

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,)**

Case No. 13-00390-UT

**PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)**

Applicant.)

**THE NEW MEXICO INDUSTRIAL ENERGY CONSUMERS
EXCEPTIONS TO THE CERTIFICATION OF STIPULATION**

COMES NOW the New Mexico Industrial Energy Consumers ("NMIEC") as a Signatory to the October 1, 2014 Stipulation in this matter, and, pursuant to the Commission Rule of Procedure, codified as 1.2.2.20.B(5)(b) NMAC, hereby files these Exceptions to the Certification of Stipulation ("Certification").

I. Introduction and Summary of Certification of Stipulation

In his Certification, the Hearing Examiner recommended that the October 1, 2014 Stipulation be approved if the Signatories agreed to two major modifications: (i) Disapproval of the proposed grant of a certificate of convenience and necessity ("CCN") for Public Service Company of New Mexico's ("PNM" or "Company") acquisition of an additional 132 Mega Watts ("MW") of Unit 4 of the San Juan Generating Station ("San Juan 4"), with the option of refile for approval once critical agreements are finalized; and (ii) approval of the requested CCN for 134 MW of Unit 3 Palo Verde Nuclear Generating Station ("Palo Verde 3"), but at a

rate base valuation of \$1,071 per kiloWatt (“kW”) instead of the negotiated amount of \$1,650/kW. Certification of Stipulation, pp. 101-110, 116-117, 129-137; 147 ¶ 7, Decretal ¶ B. The proposed language changes to implement these modifications to the Stipulation are provided in Attachment B to the Certification.

The Hearing Examiner recommended disapproval of the requested CCN for the additional 132 MW in San Juan 4 because of the significant uncertainties that still remain with respect to the future ownership arrangements at the plant and the post-2017 coal supply. He concluded that

Even if the Commission lacks the authority to approve the underlying agreements, the Commission does have the authority to approve the acquisition of additional capacity in San Juan. The terms of the agreements for the acquisition and the post 2017 coal supply will be critical to the review of the acquisition pursuant to NMSA 1978, §62-6-12A(4) and -13.

Certification, pp. 109-110.

To address the current uncertainty, the Hearing Examiner recommended that PNM be required to file a new replacement power plan fifteen (15) days after the Commission’s Final Order. Certification, p. 147 ¶ 8. If, at that time, the Company is still proposing the acquisition of an additional portion of San Juan 4, it would be required to file a plan that would

include a complete picture of the transaction . . . [including] a final San Juan restructuring agreement, any related agreements for the acquisition of the additional interest in the San Juan station and the disposition of the 65 MW interest declined by the City of Farmington, and an agreement for a post-2017 coal supply.

Attachment B to Certification at ¶ 13.

The Hearing Examiner recommended disapproval of the negotiated rate base value of Palo Verde 3 based, in part, on his analysis of the Commission’s prior precedents concerning acquisition adjustments. Certification, pp. 129-137. He concluded that a valuation based on the depreciated net book value of the plant of \$1,071/kW, for a total rate base valuation of \$143.4

million, was more consistent with these precedents.

II. NMIEC's Recommendations

Stipulations are negotiated agreements in which each party is required to give up something of value in order to reach a settlement each believes is preferable to the outcome that might be achieved through litigation. As such, it is important for the Commission to analyze the Stipulation as a whole, rather than consider each separate agreement and concession on a stand-alone basis. As the Commission has previously held: "If signatories find that the bargains struck in stipulations are later revised to their detriment . . . they will hesitate, if not refuse, to negotiate settlements thus undermining the whole process." *Re El Paso Electric Co.*, 115 PUR4th 57, 69 (1990) (NMPSC Case No. 2222). Such a result would be contrary to well-established public policy. *NMIEC v. NMPSC*, 104 N.M. 565, 568, 725 P.2d 244 (1986).

