



1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 Filing Date: July 6, 2023

3 **PUBLIC SERVICE COMPANY OF**
4 **NEW MEXICO,**

5 Appellant,

6 v.

NO. S-1-SC-39138

7 **NEW MEXICO PUBLIC REGULATION**
8 **COMMISSION,**

9 Appellee,

10 and

11 **SIERRA CLUB, NEW ENERGY ECONOMY,**
12 **WESTERN RESOURCE ADVOCATES, and**
13 **COALITION FOR CLEAN AFFORDABLE**
14 **ENERGY,**

15 Intervenors-Appellees.

16 **In the Matter of the Application of**
17 **Public Service Company of New**
18 **Mexico for Approval of the**
19 **Abandonment of the Four Corners**
20 **Power Plant and Issuance of a**
21 **Securitized Financing Order,**
22 **NMPRC Case No. 21-00017-UT**

I CERTIFY AND ATTEST
A true copy was served on all parties
or their counsel of record on date filed.

Zelda Abeita

Clerk of the Supreme Court
of the State of New Mexico

23 **APPEAL FROM THE NEW MEXICO PUBLIC REGULATION**
24 **COMMISSION**

1 PNM Resources, Inc.
2 Patrick V. Apodaca
3 Stacey J. Goodwin
4 Albuquerque, NM

5 Miller Stratvert, P.A.
6 Richard L. Alvidrez
7 Albuquerque, NM

8 Wilkinson Barker Knauer, LLP
9 Raymond L. Gifford
10 Debrea M. Terwilliger
11 Denver, CO

12 for Appellant

13 Judith E. Amer, Associate General Counsel
14 Santa Fe, NM

15 for Appellee

16 Jason Marks Law, LLC
17 Jason A. Marks
18 Albuquerque, NM

19 for Intervenor Sierra Club

20 New Energy Economy
21 Mariel Nanasi
22 Santa Fe, NM

23 Freedman Boyd Hollander & Goldberg, P.A.
24 John W. Boyd
25 Albuquerque, NM

26 for Intervenor New Energy Economy

1 Cydney Beadles
2 Santa Fe, NM
3 for Intervenor Western Resources Advocates

4 Cara Lynch Legal Services
5 Cara R. Lynch
6 Albuquerque, NM
7 for Intervenor Coalition for Clean Affordable Energy

8 **DECISION**

9 **ZAMORA, Justice.**

10 **I. INTRODUCTION**

11 {1} We address an appeal by the Public Service Company of New Mexico (PNM)
12 from a final order of the New Mexico Public Regulation Commission (Commission)
13 on PNM's Application for the Abandonment of the Four Corners Power Plant in San
14 Juan County and Issuance of a Financing Order Pursuant to the Energy Transition
15 Act, Case No. 21-00017-UT. In the current proceedings, PNM filed an application
16 with the Commission requesting permission to abandon its partial ownership interest
17 in the Four Corners Power Plant (Four Corners Plant). PNM also requested a
18 financing order that would authorize PNM to issue energy transition bonds for the
19 costs of abandoning the Four Corners Plant, as provided for by the Energy Transition
20 Act (ETA), NMSA 1978, §§ 62-18-1 to -23 (2019). The Commission denied PNM's

1 application for abandonment and for a financing order. PNM appeals directly to this
2 Court pursuant to NMSA 1978, Section 62-11-1 (1993), Section 62-18-8(B), and
3 Rule 12-601 NMRA.

4 {2} PNM challenges three aspects of the final order: (1) the Commission's
5 decision to deny the application for abandonment because PNM did not "identif[y]
6 adequate potential new resources sufficient to provide reasonable and proper service
7 to retail customers," § 62-18-4(D); (2) the Commission's alternative basis to deny
8 the application for abandonment because PNM failed to provide exit scenario
9 modeling for the Four Corners Plant as agreed upon in a prior case (Case No. 16-
10 000276-UT); and (3) the Commission's decision to defer final resolution of the
11 issues reserved in the prior case (Case No. 16-000276-UT) regarding the asserted
12 imprudence of PNM's prior investments in the Four Corners Plant.

