

**DOCKET NO. 51547**

<b>JOINT REPORT AND APPLICATION OF TEXAS-NEW MEXICO POWER COMPANY, NM GREEN HOLDINGS, INC. AND AVANGRID, INC. FOR REGULATORY APPROVALS UNDER PURA §§ 14.101, 39.262, AND 39.915</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**NOTICE OF STIPULATION, MOTION FOR ADMISSION OF EVIDENCE, AND  
MOTION FOR ENTRY OF AGREED PROPOSED ORDER**

Texas-New Mexico Power Company, NM Green Holdings, Inc., and Avangrid, Inc. (collectively Joint Applicants) and all parties to this docket have reached a settlement of all issues concerning the *Joint Report and Application of Texas-New Mexico Power Company, NM Green Holdings, Inc., and Avangrid, Inc. for Regulatory Approvals Under PURA §§ 14.101, 39.262, and 39.915* (the “Joint Application”) filed in this proceeding.

The terms of the parties’ settlement have been memorialized in a Unanimous Stipulation and Agreement (the “Stipulation”) by Joint Applicants; the Staff of the Public Utility Commission of Texas, the Office of the Public Utility Counsel, the Cities Served by Texas-New Mexico Power Company, the Alliance for Retail Markets, the Texas Energy Association for Marketers, Texas Industrial Energy Consumers, and Walmart Inc. (collectively, the “Signatories”). The Stipulation is filed concurrently with this pleading. The Signatories agree that a negotiated resolution of this proceeding on the basis set forth in the Stipulation is in the public interest, will conserve the parties’ resources, and eliminate controversy. Joint Applicants file this Notice of Stipulation, Motion for Admission of Evidence, and Motion for Entry of Agreed Proposed Order on behalf of themselves and the Signatories to the Stipulation in this proceeding.

The prefiled direct and rebuttal testimony and other exhibits of the parties were admitted into evidence at the prehearing conference held on March 19, 2021. In addition, the Signatories request admission into evidence of the following:

- a. the Unanimous Stipulation and Agreement, including attachments, filed on March 30, 2021;
- b. the supplemental testimony and exhibits of Stacy R. Whitehurst and Pedro Azagra Blazquez in support of the Stipulation on behalf of Joint Applicants, filed on March 30, 2021; and

- c. the testimony of Carolyn A. Berry, Ph.D. in support of the Stipulation on behalf of Commission Staff, filed on March 30, 2021.

The Signatories have agreed on the form of a Proposed Order in this proceeding, which is attached to this filing for the Commission's consideration. The Signatories respectfully request Commission approval of the Proposed Transaction and entry of an order consistent with the attached Proposed Order.

Respectfully submitted,

/s/ Kerry McGrath

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Certificate of Service

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on March 30, 2021, in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/ Kerry McGrath

Kerry McGrath

**DOCKET NO. 51547**

<b>JOINT REPORT AND APPLICATION</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>OF TEXAS-NEW MEXICO POWER</b>	<b>§</b>	
<b>COMPANY, NM GREEN HOLDINGS,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>INC. AND AVANGRID, INC. FOR</b>	<b>§</b>	
<b>REGULATORY APPROVALS UNDER</b>	<b>§</b>	
<b>PURA §§ 14.101, 39.262, AND 39.915</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the joint report and application filed by Texas-New Mexico Power Company (TNMP), NM Green Holdings, Inc. (Green Holdings), and Avangrid, Inc. (Avangrid) (collectively, the applicants) under PURA<sup>1</sup> §§ 14.101, 39.262, and 39.915. On March 30, 2021, the applicants, Commission Staff, the Office of Public Utility Counsel (OPUC), the Cities Served by Texas-New Mexico Power Company (Cities), the Alliance for Retail Markets (ARM), the Texas Energy Association for Marketers (TEAM), Texas Industrial Energy Consumers (TIEC), and Walmart Inc. (collectively, the signatories) filed a unanimous stipulation and agreement. The agreement contains numerous regulatory commitments by the applicants. For the reasons discussed in this Order, the Commission finds that the transaction is in the public interest under PURA §§ 14.101, 39.262, and 39.915, provided that all the regulatory commitments described in this Order are met.

**I. Discussion****A. The Proposed Transaction**

In the joint report and application filed in this docket, the applicants seek Commission approval of a proposed transaction that would result in the transfer of ultimate ownership and control of TNMP. Specifically, effective October 20, 2020, TNMP's indirect parent company, PNM Resources, Inc. (PNMR), entered into an Agreement and Plan of Merger (Merger Agreement) with Avangrid and its subsidiary, Green Holdings, under which, following receipt of regulatory approvals and satisfaction of other closing conditions, Green Holdings will be merged with and into PNMR with PNMR as the surviving corporation and a direct subsidiary of Avangrid. Avangrid will then contribute 100% of its interest in PNMR to Avangrid Networks, Inc. (Avangrid Networks). Avangrid also proposes to then have PNMR's subsidiary, TNP Enterprises, Inc.

