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From: Sullivan-Leshin, Isaac, PRC
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Subject: 21-00017-UT; Filing Submission
Attachments: 21-00017-UT-12.15.2021-Commission-Order on Recommended Decisions on Request for Approval of the Sale and Abandonment of PNM's Interest in the Four Corners Power Plant and Issuance of a Securitized Financing Order.pdf

**IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO FOR APPROVAL OF THE ABANDONMENT OF THE)
FOUR CORNERS POWER PLANT AND ISSUANCE OF A SECURITIZED) Case No. 21-00017-UT
FINANCING ORDER)
_____)**

Please file the attached ORDER ON RECOMMENDED DECISIONS on request for approval of the sale and abandonment of PNM'S interest in the four corners power plant AND ISSUANCE OF A SECURITIZED FINANCING ORDER into the above captioned case. Thank you.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF PUBLIC)
SERVICE COMPANY OF NEW MEXICO FOR APPROVAL)
OF THE ABANDONMENT OF THE FOUR CORNERS) Case No. 21-00017-UT
POWER PLANT AND ISSUANCE OF A SECURITIZED)
FINANCING ORDER)**

**ORDER ON RECOMMENDED DECISIONS ON REQUEST FOR APPROVAL OF THE
SALE AND ABANDONMENT OF PNM’S INTEREST IN THE FOUR CORNERS POWER
PLANT AND ISSUANCE OF A SECURITIZED FINANCING ORDER**

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission” or NMPRC) on the November 12, 2021 Recommended Decision (“RD”) issued by hearing examiner Anthony F. Medeiros (“HE”) pertaining to the January 8, 2021 Application filed by applicant Public Service Company of New Mexico (“PNM”). **WHEREFORE**, the Commission, having reviewed the Certification, Application, testimony and pleadings, and being duly informed,

FINDS AND CONCLUDES:

1. On November 22, 2021, exceptions to the RD were filed by the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and the County of Bernalillo (“County”) jointly, New Energy Economy (“NEE”), the New Mexico Attorney General (“Attorney General” or NMAG), the Board of County Commissioners of San Juan County (“San Juan County” or SJC), Sierra Club, NMPRC Utility Division Staff (“Staff”) and the Coalition for Clean Affordable Energy (CCAIE) and Western Resource Advocates (WRA) jointly.

2. On November 30, 2021, a response to exceptions was filed by PNM.

3. **Staff’s Exception** argues that the RD errs in granting PNM approval to abandon the Four Corners Power Plant (“FCPP”) “despite the complete lack of evidence identifying adequate replacement resources.” Staff asserts “nothing in the Energy Transition Act, NMSA 1978, §§ 62-18-1 to -23 (2019) (“ETA”), changed the legal standard for abandonment.”

4. Staff argues that the Commission analyzes abandonment requests using a test adopted from *Commuters' Committee v. Pennsylvania Public Utility Commission*, 170 Pa. Super. 596 (1952) (“Commuters’ Committee Factors”). The Commuters’ Committee Factors consider: The extent of the carrier’s loss on the particular branch or portion of the service, and the relation of that loss to the carrier’s operation as a whole; the use of the service by the public and the prospects as to future use; a balancing of the carrier’s loss with the inconvenience and hardship to the public upon discontinuance of such service; and the availability and the adequacy of service to be substituted.

5. Staff argues PNM failed to identify sufficient generation resources to replace FCPP and that this failure requires the Commission to deny the abandonment application. Staff notes PNM declined to propose actual replacement resources in this case and instead chooses to defer such a proceeding under NMSA 1978, § 62-18-4 (D).

6. Staff asserts the availability and the adequacy of service to be substituted remains a “critical component” of the Commuters’ Committee Factors for the Commission to adequately review an abandonment application and PNM’s failure to identify and propose actual known replacement facilities prevents the Commission from granting approval to abandon FCPP.

7. Staff argues the RD “basically ignores Staff’s concerns” and instead finds PNM has “reasonably demonstrated” that replacement resources can be deployed prior to the abandonment of FCPP based on testimony from PNM witness Phillips stating that PNM has already conducted an RFP for replacement resources and will file a replacement resource case for FCPP in the first quarter of 2022.

8. Staff argues: “This is astonishingly thin evidence upon which to base a finding that will place an enormous risk on New Mexico’s electric customers. PNM has already had to brief the

Commission on the construction delays of the replacement resources for the San Juan Generation Station. Tr., 138:19-139:18. Given the difficulties in constructing resources approved well over a year ago, it would be irresponsible for the Commission to authorize PNM to abandon its interest in the FCPP without full confidence that adequate service will be able to be maintained. Self-serving assurances by PNM's witness without any supporting facts cannot justify the Commission accepting this risk."