13 {3} As the party challenging the Commission's final order, PNM bears the burden
14 of showing that the order was "arbitrary and capricious, not supported by substantial
15 evidence, outside the scope of the agency's authority, or otherwise inconsistent with
16 law." *Pub. Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n*, 2019-NMSC-012, ¶ 12,
17 444 P.3d 460 (internal quotation marks and citation omitted). On careful
18 consideration of the briefs, authorities, and record, we conclude that PNM has not
19 met its burden in challenging the final order. We deem it necessary to explain our

1 reasoning only on PNM's challenge to the Commission's interpretation and
2 application of Section 62-18-4(D). We otherwise summarily affirm the final order.¹
3 *See* NMSA 1978, § 62-11-5 (1982) ("The supreme court shall have no power to
4 modify the action or order appealed from, but shall either affirm or annul and vacate
5 the same.").

6 {4} We exercise our discretion to dispose of this appeal by nonprecedential
7 decision because the issues are answerable by statute and by the presence of
8 substantial evidence. Rule 12-405(B)(2), (3) NMRA.

9 **II. BACKGROUND**

10 {5} In January 2021, PNM filed an application with the Commission requesting
11 permission to abandon its thirteen percent ownership interest in the Four Corners
12 Plant, a coal-fired generating facility near Fruitland, New Mexico. PNM wished to
13 sell its interest to the Navajo Transitional Energy Company, LLC (NTEC). PNM
14 also requested a financing order authorizing the issuance of energy transition bonds
15 to securitize the costs of abandoning the Four Corners Plant, as provided for by the

¹By summarily affirming the final order, we do not reach PNM's challenges to the Commission's alternative basis for denying the abandonment application based on PNM's lack of exit scenario modeling and to the authority of the Commission to disallow PNM recovery for its prior investments in the Four Corners Plant. The Commission has decided to defer final action on the prudence issues reserved in Case No. 16-000276-UT and raised in the proceedings below. We affirm the Commission's decision to defer final resolution of these prudence issues.

1 ETA.

2 {6} PNM elected to defer applying for approval of new resources to replace the
3 generating capacity that it proposed to abandon at the Four Corners Plant.
4 Consequently, according to Section 62-18-4(D) of the ETA, PNM's application for
5 a financing order needed to identify "adequate potential new resources sufficient to
6 provide reasonable and proper service to retail customers."

7 {7} PNM attempted to meet its burden to identify "adequate potential new
8 resources" through the testimony of Nicholas Phillips, PNM's director of Integrated
9 Resource Planning. According to Phillips, PNM had compared the costs of
10 continued ownership in the Four Corners Plant against the costs of the proposed
11 abandonment and sale to NTEC. PNM's analysis showed that abandoning the Four
12 Corners Plant and replacing the lost capacity with new resources would, in most
13 cases, "result in cost savings for PNM's customers and a net public benefit."

14 {8} Phillips further explained that, in analyzing the cost savings flowing from the
15 proposed abandonment, PNM had not conducted a request for proposals (RFP) for
16 new resources to replace the Four Corners Plant. Rather, "[f]or the purposes of this
17 filing, PNM reasonably used the most recent available data to perform its
18 abandonment analysis and assess the potential net public benefit for the proposed
19 transaction." This "most recent available data" included publicly available

1 information from national energy organizations, nonpublic information from PNM's
2 2019 technology request for information, and bids that PNM had obtained in
3 response to an RFP issued in 2017 for resources to replace the San Juan Generating
4 Station (San Juan Station). According to Phillips, the San Juan Station's replacement
5 resources were expected to be deployed by 2022, and the San Juan Station RFP data
6 was "still recent enough to serve as a proxy for alternative resource options in
7 evaluating the potential benefits of abandonment." The new resources identified in
8 PNM's modeling were therefore "generic placeholders" for the types of resources
9 generally available to replace the Four Corners Plant. Phillips further explained,
10 "actual resources, including ownership structures, ultimately will be determined in
11 the replacement resource filing following a competitive RFP evaluation process."