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<sup>1</sup> Public Utility Regulatory Act, Tex. Util. Code § 11.001–66.016.

(TNPE) transfer the 100% ownership interest in TNMP to a newly created special purpose entity (SPE) named TNMP Holdings that will be owned by TNPE, so that there will be a SPE interposed between TNMP and TNPE. These collective steps are the Proposed Transaction. After closing, TNMP and Public Service of New Mexico (PNM) will continue to be subsidiaries of PNMR and will be indirect subsidiaries of Avangrid Networks and Avangrid.

### **B. Regulatory Commitments**

The applicants proposed regulatory commitments in both the joint report and application and in their rebuttal testimonies filed in this proceeding. These regulatory commitments were modified and expanded in the parties' agreement. The regulatory commitments are set forth in findings of fact 43 through 55 below. The Commission finds that these regulatory commitments are necessary to find that the transaction is in the public interest under PURA §§ 14.101, 39.262, and 39.915. The Commission may enforce these regulatory commitments under PURA §§ 39.262(o) and 39.915(d).

## **II. Findings of Fact**

The Commission makes the following findings of Fact.

### **Applicants**

1. TNMP, a wholly owned subsidiary of PNMR, is a transmission and distribution utility serving four areas of Texas, all located in the Electric Reliability Council of Texas (ERCOT). TNMP is authorized to provide service under certificate of convenience and necessity number 30038 and serves more than 259,000 homes and businesses in a service territory totaling 13,613 square miles. With headquarters in Lewisville, TNMP has approximately 400 employees in more than 70 municipalities throughout the state. TNMP historically and currently receives support services from affiliate employees located in Texas and New Mexico.
2. Avangrid, a subsidiary of Iberdrola, S.A., is a leading United States sustainable energy company with approximately \$36 billion in assets and operations in 24 states. Avangrid's primary business is ownership of its operating businesses, which are held by two subsidiaries in two primary lines of business: Avangrid Networks and Avangrid Renewables. Avangrid Networks owns eight electric and natural gas utilities, serving approximately 3.3 million customers in New York, Maine, Connecticut, and Massachusetts, delivering electricity to approximately 2.3 million electric utility customers

and delivering natural gas to approximately 1.0 million natural gas public utility customers. Avangrid Renewables owns and operates approximately 7.5 gigawatts of wind and solar electricity generating capacity, with a presence in 22 states across the United States.

3. Avangrid Texas Renewables, LLC, an indirect subsidiary of Avangrid Renewables, holds power generation company registration number 20213.<sup>2</sup>
4. Iberdrola Solutions, LLC, an indirect subsidiary of Iberdrola, S.A., holds retail electric provider Option 1 certificate number 10267.<sup>3</sup>
5. Green Holdings is a New Mexico corporation and a wholly owned subsidiary of Avangrid that was formed solely for the purpose of merging with and into PNMR in the proposed transaction.

**Application and Description of the Proposed Transaction**

6. On November 23, 2020, the applicants filed the joint report and application, including direct testimony, seeking approval of a change of ownership or control of TNMP.
7. The transaction will occur in accordance with the merger agreement executed by TNMP's indirect parent company, PNMR, with Avangrid and Green Holdings on October 20, 2020.
8. Under the merger agreement, Green Holdings will merge with and into PNMR, with PNMR as the surviving entity. As a result, TNMP will become a wholly owned subsidiary of Avangrid. Subsequently, Avangrid will contribute 100% of the ownership interests in PNMR to its subsidiary Avangrid Networks with the result that PNMR will become a direct subsidiary of Avangrid Networks and an indirect subsidiary of Avangrid. Finally, Avangrid proposes to then have PNMR, as sole shareholder of TNP Enterprises, Inc. (TNPE), transfer TNPE's 100% ownership interest in TNMP to a newly created special-purpose entity (SPE) named TNMP Holdings that will be indirectly owned by PNMR, so that there will be a SPE interposed between TNMP and TNPE.
9. Under the merger agreement, Avangrid will acquire 100% of the common stock of PNMR and the shareholders of PNMR will receive, in consideration for their shares, \$50.30 in cash per share. The total consideration that Avangrid will pay to PNMR shareholders, based upon the number of PNMR shares outstanding, is approximately \$4.3 billion.