9. Staff further argues that because abandonment of FCPP will not include shutting the plant down, but will instead involve PNM's transfer of its interest in the FCPP to Navajo Transitional Energy Company, LLC ("NTEC"), the requested abandonment of the FCPP will not further one of PNM's asserted purposes of the ETA - to accelerate the elimination of coal-fired generation from the State of New Mexico.

10. **NEE's Exception** joins in Staff's argument that PNM's proposed abandonment failed to satisfy the Commuters' Committee Factors test. NEE also focuses on the fourth factor: the availability and adequacy of substitute service. NEE asserts this is the first abandonment case that has not included a proposed replacement power package for Commission review and PNM has taken the position in a number of cases, including in argument to the New Mexico Supreme Court, "that without specific replacement portfolio options for the Commission review it could not adequately meet its burden of proof for abandonment" under the Commuters' Committee test. NEE argues that PNM is bound by its position and the Commission should find "PNM cannot meet its burden of proof without actual replacement power scenarios that can meet reliability, cost, environmental standards and adequately accommodate the whole of operations."

11. SJC also argues "[t]here is no dispute that FCPP is a qualifying generating facility as defined in 62-18-2(S)(4); that the FCPP was not operated by PNM prior to the effective date of

the ETA and PNM proposes to abandon it prior to January 1, 2032, as provided in the Section 62-18-2(S) definition.” As part of that argument, SJC concludes that PNM is required to identify replacement resources satisfying the requirements of Section 62-18-3(F) in order “to avail itself of the rest of the ETA, otherwise the application should be denied.”

PNM RESPONSE

12. PNM argues the HE correctly found that PNM has reasonably demonstrated that replacement resources can be deployed prior to its abandonment of Four Corners and the ETA explicitly permits the utility to “defer applications for needed approvals of new resources to a separate proceeding.” PNM acknowledges it has already conducted an RFP for FCPP replacement resources, which it asserts “yielded robust results” and PNM intends to file a replacement resource case in the first quarter of 2022 based on this RFP.

13. PNM further argues that the Commission has taken the position that it is important to resolve the question of abandonment prior to considering replacement resources, pointing to the Commission’s 5/21/21 Initial Order in Case 21-00083-UT.

14. PNM asserts: “A denial of abandonment at this stage will only delay a proceeding to obtain Commission approval for replacement resources, which will have the cascading effect of delaying replacement resource deployment. The advantage of addressing abandonment now and moving on to a replacement resources case is that a Commission order on a replacement resources case can be expected by the end of 2023 if the case is filed in early 2022, giving developers the better part of two years to bring resources online before the summer peak of 2025. As such, any projects chosen from PNM’s RFP for FCPP will have a longer lead time to complete construction as compared to the developers of replacement resources for the San Juan Generating Station.”

COMMISSION RESPONSE

15. The RD found that PNM witness Mr. Fenton “asserted that the last three *Commuters’ Committee* factors, properly analyzed, should account for the net public benefit of abandoning FCPP in the form of cost savings for customers.”

16. While the RD found that “PNM has established by a preponderance of the evidence that the proposed abandonment satisfies the net public benefit and *Commuters’ Committee* standard,” the RD bases this assessment on testimony by PNM witness Phillips based only on proxy modeling conducted by PNM, rather than on actual identified replacement resources, PNM asserts its modeling shows “that the abandonment will cost ratepayers significantly less over the next 20 years than continuing in FCPP until 2031, with cost savings between \$30 and \$300 million on a 20-year NPV basis and expected median savings of approximately \$143.7 million.”

17. Notwithstanding this conclusion, the RD acknowledges: “However. given that a few cases do approach the breakeven point, Phillips concedes that his analysis “results in a non-zero probability that customers could face an increased cost, but such an outcome is highly unlikely.”

18. The RD also notes: “While the actual replacement portfolio will not be determined until PNM has completed its RFP evaluation process, Phillips believed that the results of his analysis using what he termed the “generic placeholders” provides reliable insight into **what a potential replacement portfolio *might look like and cost*; under its “Current Trends and Policy” assumptions, i.e., those which reflect PNM’s view of the most likely set of conditions in the future...**” Emphasis added.

19. NMSA 1978, Section 62-18-4 states: “The qualifying utility or the commission may defer applications for needed approvals for new resources to a separate proceeding; provided that the application identifies adequate potential new resources sufficient to provide reasonable and proper service to retail customers.”