12 {9} Later, during evidentiary hearings on the application, Phillips testified that
13 PNM had issued an RFP for new resources to replace capacity from the Four Corners
14 Plant and was in the process of evaluating bids. However, Phillips did not identify
15 any of the bids that were being considered by PNM. Phillips nevertheless
16 emphasized that "the RFP response has been very robust," and that the bids PNM
17 had received were "very much in line" with the bids PNM had received in response
18 to prior RFPs. Phillips indicated that PNM was "planning on filing a replacement
19 resource case with this RFP information used as the evaluation criteria for

1 replacement resources in the first quarter of 2022.”

2 {10} During the hearing, Phillips was asked about unexpected delays PNM had
3 experienced in deploying new resources to replace capacity from the San Juan
4 Station. Phillips stated that PNM did not expect similar delays in developing new
5 resources for the Four Corners Plant. He explained that the Four Corners Plant
6 replacement resources would be deployed in 2025, and the timing of PNM’s Four
7 Corners Plant abandonment application thus offered “a much longer lead time prior
8 to when the replacement resources would need to come online.” Phillips connected
9 most of the delays with the replacement resources for the San Juan Station to supply
10 chain issues arising from the COVID-19 pandemic, and he projected that the issues
11 were “expected to be, you know, a short-term blip, and not a long-term effect.”
12 However, he also acknowledged that the delays experienced in at least one of the
13 San Juan Station’s replacement resource projects were not connected to the
14 pandemic.

15 {11} After conducting seven days of evidentiary hearings and considering post-
16 hearing briefs, the hearing examiner assigned to the proceedings issued two
17 recommended decisions. The first decision recommended approval of PNM’s
18 request to abandon the Four Corners Plant and to transfer its interest to NTEC. The
19 second decision recommended that the Commission grant PNM’s request for a

1 financing order to securitize the costs of abandoning the Four Corners Plant. With
2 respect to the sufficiency of PNM's showing under Section 62-18-4(D), the hearing
3 examiner recommended that the Commission find that PNM satisfactorily identified
4 adequate potential new resources to permit deferral of applications for new
5 resources.

6 {12} The Commission disagreed with the recommendation of the hearing examiner
7 and denied PNM's application to abandon the Four Corners Plant. Specifically, the
8 Commission

9 disagree[d] that proxy modeling alone, based on analysis of "generic
10 placeholders" and "*PNM's view* of the most likely set of conditions in
11 the future," is sufficient to meet ETA Section 62-18-4(D)'s
12 requirements that the application both identify "adequate potential new
13 resources" and that the potential new resources be "sufficient to provide
14 reasonable and proper service to retail customers" without identifying
15 the actual resources already under consideration, especially when PNM
16 concedes it is in possession of such information.

17 According to the Commission, PNM's modeling was an insufficient "substitute for
18 the review of the actual replacement resource portfolio" that the Commission was
19 "able to perform in its prior ETA replacement resource and abandonment cases . . .
20 especially when . . . the actual replacement resources are already under review by
21 PNM as part of its ongoing RFP process." The Commission also raised concerns
22 "about the supply chain issues that have recently affected PNM's efforts to bring the
23 [San Juan Station] replacement resources online in a timely manner." The

1 Commission explained, "Review of the actual results of PNM's RFP and the
2 resulting bids will provide the Commission up-to-date information on the effects
3 such supply chain issues may have on pricing of actual proposed replacement
4 resources." The Commission further noted, "PNM acknowledges[] ample time
5 remains for the Commission to review PNM's actual proposed resources in
6 determining whether the proposed abandonment should be granted especially since
7 PNM indicates it will be ready to file its application in the first quarter of 2022." The
8 Commission provided instructions for further proceedings should PNM refile an
9 updated application with the required information.