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<sup>2</sup> *Application of Iberdrola Texas Renewables, LLC to Amend its Power Generation Company Registration under 16 Texas Administrative Code § 25.109*, Project No. 46990, Notice of Approval (Apr. 24, 2017).

<sup>3</sup> *Application of Iberdrola Solutions, LLC for a Retail Electric Provider Certificate*, Docket No. 49459, Notice of Approval (Jul. 9, 2019).

10. The applicants made regulatory commitments related to the transaction in the joint report and application and in their rebuttal testimonies.
11. The applicants represented that the transaction is in the public interest because it: (1) provides significant net benefits to TNMP customers and to Texas that are achievable only because of the transaction; (2) maintains the current local management control and location of TNMP headquarters in TNMP's service territory; (3) ensures that customers do not bear the costs of the transaction, such as any acquisition premium, transaction costs, or transition costs; (4) preserves the Commission's jurisdiction; (5) provides tangible and quantifiable benefits to TNMP customers through implementation of a rate credit over three years; (6) ensures customers will see no changes in the day-to-day operations of TNMP, workforce pay and staffing levels will be maintained, and necessary and prudent capital expenditures will be maintained consistent with TNMP's current five-year budget; and (7) will not result in the transfer of jobs to workers outside of Texas, adversely affect the safety of TNMP's customers or employees, or result in a decline of service.
12. The applicants represented that the transaction will not adversely affect the reliability, availability, or cost of TNMP's service.
13. The applicants represented that TNMP will continue to maintain separate books and records and adhere to all applicable affiliate rules.
14. In Order No. 4 filed on December 15, 2020, the Commission administrative law judge (ALJ) found the application sufficient for further review.

### **Notice**

15. Notice of the joint report and application in this docket was provided by email<sup>4</sup> or first class mail to: (1) all affected counties and municipalities in TNMP's service area; (2) all entities listed in the Commission's transmission matrix in Docket No. 50333, *Commission Staff's Application to Set 2020 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*;<sup>5</sup> (3) all neighboring utilities and electric cooperatives of

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<sup>4</sup> Under the Commission's Second Order Suspending Rules in Project No. 50664, service via electronic mail is appropriate.

<sup>5</sup> *Commission Staff's Application to Set 2020 Wholesale Transmission Service Charges for the Electric Reliability Council of Texas*, Docket No. 50333, Final Order (May 1, 2020).

- TNMP; (4) all retail electric providers (REPs) serving TNMP's service territory; and (5) all authorized representatives for parties in Docket No. 48401,<sup>6</sup> TNMP's last base rate case.
16. On December 9, 2020, the applicants filed the affidavit of Jacqueline Jones, a paralegal for counsel for TNMP, attesting to the provision of notice as described in finding of fact 15 along with a copy of the notice provided.
17. In Order No. 2 filed December 9, 2020, the Commission ALJ found the notice sufficient.

**Intervenors**

18. In Order No. 3 filed on December 14, 2020, the Commission ALJ granted the motions to intervene of Cities, TIEC, and OPUC.
19. In Order No. 6 filed on January 15, 2021, the Commission ALJ has granted the motions to intervene of ARM, TEAM, and Walmart.

**Pre-filed Testimony and Statements of Position**

20. As part of the joint report and application, the applicants filed the direct testimonies and exhibits of James Neal Walker, Stacy R. Whitehurst, Henry E. Monroy, and Ellen Lapson on behalf of TNMP, and the direct testimonies and exhibits of Pedro Azagra Blazquez and Robert D. Kump on behalf of Avangrid and Green Holdings.
21. On February 23, 2021, TIEC filed the redacted and confidential direct testimony of Charles S. Griffey, ARM filed the direct testimony of Dr. Wayne D. Hoyer, and Walmart filed the direct testimony of Alex J. Kronauer.
22. On March 2, 2021, Commission Staff filed the direct testimonies of David Bautista and William B. Abbott, and the redacted and confidential direct testimony of Carolyn A. Berry, Ph.D.
23. On March 3, 2021, Commission Staff filed the redacted and confidential workpapers to the direct testimony of Carolyn A. Berry, Ph.D.
24. On March 10, 2021, OPUC filed a statement of position.
25. On March 15, 2021, TNMP filed the redacted and confidential rebuttal testimony of Stacy R. Whitehurst, and the rebuttal testimonies of Henry E. Monroy and Ellen Lapson.
26. On March 15, 2021, Avangrid and Green Holdings filed the rebuttal testimonies of Pedro Azagra Blazquez, Robert D. Kump, and John J. Reed.