20. Accordingly, in order to justify deferral of an actual application for approval of new resources to a separate proceeding, the express unambiguous language of the statute requires a determination of whether the application satisfies the requirement that it identifies “adequate potential new resources” and that those resources be “sufficient to provide reasonable and proper service to retail customers.”

21. While the RD concludes “The evidence adduced by PNM on the issue of potential resource adequacy, therefore, is sufficient to satisfy the Company’s deferral of an application for Four Corners replacement resources pursuant to ETA Section 62-18-4(D),” the Commission disagrees that proxy modeling alone, based on analysis of “generic placeholders” and “*PNM’s view* of the most likely set of conditions in the future,” is sufficient to meet ETA Section 62-18-4(D)’s requirements that the application both identify “adequate potential new resources” and that the potential new resources be “sufficient to provide reasonable and proper service to retail customers” without identifying the actual resources already under consideration, especially when PNM concedes it is possession of such information.

22. Unlike past applications to the commission, PNM’s application does not identify any of the actual potential new resources that PNM is considering. Instead, PNM proposes only proxy resources. As NEE notes, in prior cases the Commission and parties have been able to review actual proposed resources to consider while addressing an abandonment application and determining whether the *Commuters’ Committee* standards have been met.

23. Moreover, the RD further notes: “The IRP director, Nicholas Phillips, testified that PNM has already conducted an RFP for replacement resources for Four Corners. Mr. Phillips said that PNM will file its replacement resource case in the first quarter of 2022.”

24. PNM's proposed reliance on modeling, is not a sufficient substitute for the review of the actual replacement resource portfolio the Commission and intervenors have been able to perform in its prior ETA replacement resource and abandonment cases such as 19-00018-UT, 19-00195-UT and 20-00182-UT, especially when PNM's own testimony indicates the actual replacement resources are already under review by PNM as part of its ongoing RFP process.

25. Moreover, as the RD also notes: "assuming a Commission order in the replacement resources case occurs by the end of 2023, Phillips estimated that developers will have the better part of two years to bring resources online before the summer peak of 2025. He also noted that any projects chosen from this RFP will have a much longer lead time to complete construction as compared to the developers of replacement resources for the SJGS."

26. Accordingly, PNM acknowledges, ample time remains for the Commission to review PNM's actual proposed replacement resources in determining whether the proposed abandonment should be granted especially since PNM indicates it will be ready to file its application in the first quarter of 2022.

27. Notably, Mr. Phillips statement above seeks to address concerns about the supply chain issues that have recently affected PNM's efforts to bring the SJGS replacement resources online in a timely manner in order to meet peak demand following the retirement of SJGS. While the PPA's for those projects provide some insulation to ratepayers and the utility from the cost increases associated with those supply chain issues, these issues have led to the default of least one developer under the PPA approved by the Commission. Review of the actual results of PNM's RFP and the resulting bids will provide the Commission up-to-date information on the effects such supply chain issues may have on pricing of actual proposed replacement resources.

28. While PNM argues “the Commission has taken the position that it is important to resolve the question of abandonment prior to considering replacement resources” its reliance on the Commission’s 5/21/21 Initial Order in Case 21-00083-UT is misplaced. In that case, as in other replacement resource cases, PNM did propose specific replacement resources. The Commission’s order referenced by PNM was focused on the six-month time limitation for approval of a long term purchased power agreement under 17.9.551.10(B) NMAC. The order provided that, consistent with prior commission cases, the time limitation for a PPA application should not act to impose a deadline on the determination of an abandonment request because abandonment applications are not subject to any time limitation by statute or rule.

29. Consistent with that position, in that order the Commission found “PNM’s requests for approval of the replacement resource, PPAs are necessarily dependent on the Commission’s approval of PNM’s request for abandonment of the Leased Interests to supply the basis for the requisite finding of “need” for the replacement resources. Accordingly, the basis for PNM’s separate request for approval of the PPAs and any applicable time period begins only after the Commission acts on the abandonment request.”

30. Moreover, the Commission also expressly found that applying the time limit on a PPA application did not justify deferral of action on such request, stating: “The Commission also recognizes PNM’s request for expediency in order to meet Commercial Operation Dates in advance of the 2023 Summer Peak. In order to balance these considerations and provide sufficient opportunity for full consideration of PNM’s total Application, at this time the Commission will not defer consideration of PNM’s requests for approval of the proposed PPAs to a separate proceeding, but will address them in this docket together with the abandonment request subject to the finding above that the six-month time limit of 17.9.551.10(B) NMAC has not been triggered.”