10 **III. DISCUSSION**

11 {13} PNM argues that the Commission's decision is inconsistent with the plain
12 language of Section 62-18-4(D). PNM also asserts that the Commission's decision
13 is not supported by substantial evidence because PNM's modeling and Phillips'
14 testimony satisfied Section 62-18-4(D). PNM suggests that the Commission's
15 decision to reject PNM's evidence was arbitrary and capricious. As further discussed
16 below, we disagree with PNM and conclude that the Commission reasonably and
17 lawfully denied PNM's application for failure to meet the requirements of Section
18 62-18-4(D).

19 **A. The Commission's Decision Is Consistent with Section 62-18-4(D)**

1 {14} We first address PNM’s contention that the Commission’s decision was
2 inconsistent with Section 62-18-4(D). We review this issue de novo. *N.M. Indus.*
3 *Energy Consumers v. N.M. Pub. Regul. Comm’n (NMIEC)*, 2007-NMSC-053, ¶ 19,
4 142 N.M. 533, 168 P.3d 105.

5 {15} Section 62-18-4 governs the contents of PNM’s application for a financing
6 order in connection with its proposed abandonment of the Four Corners Plant. *See*
7 *Citizens for Fair Rates & the Env’t v. N.M. Pub. Regul. Comm’n (CFRE)*, 2022-
8 NMSC-010, ¶ 8, 503 P.3d 1138 (“A utility that wishes to obtain a financing order
9 from the Commission must submit an application with several estimates, supporting
10 documents, and other specified information as identified in Section 62-18-4.”). As
11 relevant to the issues herein addressed, Subsection (D) of that statute provides,
12 “The qualifying utility or the commission may defer applications for needed
13 approvals for new resources to a separate proceeding; provided that the application
14 *identifies adequate potential new resources sufficient to provide reasonable and*
15 *proper service to retail customers.*” Section 62-18-4(D) (emphasis added).

16 {16} PNM argues that the Commission misconstrued Section 62-18-4(D) by
17 requiring PNM to provide evidence of the “actual,” rather than the “potential,” new
18 resources that PNM will use to replace the Four Corners Plant. PNM defines
19 “potential” to mean “existing in possibility” or “capable of development into

1 actuality.” See *Potential*, Merriam Webster Online Dictionary,
2 <https://www.merriam-webster.com/dictionary/potential> (last viewed June 27, 2023).
3 PNM asserts, “[b]ecause the plain meaning of the term ‘potential’ must indicate an
4 action is ‘capable of development into actuality,’ the Commission cannot assume the
5 Legislature meant to use the term ‘actual’ when it said ‘potential.’” The Commission
6 responds that it lawfully interpreted Section 62-18-4(D), considering its regulatory
7 expertise and other relevant statutes and authority governing abandonment
8 proceedings.

9 {17} At the outset, we reject PNM’s characterization of the reasoning and effect of
10 the final order. On careful review, we ascertain that the Commission did not require
11 PNM to identify the “actual resources” that PNM intends to use to replace the
12 proposed abandoned capacity at the Four Corners Plant. Rather, the Commission
13 required PNM to identify “the actual resources *already under consideration*.” We
14 understand this language to refer to the bids for new resources that PNM had
15 obtained during the RFP directed at replacing the Four Corners Plant. We do not
16 view the Commission’s order as imposing a requirement that PNM identify the new
17 resources that will actually replace the Four Corners Plant or as rejecting proxy
18 modeling in all circumstances.