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<sup>6</sup> *Application of Texas-New Mexico Power Company to Change Rates*, Docket No. 48401, Order (Dec. 20, 2018).

27. On March 16, 2021, Commission Staff filed an errata to the redacted and confidential direct testimony of Carolyn A. Berry, Ph.D.
28. On March 19, 2021, Cities filed a statement of position.
29. On March 19, 2021, TEAM filed a statement of position.
30. On March 30, 2021, the applicants filed the testimony of Stacy R. Whitehurst and Pedro Azagra Blazquez in support of the agreement.
31. On March 30, 2021, Commission Staff filed the testimony of Carolyn A. Berry, Ph.D. in support of the agreement.

**Evidence**

32. At the prehearing conference on March 19, 2021, the Commission ALJ admitted the following items into evidence:
  - a. the joint report and application, filed on November 23, 2020;
  - b. the affidavit of Jacqueline Jones attesting to the applicants' provision of notice, filed on December 9, 2020;
  - c. the direct testimonies and exhibits of James Neal Walker, Stacy R. Whitehurst, Henry E. Monroy, and Ellen Lapson on behalf of TNMP, filed on November 23, 2020;
  - d. the direct testimonies and exhibits of Pedro Azagra Blazquez and Robert D. Kump on behalf of Avangrid and Green Holdings, filed on November 23, 2020;
  - e. the redacted and confidential direct testimony with exhibits of Charles S. Griffey on behalf of TIEC, filed on February 23, 2021;
  - f. the direct testimony of Dr. Wayne D. Hoyer on behalf of ARM, filed on February 23, 2021;
  - g. the direct testimony of Alex J. Kronauer on behalf of Walmart, filed on February 23, 2021;
  - h. the redacted and confidential direct testimony, with errata, of Carolyn A. Berry, Ph.D, on behalf of Commission Staff, filed on March 2, 2021; the direct testimonies of David Bautista and William B. Abbott on behalf of Commission Staff, filed on March 2, 2021;
  - i. the redacted and confidential workpapers to the direct testimony of Carolyn A. Berry, Ph.D., filed on March 3, 2021;

- j. the redacted and confidential rebuttal testimony of Stacy R. Whitehurst on behalf of TNMP, filed on March 15, 2021;
  - k. the rebuttal testimonies of Henry E. Monroy and Ellen Lapson on behalf of TNMP, filed on March 15, 2021; and
  - l. the rebuttal testimonies of Pedro Azagra Blazquez, Robert D. Kump, and John J. Reed on behalf of Avangrid and Green Holdings, filed on March 15, 2021.
33. In Order No. [REDACTED] filed on [REDACTED], 2021, the Commission ALJ admitted the following items into evidence:
- a. the unanimous stipulation and agreement, and all attachments, filed on March 30, 2021;
  - b. the supplemental testimony and exhibits of Stacy R. Whitehurst and Pedro Azagra Blazquez in support of the agreement on behalf of Joint Applicants, filed on March 30, 2021; and
  - c. the testimony of Carolyn A. Berry, Ph.D. in support of the agreement on behalf of Commission Staff, filed on March 30, 2021.

### **Hearing**

34. In Order No. 6 filed on January 15, 2021, the Commission ALJ scheduled a prehearing conference for March 19, 2021 and a hearing on the merits for March 24 through 26, 2021.
35. In Order Nos. 8 and 9 filed on March 12, 2021, the Commission ALJ provided public notice of the prehearing conference and hearing on the merits and adopted procedures and guidelines for both the prehearing conference and the hearing on the merits.
36. In Order No. 11 filed on March 22, 2021, the Commission ALJ cancelled the hearing on the merits after the parties announced that they had reached a settlement agreement.

### **The Agreement**

37. An agreement was executed by the applicants, Commission Staff, OPUC, Cities, ARM, TEAM, TIEC, and Walmart on March 30, 2021.
38. The signatories agreed that the agreement resolves all issues between them related to this proceeding and that the agreement is binding on each of the signatories for the purpose of resolving the issues set forth in the agreement.
39. The signatories agreed that, based on the requirements of the agreement, the transaction is in the public interest in accordance with PURA §§ 14.101, 39.262(*l*) and(*m*), and 39.915.

40. The regulatory commitments included in the agreement, as agreed to by all the signatories, are set forth below in findings of fact 43 through 55.
41. The agreement, taken as a whole, is a just and reasonable resolution of the issues, is in the public interest, and should be approved.