31. WRA witness Brendon Baatz's analysis is likewise based on replacement resource portfolio and assumptions rather than analysis of actual replacement resources proposed by the utility as has been available to the Commission in past cases.

32. Accordingly, the Commission finds that PNM's Application for Abandonment should be denied based on its failure to identify adequate potential new resources sufficient to provide reasonable and proper service to retail customers as required to defer its application for needed approvals for new resources to a separate proceeding under section 62-18-4 as well as the impact the lack of such information has on the Commission's ability to analyze the application for abandonment under the Commuter's Committee Factors. Based on applicable timeframes, if PNM re-files its application as anticipated, sufficient time will remain for approval of the replacement resources.

33. **Sierra Club Exception 1.3** argues that the abandonment application be denied due to PNM's failure to comply with the terms of the stipulation approved by the Commission in Case 16-00276-UT. Sierra Club points out that PNM agreed to present economic modeling of exiting Four Corners in 2024 and 2028 under a scenario in which PNM breaches its contractual obligations, a provision that the Commission approved in its final order. Sierra Club asserts the RD errs in finding that "requiring PNM to conduct a contractual breach option analysis would not be a worthwhile or sensible exercise."

34. Sierra Club argues: "The parties in Case No. 16-00276-UT bargained for this provision in the stipulation; Sierra Club would not have agreed to the stipulation in Case No. 16-00276-UT if it knew that PNM would be allowed to breach the Stipulation. Sierra Club asserts: "the very reason that the parties included this provision in the stipulation was to have a quantitative analysis of the economics of exiting Four Corners by breaching PNM's contractual obligations, rather than rely on the very speculation that the Hearing Examiner engages in. If PNM had complied with its obligations, the

Commission could have compared PNM's proposed abandonment to alternatives for exiting Four Corners prior to 2031. Instead, PNM deprived the parties and the Commission of a proper baseline against which to compare PNM's proposed abandonment. This renders PNM's modeling unreliable, as well as WRA's modeling, which uses the same baseline PNM used."

PNM RESPONSE:

35. PNM responds that Sierra Club's exception asserting that the PNM did not prepare a modeling scenario for a 2028 exit from FCPP assumed PNM breached its contractual obligations. Sierra Club argues that by not modelling a deliberate breach of its contractual obligations, "PNM has deprived the parties and the Commission of a proper baseline against which to compare PNM's proposed abandonment." The Abandonment RD concludes, however, that such a baseline would be meaningless because, among other reasons, PNM would be exposed to significant default payments and penalties but would still remain bound to pay certain costs while the coal plant supplies electricity for the benefit of other utilities' customers, in addition to having to secure replacement resources for its own customers. Given these assumptions, the HE reasonably found "that requiring PNM to conduct a contractual breach option analysis would not be a worthwhile or sensible exercise."

COMMISSION RESPONSE:

36. The Commission finds that PNM's failure to comply with an express provision of the stipulation in Case 16-00276-UT and its unilateral decision to substitute instead the proxy modeling it has submitted in this case without advance authorization from the Commission or the signatories to that stipulation clearly breached of the terms of the stipulation.

37. This breach denied those signatories to that stipulation access to the requested modeling information and impacts the parties' and the Commission's ability to at a minimum review and analyze PNM's proffered proxy modeling that PNM now relies on against such the information

PNM made an agreement to furnish. While the RD concludes that there was no need to compel PNM to provide the modeling it agreed to provide, based on an assessment that such modeling would be “meaningless” because of the default payments and penalties PNM would incur, as well as continuing obligations for certain costs associated with the plant’s continued operation as well as the cost of replacement resources, the fact remains that PNM breached an obligation under the stipulation that was directed related at the very issues presented in this case.

38. Accordingly, PNM’s breach is a separate basis on which to deny PNM’s current application for abandonment and require compliance by PNM in any resubmission of its application. In any subsequent refiling of an application for abandonment of FCPP, PNM shall include the modeling it agreed to perform under its agreement under the stipulation in Case 16-00276-UT.

39. The Commission also notes Sierra Club’s argument that, based on its witness Dr. Jeremy Fisher’s testimony, if PNM’s analysis of the alternative to PNM’s abandonment application is were corrected to reflect a disallowance of the challenged SCR and other expenditures abandonment, it would be shown to “cost customers more than not abandoning the plant, even if the plant continues to operate through 2031.”