1 {18} PNM has not shown that the Commission’s decision to deny the application
2 for failure to identify this information was inconsistent with the plain language of
3 Section 62-18-4(D). “When construing statutes, our guiding principle is to determine
4 and give effect to legislative intent.” *Albuquerque Bernalillo Cnty. Water Util. Auth.*
5 *v. N.M. Pub. Regul. Comm’n*, 2010-NMSC-013, ¶ 52, 148 N.M. 21, 229 P.3d 494
6 (internal quotation marks and citation omitted). “In discerning the Legislature’s
7 intent, we are aided by classic canons of statutory construction, and we look first to
8 the plain language of the statute, giving the words their ordinary meaning, unless the
9 Legislature indicates a different one was intended.” *Id.* (text only)² (citation
10 omitted). “[W]e accord some deference to the Commission’s interpretation of its
11 own governing statutes and will confer a heightened degree of deference to legal
12 questions that implicate special agency expertise or the determination of
13 fundamental policies within the scope of the agency’s statutory function.” *Pub. Serv.*
14 *Co. of N.M.*, 2019-NMSC-012, ¶ 15 (internal quotation marks and citation omitted).
15 However, “statutory construction itself is not a matter within the purview of the
16 Commission’s expertise,” and this Court “will reverse the Commission’s statutory

²The “text only” parenthetical as used in this decision indicates the omission—for enhanced readability—of all of the following nontextual marks that may be present in the source text: brackets, ellipses, and internal quotation marks.

1 interpretation if it is unreasonable or unlawful.” *CFRE*, 2022-NMSC-010, ¶ 14
2 (internal quotation marks and citation omitted).

3 {19} The ETA does not define the phrase “identifies adequate potential new
4 resources.” Section 62-18-4(D); *see also* § 62-18-2 (Definitions). Although the terms
5 used in this phrase are seemingly plain, we understand the phrase to demand
6 resolution of policy issues and factual determinations falling within the
7 Commission’s statutory function and expertise. The Commission has been granted
8 express authority to ascertain whether PNM’s application for a financing order
9 complies with the requirements of Section 62-18-4(D). Section 62-18-5(A), (E). The
10 Commission likewise has been granted a “broad legislative mandate” to determine
11 whether to grant or deny PNM’s application for its abandonment of the Four Corners
12 Plant. *Pub. Serv. Co. of N.M. v. N.M. Pub. Serv. Comm’n*, 1991-NMSC-083, ¶¶ 11-
13 12, 112 N.M. 379, 815 P.2d 1169; NMSA 1978, § 62-9-5 (2005) (“No utility shall
14 abandon *all or any portion* of its facilities subject to the jurisdiction of the
15 commission . . . without . . . approval of the commission.”); § 62-18-4(A).

16 {20} With those principles in mind, we conclude that the Commission’s
17 interpretation of Section 62-18-4(D) in this case was not contrary to the plain
18 language of the ETA. Section 62-18-4(D) required PNM to specify resources that
19 were “existing in possibility” or “capable of development into actuality,” *Potential*,

1 *Merriam Webster, supra*, so that the Commission could determine whether “the
2 application identifie[d] adequate potential new resources sufficient to provide
3 reasonable and proper service to retail customers.” Section 62-18-4(D). *See also*
4 *Identify, Black’s Law Dictionary* (11th ed. 2019) (defining “identify” in this context
5 as “[t]o specify”). The Commission is in the best position to determine whether the
6 generic resources used in PNM’s modeling met that standard. This is especially true
7 in regard to determining whether the replacement resources were “sufficient to
8 provide reasonable and proper service to retail customers,” a factual determination
9 specifically implicating the Commission’s expertise. *See* § 62-18-4(D). Thus, the
10 Commission’s order is not contrary to the plain language of Section 62-18-4(D),
11 especially when we give effect to the whole phrase, “identifies adequate potential
12 new resources.” *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24, 309 P.3d 1047
13 (“[T]he [L]egislature is presumed not to have used any surplus words in a statute;
14 each word is to be given meaning.” (second alteration in original) (internal quotation
15 marks and citation omitted)).

16 {21} PNM has not persuaded us that the Commission’s interpretation of Section
17 62-18-4(D) was unreasonable or unlawful. Thus, we hold that the Commission’s
18 decision was consistent with Section 62-18-4(D).