**Regulatory Commitments**

42. The signatories agreed that except to the extent that any of the following conditions (through finding of fact 55) explicitly state otherwise, the following commitments will apply as of closing of the transaction and continue to apply thereafter, unless and until altered by the Commission.
43. The signatories agreed to the following regulatory commitments addressing financial protections and code of conduct:
  - a. Sole Authorized Purpose – The sole authorized purpose of TNMP will be the provision of transmission and distribution utility service and the performance of activities reasonably necessary and appropriate thereto. The sole authorized purpose of the special purpose entity that will be created and interposed between TNMP and TNPE (the SPE is to be named TNMP Holdings) will be the direct ownership of TNMP.
  - b. Best Interest of Utility – The TNMP and TNMP Holdings boards of directors must have the duty to act, subject to applicable Texas law, in the best interests of TNMP consistent with this Order.
  - c. Separate Name and Logo – TNMP will maintain an identity, name, and logo that is separate and distinct from the identity, name, and logos of Avangrid, Iberdrola, and any current and future retail electric providers, wholesale generation companies, and other Texas competitive affiliates of TNMP. To remain separate and distinct, TNMP's logo will not include the name, logo, or any other brand-identifying features of any Avangrid or Iberdrola retail electric providers, wholesale generation companies, or any other current or future Texas competitive affiliate of TNMP. Notwithstanding the foregoing, the Avangrid name and logo can be added to the TNMP name and logo for branding purposes (e.g., "An Avangrid Company") provided that no current or future competitive affiliate with operations in Texas adds the Avangrid name, logo, or other brand-identifying features for branding

purposes. No Avangrid or Iberdrola retail electric providers, wholesale generation companies that operate in Texas, or any other current or future Texas competitive affiliate of TNMP will use the same name, trademark, brand, logo, or any other brand-identifying features such as color scheme or font style as are used by TNMP. TNMP will not otherwise engage in joint marketing, advertising, or promotional activities with any Avangrid or Iberdrola retail electric provider, broker, aggregator, wholesale generation company that operates in Texas, or any other current or future Texas competitive affiliate of TNMP, in a manner that is inconsistent with the Public Utility Regulatory Act and the Commission's rules.

- d. Pledging of Assets/Stock – TNMP's assets, stock, or revenues must not be pledged by TNMP Holdings, TNPE, PNMR, Avangrid Networks, Avangrid, Iberdrola, or any of their affiliates or subsidiaries, or any entity with a direct or indirect ownership interest in TNMP or TNMP Holdings for the benefit of any entity other than TNMP.
- e. Elimination of PNMR Debt – Avangrid will extinguish all debt at PNMR, reducing it to zero reasonably promptly following the closing of the transaction and maintaining it at zero going forward unless authorized in advance by the Commission. No debt will be incurred at PNMR, TNPE or TNMP Holdings or at any corporate entity between TNMP and PNMR in the future unless authorized in advance by the Commission.
- f. No Additional Inter-Company Debt or Lending – Aside from the existing arrangement with PNMR and its subsidiaries during the current term of that arrangement, TNMP will not lend money to or borrow money from any of its affiliates, other than through Avangrid Networks' existing money pool arrangements in which TNMP may only borrow from and lend to investment grade-rated, regulated utilities within Avangrid Networks.
- g. Credit Facility – Neither TNMP nor TNMP Holdings will share credit facilities with Avangrid or any Avangrid affiliates, or any entity with a direct or indirect ownership interest in Avangrid or any Avangrid affiliate, other than joint credit revolvers with affiliates where liability shall be several and not joint, and where there would not be cross default provisions applicable to any utility borrower.

- h. Cross-Default Provisions – TNMP will not include in any of its debt or credit agreements cross-default provisions relating to TNMP Holdings, TNPE, PNMR, Avangrid Networks, Avangrid, Iberdrola, or any of their affiliates or subsidiaries or any entity with a direct or indirect ownership interest in TNMP or TNMP Holdings. Under no circumstances will any debt of TNMP become due and payable or otherwise be rendered in default because of any cross-default, financial covenants, rating agency triggers or similar provisions of any debt or other agreement of TNMP Holdings, TNPE, PNMR, Avangrid Networks, Avangrid, Iberdrola, or any of their affiliates or subsidiaries.
- i. Affiliate Asset Transfer – TNMP will not transfer material assets or any transmission or distribution asset worth more than \$1 million to affiliates other than in a transfer that is at an arm's length basis consistent with the Commission's affiliate standards applicable to TNMP, regardless of whether such affiliate standards would apply to a particular transaction.
- j. Separate Books and Records – TNMP will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity.
- k. Code of Conduct – TNMP will file with the Commission for authority to amend and update its code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by these regulatory commitments.
- l. Credit Ratings Agencies – TNMP, TNMP Holdings, TNPE, PNMR, Avangrid Networks, and Avangrid must take the actions necessary to ensure the existence of TNMP's standalone bond credit and debt ratings. TNMP will, except as otherwise approved by the Commission, be registered with at least two nationally recognized statistical ratings organizations that are registered with the United States Securities and Exchange Commission, which must include two of Moody's, Fitch, or Standard & Poor's. TNMP, TNMP Holdings, TNPE, PNMR, and Avangrid Networks must take the actions necessary to ensure that TNMP's credit ratings reflect the ring-fence provisions adopted in this order such that the credit ratings agencies provide TNMP with a standalone credit rating.