If the Stipulation is analyzed in a comprehensive fashion, NMIEC still believes that it is the best outcome for ratepayers from both a rate impact and a system reliability perspective. *See generally*, James R. Dauphinais Testimony in Support of Stipulation (October 31, 2014); James R. Dauphinais Rebuttal Testimony in Support of the Stipulation (November 19, 2014). NMIEC has also provided the legal and evidentiary basis for Commission approval of the Stipulation in its Brief-in-Chief and Response Brief in this matter, which are incorporated herein by reference.

It is critical for the Commission to be aware that the Stipulation portfolio is the only recommended portfolio that identifies specific resources with known and measurable performance standards. While there are significant unresolved cost and ownership issues at San Juan, the unknowables attached to any of the opposing parties "alternative portfolios" are order of magnitudes greater.

Having stated that, however, NMIEC agrees that the concerns the Hearing Examiner has

raised about the lack of certainty with respect to the future San Juan ownership arrangements and its post-2017 coal supply are not unreasonable. This is especially true in light of PNM's assurances early in the case that all ownership and coal supply issues would be resolved prior to the hearing. Certification, p. 89. If that had occurred, the Commission would now have a complete picture of the San Juan transactions as the context for its review of the San Juan CCN application. Given these facts, the Certification's recommendation that the Company be required to provide certainty with respect to the San Juan agreements as a condition precedent to the granting of a CCN is not unreasonable.

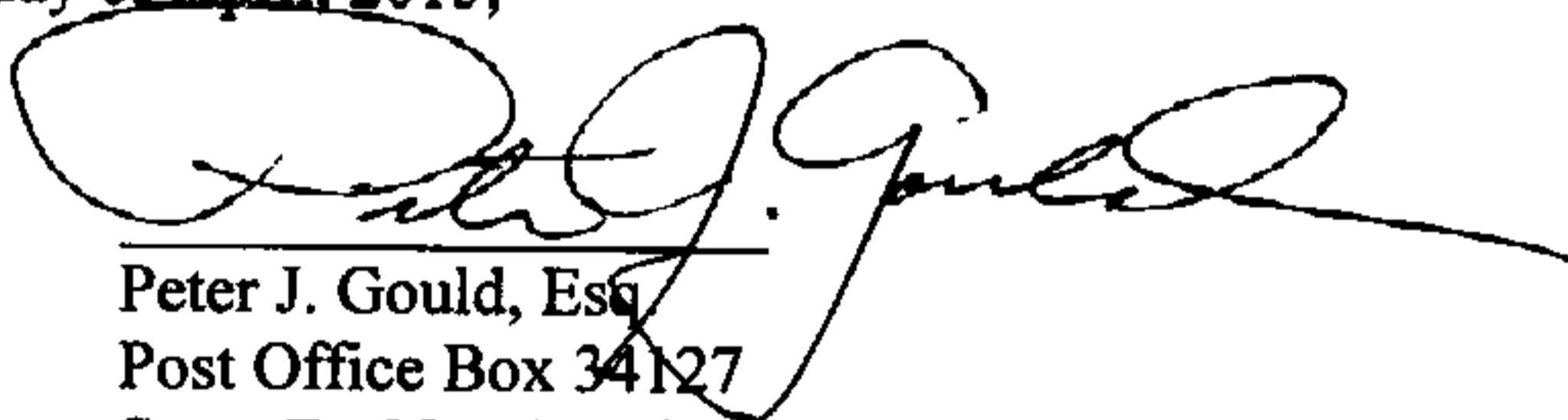
As the Hearing Examiner has acknowledged, however, the abandonment of San Juan Units 2 and 3 cannot be approved without certainty with respect to the capacity that will replace those units. Certification, pp. 120-121. Abandonment of those Units, is the central issue in this case as the EPA-approved Revised Implementation Plan ("RSIP") cannot be implemented without the Commission's abandonment approval. Therefore, it is critical for the Commission, in balancing the need for more certainty with respect to the San Juan ownership and post-2017 coal agreements and the need to act on the implementation of the RSIP, to fashion a review procedure and schedule on this issue that are workable.