1 **B. The Commission's Decision Was Based on Substantial Evidence**

2 {22} PNM next asserts that the final order was not supported by substantial
3 evidence because PNM identified new resources that were sufficient to meet the
4 requirements of Section 62-18-4(D). The Commission counters that the generic or
5 proxy resources that PNM presented were insufficient to meet PNM's Section 62-
6 18-4(D) burden.

7 {23} We review this issue by looking "to the whole record to determine whether
8 substantial evidence supports the Commission's decision." *Pub. Serv. Co. of N.M.*,
9 2019-NMSC-012, ¶ 14 (internal quotation marks and citation omitted). For a
10 decision to be supported by substantial evidence, "[t]he reviewing court needs to
11 find evidence that is credible in light of the whole record and that is sufficient for a
12 reasonable mind to accept as adequate to support the conclusion reached by the
13 agency." *NMIEC*, 2007-NMSC-053, ¶ 24 (internal quotation marks and citation
14 omitted). "We view the evidence in the light most favorable to the Commission's
15 decision and draw every inference in support of the Commission's decision." *Id.*
16 (citations omitted).

17 {24} PNM asserts that the Commission's decision was not based on substantial
18 evidence because PNM's evidence was uncontradicted. We similarly acknowledge
19 that no additional evidence or testimony was introduced to contradict PNM's

1 evidence. However, “[t]he Commission is not bound by the opinions of experts so
2 long as the Commission’s ultimate decision is supported by substantial evidence.”
3 *Att’y Gen. of N.M. v. N.M. Pub. Serv. Comm’n*, 1984-NMSC-081, ¶ 15, 101 N.M.
4 549, 685 P.2d 957. The Commission’s reasons for departing from uncontradicted
5 testimony must be supported by the record. *In re Commission’s Investigation of*
6 *Rates for Gas Serv. of PNM’s Gas Servs.*, 2000-NMSC-008, ¶¶ 11-12, 128 N.M.
7 747, 998 P.2d 1198.

8 {25} The record here supports the Commission’s decision to depart from PNM’s
9 evidence. Phillips himself testified about the limitations of PNM’s modeling,
10 explaining that PNM relied on prior bids for new resources for the San Juan Station
11 as a proxy for new resources to replace capacity from the Four Corners Plant. The
12 resources identified in PNM’s application thus served only as “generic
13 placeholders.” Phillips further admitted that PNM had encountered unexpected
14 delays in deploying resources to replace the capacity being abandoned at the San
15 Juan Station. At the time of the evidentiary hearings on the application, Phillips
16 testified that PNM was in the process of evaluating bids from an RFP for new
17 resources to replace the proposed abandoned capacity at the Four Corners Plant. But
18 PNM did not identify any of the new resources being evaluated. In view of these

1 circumstances, the Commission found that it could not satisfactorily review PNM's
2 application for abandonment and request for a financing order.

3 {26} Given the delays experienced in deploying the San Juan Station replacement
4 resources and the nature of the generic information provided, we agree that a
5 reasonable mind could conclude that Phillips' testimony and PNM's modeling, on
6 its own, was inadequate to sustain PNM's burden under Section 62-18-4(D). *Cf. Pub.*
7 *Serv. Co. of N.M.*, 1991-NMSC-083, ¶ 19 (affirming a Commission order which
8 "rejected as inadequate PNM's proffered alternative energy sources" in a proceeding
9 to review PNM's application for abandonment of San Juan Unit 4). We accord some
10 deference to the Commission's expertise with respect to the weight to be accorded
11 to PNM's evidence on this issue. *See Morningstar Water Users Ass'n v. N.M. Pub.*
12 *Util. Comm'n*, 1995-NMSC-062, ¶ 12, 120 N.M. 579, 904 P.2d 28 ("When the
13 matter before the court is a question of fact, the court will generally defer to the
14 decision of the agency, especially if the factual issues concern matters in which the
15 agency has specialized expertise."). Thus, viewing the whole record in the light most
16 favorable to the Commission's decision, we hold that the Commission's findings as
17 to the sufficiency of PNM's application under Section 62-18-4(D) are supported by
18 substantial evidence.