- m. Dividend Restriction – TNMP will not pay dividends or distributions, except for contractual tax payments, at any time that TNMP’s debt rating is below (BBB) or the equivalent with any one of the credit agencies rating TNMP unless approved by the Commission in a proceeding opened for that purpose. Additionally, TNMP, TNMP Holdings, and any entity in their chain of ownership will not issue stock or ownership interests that supersede the foregoing obligations of TNMP, nor will TNMP Holdings or any of its affiliates permit TNMP to act in a manner that will supersede the foregoing obligations of TNMP. TNMP shall notify the Commission if TNMP’s credit rating from any of the agencies rating TNMP falls below the rating TNMP was given as of October 21, 2020.
- n. No Transaction-Related Debt at TNMP or TNMP Holdings – TNMP, TNMP Holdings, and TNPE will not take on any new debt in conjunction with the Transaction, provided further that any increased costs due to refinancing of existing TNMP debt caused by the Proposed Transaction will not be borne by customers.
- o. Non-Consolidation Legal Opinion – Avangrid will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of Avangrid or any affiliate of Avangrid, a bankruptcy court will not consolidate the assets and liabilities of TNMP with Avangrid or any affiliate of Avangrid.
- p. Arm’s-Length Relationship – The ring-fenced entity, TNMP, when negotiating or entering into contracts with affiliates, will comply with the Commission’s affiliate standards applicable to TNMP, maintain an arm’s-length relationship with Avangrid or Avangrid’s affiliates, or any entity with a direct or indirect ownership interest in TNMP or TNMP Holdings.
- q. No Debt Disproportionally Dependent on TNMP – Without prior approval of the Commission, neither Avangrid nor any affiliate of Avangrid (excluding TNMP) will incur, guaranty, or pledge assets in respect of any incremental new debt at the closing or thereafter that is dependent on: (1) the revenues of TNMP in more than a proportionate degree than the other revenues of Avangrid; or (2) the stock of TNMP or TNMP Holdings.
- r. No Recovery of Affiliate REP Bad Debt – To the extent that any retail electric provider is affiliated with TNMP, TNMP will not seek to recover from its

customers any costs incurred as a result of a bankruptcy of any such affiliate.

- s. Net Income and Dividends – TNMP will limit its payment of dividends, except for contractual tax payments, to an amount not to exceed its net income as determined in accordance with GAAP. Beyond that restriction, dividend policy will be set by the board of TNMP as discussed in Section 7.
- t. Prohibition on Commingling of Assets – Except insofar as TNMP is authorized to participate in the Avangrid shared credit facilities under Section 1(g) of the agreement or its participation in Avangrid Networks’ existing affiliate money pool under Section 1(f) of the agreement, TNMP must not commingle its funds, assets, or cash flows with TNMP Holdings, TNPE, PNMR, Avangrid Networks, Avangrid, Iberdrola, or any of their affiliates or subsidiaries or any entity with a direct or indirect ownership in TNMP.
- u. Debt-to-Equity Ratio – TNMP shall maintain a minimum common equity ratio (measured using a trailing 13-month average) in compliance with the equity ratio established from time to time by the Commission for ratemaking purposes. TNMP will make no payment of dividends or other distributions, except for contractual tax payments, where such dividends or other distributions would cause TNMP to be out of compliance with the Commission approved equity ratio (measured using a trailing 13-month average).
- v. TNMP Competitive Affiliate Commitment – TNMP will comply with all requirements in PURA and Commission rules governing all aspects of any relationship and dealings between TNMP and all competitive affiliates.
- w. Within six (6) months of the closing of this Proposed Transaction, neither Iberdrola nor Avangrid will own or control any customer facing competitive affiliates in ERCOT including retail electric providers, brokers or aggregators. Within six (6) months of the closing of this Proposed Transaction, Iberdrola Solutions LLC dba Iberdrola Texas will either file an application with the PUC to voluntarily relinquish its retail electric provider certificate or transfer its certificate to an unaffiliated third party. Iberdrola Solutions LLC dba Iberdrola Texas will not convey the name, logo or other brand identifying feature such as color scheme or font style to any third party. If ever Iberdrola or Avangrid were to seek to own or control any customer

facing competitive affiliates in ERCOT including retail electric providers, brokers or aggregators, they would need prior Commission approval and would agree not to have any such competitive affiliates engaged in such activities within TNMP's service territory.