The only party that is privy to the current status of the negotiations with respect to both the ownership and post-2017 coal agreements is the Company. NMIEC, therefore, encourages the Company to be as forthcoming as is possible on the current status of those negotiations by May 1st, the date set by the Attorney General for PNM to provide certainty with respect to those agreements. Transcript, pp. 2696-2700. In addition, the Company should recommend an expedited procedure and schedule that adequately address the Hearing Examiner's concerns.

Finally, as a consumer organization, it is difficult for NMIEC to argue against the

Hearing Examiner's recommendation that the rate base valuation of Palo Verde 3 be reduced from \$1,650/kW to \$1,071/kW, an overall reduction of \$77.7 million. NMIEC has, however, agreed to the rate basing of Palo Verde 3 at the higher valuation, because the inclusion of that plant as part of the replacement portfolio, in conjunction with all the other benefits provided by the Stipulation, is the least-cost and the most reliable alternative. Dauphinais Testimony in Support, pp. 10-14, 35-38; Ex. JRD-2 Stipulation. In short, the Hearing Examiner's proposed reduction to the rate base valuation to Palo Verde 3 is a change to the Stipulation that PNM will have to determine whether it can live with. NMIEC will agree to the lower recommended valuation if the Company also accepts that valuation.

Respectfully submitted this 20th day of April, 2015,



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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

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of **NEW MEXICO INDUSTRIAL ENERGY CONSUMERS' EXCEPTIONS TO THE CERTIFICATION OF STIPULATION** and this Certificate of Service were sent via electronic transmission only to the following parties:

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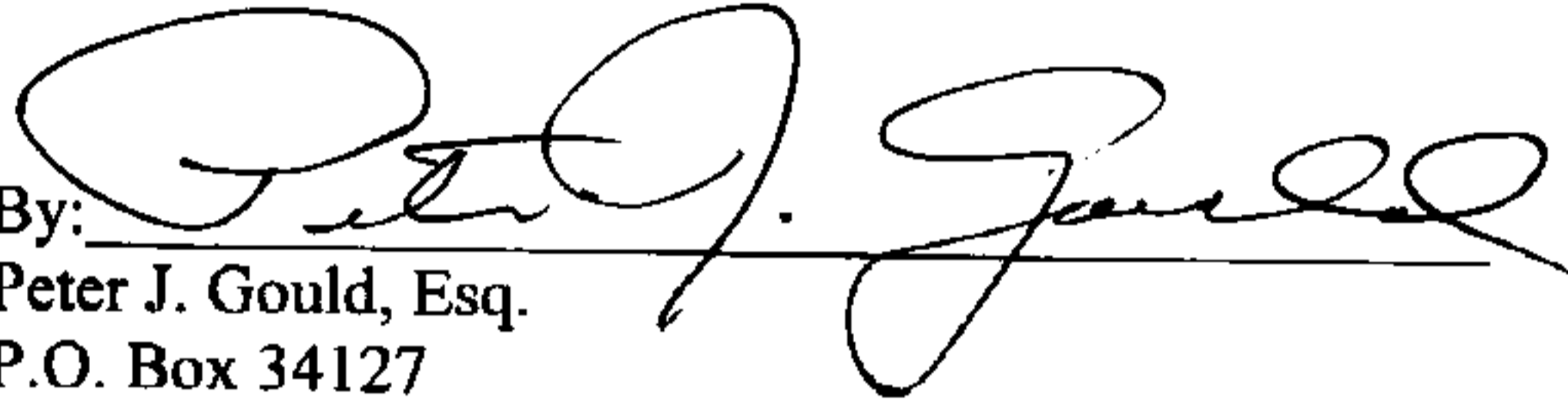
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Dated this 20th day of April, 2015

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