40. Sierra Club argues that “Dr. Fisher calculated \$146 million as the amount to be disallowed because of PNM’s imprudent decision to remain an owner of Four Corners after 2016, which is comprised of: the undepreciated amount of the Four Corners capital costs spent from July 2016 through 2018, which is \$118 million (out of \$131.3 million in actual capital clearings, and compared to PNM’s estimate of \$148.1 million in expected capital costs); the undepreciated amount of PNM’s share of capital costs at Four Corners from January 2019 through June 2020, which is \$20.8 million; and the undepreciated amount of PNM’s share of capital costs at Four Corners from July 2020 through December 2020, which is \$7.2 million.”

41. Sierra Club concludes: “The potential \$146 million disallowance short-circuited by abandonment exceeds the \$143 median savings Mr. Phillips calculated.”

42. While in this order the Commission does not rule on Sierra Club’s argument, the issues in that argument do underscore the need to serve the public interest by rendering a final decision on the merits of the prudence issues concerning the expenditures on SCR and other improvements reserved to this case by the Commission’s orders in the 16-00276-UT case which the HE was unable to resolve and issue a recommendation on due to the deficiencies outlined in his RD.

43. Accordingly, the prudence issues concerning the expenditures on SCR and other improvements reserved to this case by the Commission’s orders in the 16-00276-UT and which have not been resolved by this proceeding should be addressed in any subsequent proceeding on an application by PNM for abandonment of FCPP and request for approval of replacement resources filed in accordance with this order and NMSA 1978, Section 62-18-4 D.

44. Because the entry of an order consistent with the Commission’s findings of facts and conclusions stated herein are conclusive of PNM’s application, the Commission does not address the remaining recommendations of the HE and exceptions pertaining to those recommendations.

IT IS THEREFORE ORDERED:

A. The Statement of the Case, Background and Legal Framework, and Introduction in the Recommended Decision on PNM’s Request for Sale and Abandonment of PNM’s Interest in the Four Corners Power Plant is adopted and is incorporated herein by reference as part of this Order except to the extent expressly modified by this order.

B. The Commission rejects the Recommended Decision’s Finding of Facts and Conclusions of Law as they relate to the HE’s recommendations concerning PNM’s failure to comply with the terms of the stipulation approved by the Commission in Case 16-00276-UT and PNM’s failure

to satisfy ETA Section 62-18-4(D)'s requirement that PNM's deferral of an application to approve new replacement resources to proceeding both identify "adequate potential new resources" and that the potential new resources are "sufficient to provide reasonable and proper service to retail customers" as well as the effect of such failure on the Commission's ability to perform the necessary analysis under the Commuters' Committee Factors.

C. PNM's Application for Approval of the Sale and Abandonment of the Four Corners Power Plant is denied based on the findings of fact and conclusions of law stated above.

D. PNM's corresponding requests for the Issuance of a Securitized Financing Order is denied based on the Commission's denial of the Application for Approval of the Sale and Abandonment of the Four Corners Power Plant.

E. The Hearing Examiner in any subsequent proceeding on an application by PNM for abandonment of FCPP and request for approval of replacement resources filed in accordance with this order shall address and resolve the outstanding issues concerning the prudence of expenditures on SCR and other improvements reserved to this case by the Commission's orders in the 16-00276-UT case which were not resolved by this proceeding.

F. In any subsequent refiling of an application for abandonment of FCPP, PNM shall include the modeling it agreed to perform under its agreement under the stipulation in case 16-00276-UT.

G. In the event PNM does not file an updated application for abandonment of FCPP consistent with this order in a timely fashion or other factors delay the Commission's review of the issues concerning the prudence of expenditures on SCR and other improvements, those issues may be addressed in a separate proceeding.

H. All other pending motions or exceptions not expressly addressed are deemed resolved consistent with this order.

I. This Order is effective immediately.

J. Copies of this Order shall be served on all persons listed on the attached Certificate of Service, via e-mail to those whose e-mail addresses are known, and otherwise via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 15th day of December, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION OF PUBLIC)
SERVICE COMPANY OF NEW MEXICO FOR APPROVAL)
OF THE ABANDONMENT OF THE FOUR CORNERS)
POWER PLANT AND ISSUANCE OF A SECURITIZED)
FINANCING ORDER)**

Case No. 21-00017-UT

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this date I caused to be sent to the individuals listed below, via e-mail only, a true and correct copy of **Order on Recommended Decisions on Request for Approval of the Sale and Abandonment of PNM’s Interest in the Four Corners Power Plant and Issuance of a Securitized Financing Order** issued December 15th, 2021.

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DATED this 15th of December, 2021.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

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