44. The regulatory commitments addressing financial protections and code of conduct in this Order are reasonable.
45. The signatories agreed to the following regulatory commitments addressing local control and management:
  - a. Capital Expenditures – TNMP will continue to make minimum capital expenditures in an amount equal to TNMP's current five-year budget for the five year period beginning January 1, 2021, subject to the following qualifications, which must be reported to the Commission in TNMP's earnings monitoring report: TNMP may reduce capital spending due to conditions not under TNMP's control, including, without limitation, siting delays, cancellations of projects by third-parties, weaker than expected economic conditions, or if TNMP determines that a particular expenditure would not be prudent.
  - b. Headquarters – TNMP's headquarters will remain in Texas in TNMP's service territory for so long as Avangrid or any affiliate or successor owns TNMP unless authorized in advance by the Commission.
  - c. TNMP Employee Compensation – No TNMP employees including TNMP's President and senior management will simultaneously hold positions with any upstream affiliate. The compensation of the President and senior management shall not be related or tied to the business or social goals of any entity other than TNMP.
  - d. Management Day-to-Day Control – TNMP's President and TNMP's senior management will continue to have day-to-day control over TNMP's operations.
  - e. Continued Ownership – TNMP Holdings (directly) and Avangrid (indirectly) will maintain a controlling ownership interest in TNMP for at least five years post-closing.
  - f. Workforce – For at least two years post-closing, as a result of the transaction, TNMP will not implement any involuntary workforce reductions (other than for cause or performance) or reductions in wages or benefits.

46. The regulatory commitments addressing local control and management in this Order are reasonable.
47. The signatories agreed to the following regulatory commitments addressing accounting and ratemaking:
- a. Goodwill – TNMP will not seek recovery in rates of any transaction acquisition premium. Any goodwill associated with the transaction will not be included in rates, rate base, cost of capital, or operating expenses in future TNMP ratemaking proceedings. Write-downs or write-offs of goodwill associated with the transaction will not be included in the calculation of net income for dividend or other distribution payment purposes.
  - b. No Pushdown Accounting – Neither TNMP Holdings nor TNPE nor PNMR nor any of their affiliates will elect to apply pushdown accounting for the transaction (i.e., the transaction will have no accounting impact on TNMP's assets). Any incremental goodwill will not be allocated to, nor recognized within, TNMP's financial statements.
  - c. Transaction Costs – Neither TNMP nor TNMP Holdings, nor any affiliate or subsidiary of PNMR, Avangrid, or Iberdrola will seek recovery of transaction costs in TNMP's rates. None of the transaction costs will be borne by TNMP's customers, nor will TNMP seek to include transaction costs in its rates. Transaction costs are those incremental costs paid to advance or consummate the transaction. Transaction costs do not include TNMP employee time but must include any form of incentive compensation associated with the Proposed Transaction, regardless of whether Avangrid, PNMR, or their affiliates and subsidiaries internally refer to it as incentive compensation.
  - d. Transition Costs – No time and expenses, third party costs, fees, expenses, or costs of the transition (transition costs) incurred by any party to the Transaction (including Avangrid and its subsidiaries and PNMR and its subsidiaries) will be borne by TNMP's customers, nor will TNMP seek to include transition costs in rates. Transition costs are those costs necessary to integrate TNMP into the holdings of TNMP Holdings and Avangrid Networks, whether incurred before or after closing of the transaction, including one-time transition costs being incurred

whether directly or indirectly through affiliate charges, to transition TNMP to ownership by TNMP Holdings and to integrate TNMP's operations and systems with those of Avangrid Networks. Provided, however, that transition costs do not include TNMP employee time.