1 **C. The Commission's Decision Was Not Arbitrary and Capricious**

2 {27} Finally, we consider whether the Commission's decision to deny PNM's
3 application for failure to satisfy Section 62-18-4(D) was arbitrary and capricious. "A
4 ruling by an administrative agency is arbitrary and capricious if it is unreasonable or
5 without a rational basis, when viewed in the light of the whole record." *Pub. Serv.*
6 *Co. of N.M.*, 2019-NMSC-012, ¶ 16 (internal quotation marks and citation omitted).

7 {28} PNM asserts that the final order was arbitrary and capricious because the
8 Commission had previously accepted proxy modeling as reliable evidence in other
9 proceedings. The Commission "is not free to change its position without good cause
10 and prior notice to the affected parties, if the regulatory change is to be imposed
11 retroactively." *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-032, ¶ 12,
12 115 N.M. 678, 858 P.2d 54. However, we do not view the final order as changing
13 the Commission's position with respect to the reliability of proxy modeling
14 evidence. Rather, we understand the final order as finding that the modeling
15 provided in this proceeding was insufficient, on its own, to meet PNM's burden
16 under Section 62-18-4(D) in view of the circumstances presented.

17 {29} Nevertheless, to the extent that the Commission's decision to require more
18 than modeling can be understood as a departure from prior practice, we conclude
19 that PNM had sufficient notice. Several intervening parties challenged the

1 sufficiency of PNM's evidence early in the proceedings during briefing on a motion
2 to dismiss. In declining to dismiss on this basis, the hearing examiner explained,
3 "[A]t this nascent stage of the proceeding PNM's [a]pplication and supporting
4 testimony appear to sufficiently address the requirement under Section 62-18-4(D)
5 that adequate potential new resources be identified." But the hearing examiner also
6 emphasized, "[f]or purposes of ultimate proof, however, whether this requirement
7 has been satisfied awaits a ruling based on the evidence adduced at hearing."
8 Additionally, Commission staff expressed concerns in post-hearing briefing about
9 PNM's failure to satisfactorily identify replacement resources for the Four Corners
10 Plant. Thus, PNM was aware of the questions raised about the sufficiency of its
11 modeling evidence.

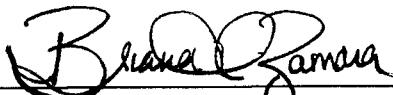
12 {30} PNM also asserts that the Commission's reasoning is internally inconsistent
13 because the final order "concludes that 'proxy modeling alone' is not sufficient to
14 meet Section 62-18-4(D), while also acknowledging that PNM had already
15 conducted an RFP and had 'actual resources already under consideration.'" We do
16 not see the Commission's reasoning as internally inconsistent. The Commission
17 concluded that the application was deficient because PNM had failed to provide the
18 Commission with necessary information. It was not inconsistent for the Commission
19 to also acknowledge that PNM possessed the necessary information and that enough

1 time remained to reconsider an updated application if PNM were to provide the
2 information. We therefore hold that the final order did not arbitrarily and
3 capriciously deny PNM's application under Section 62-18-4(D).

4 **IV. CONCLUSION**

5 {31} We conclude that the Commission reasonably and lawfully denied PNM's
6 application for failure to satisfy Section 62-18-4(D). As we otherwise find no error,
7 we affirm the final order and remand for further proceedings consistent with our
8 decision.

9 {32} **IT IS SO ORDERED.**

10 
11 _____
BRIANA H. ZAMORA, Justice

12 **WE CONCUR:**

13 
14 _____
C. SHANNON BACON, Chief Justice

15 
16 _____
MICHAEL E. VIGIL, Justice

17 
18 _____
DAVID K. THOMSON, Justice

1

Julie J. Vargas

2

JULIE J. VARGAS, Justice