, 2015.

NEW MEXICO PUBLIC REGULATION COMMISSION



Elizabeth Iddings, Paralegal