48. The regulatory commitments addressing accounting and ratemaking in this Order are reasonable.
49. The signatories agreed to the following regulatory commitments addressing regulatory jurisdiction:
  - a. Commission Jurisdiction – TNMP will not build transmission or distribution assets outside of ERCOT without prior Commission approval or otherwise take any action that impairs the continuing jurisdiction of the Commission. Neither TNMP, TNMP Holdings, Avangrid, Iberdrola, nor their respective affiliates will take any action that would subject ERCOT assets to the jurisdiction of the Federal Energy Regulatory Commission (FERC); provided, however, that the FERC continues to have jurisdiction under sections 210, 211, and 212 of the Federal Power Act and may direct transmission and interconnection services over certain existing facilities outside of ERCOT; provided further that the existing reliability and critical infrastructure standards administered by the North American Electric Reliability Corporation (NERC), through delegation of authority from the FERC, may affect the operations of assets that are deemed part of the bulk electric system. Avangrid further commits that it will affirmatively support the preservation of the status quo of ERCOT's jurisdictional authority and will in good faith support the efforts of TNMP to preserve and maintain the current state of ERCOT's jurisdiction.
  - b. FERC Preemption – Neither TNMP, TNMP Holdings, PNMR, Avangrid, Iberdrola, nor any of their affiliates will assert before the Commission, FERC, or a federal or Texas court of competent jurisdiction that the Commission is preempted pursuant to the Federal Power Act (e.g., under a FERC tariff) from making a determination regarding the cost recovery of affiliate costs sought to be allocated to TNMP.
  - c. Compliance Reports – For a period of five years after the closing of the transaction, TNMP will make annual reports to the Commission regarding its compliance with

the terms stated in the order approving the transaction.

- d. Access to Books and Records – TNMP Holdings, Avangrid, and Iberdrola will provide the Commission access to its books and records, as well as those of its applicable affiliates, as necessary to facilitate the Commission’s audit or review of affiliate transactions, if any, between TNMP and TNMP Holdings or between TNMP and PNMR or any of Avangrid’s affiliates or subsidiaries.
  - e. Amendments to Regulatory Commitments – Any amendments to these regulatory commitments will require prior Commission approval.
  - f. Modification of Regulatory Commitments – TNMP, TNMP Holdings, TNPE, PNMR, Avangrid Networks, Avangrid, and Iberdrola acknowledge the Commission’s jurisdiction and authority to initiate a future proceeding to modify any or all of the regulatory commitments adopted as part of the final order in this proceeding (Docket No. 51547). Nothing will preclude TNMP, TNMP Holdings, TNPE, PNMR, or Avangrid Networks from seeking to modify these regulatory commitments in a future filing made with the Commission.
50. The regulatory commitments addressing regulatory jurisdiction in this Order are reasonable.
51. The signatories agreed to the following regulatory commitments addressing LLC Agreements or corporate bylaws:
- a. Requirement to Abide by Commitments – TNMP’s and TNMP Holdings’ LLC agreements or corporate bylaws will be modified to reflect that those entities must abide by the commitments made to the Commission.
  - b. Amendments to LLC Agreements or Corporate Bylaws – No more than 30 days after the closing of the transaction, the following entities must approve the necessary amendments to their LLC agreements or corporate bylaws to give effect to the provisions of this Order: TNMP and TNMP Holdings. The proposed amendments to the LLC agreements or corporate bylaws will be filed with the Commission. To the extent thereafter that any changes to the regulatory commitments approved in this proceeding (Docket No. 51547) are sought, TNMP and TNMP Holdings must not amend such regulatory commitments until such changes are approved by the Commission, and the amendments must be completed

within the timeframe ordered by the Commission.

52. The regulatory commitments addressing LLC Agreements and corporate bylaws in this Order are reasonable.
53. The signatories agreed to the following regulatory commitments addressing tangible and quantifiable benefits:
  - a. Rate Credit – TNMP will provide a direct financial benefit to TNMP wholesale and retail customers in the form of a \$16.2 million rate credit to electric delivery rates payable over three years following closing of the Transaction. The credit shall be allocated between the wholesale transmission and retail distribution functions using the percentages included in Table WBA-1 to the Direct Testimony of Staff witness William B. Abbott.
    - i. Retail Rate Credit. The allocation among retail rate classes shall be based on 2020 base revenue, exclusive of TCRF revenues, as reflected in the Supplemental Testimony in Support of Stipulation of Stacy R. Whitehurst. All customer classes will receive the retail rate credit on a kWh basis using an existing SAC04 code in the standard electronic transaction for each ESIID. This credit to retail customers shall be implemented by retail electric providers (REPs) in accordance with the customer's terms of service, and TNMP commits to working in good faith with affected REPs to determine an acceptable method for implementation of such electric delivery rate credits to implement this commitment. The effective date of the retail rate credit shall coincide with the effective date of the next adjustment to TNMP's TCRF after the closing of the Transaction.
    - ii. Wholesale Rate Credit. The monthly wholesale network transmission service credit will be provided to distribution service providers by means of a credit rider with the credit rate calculated and applied for the entirety of the three-year period based on the most recently approved ERCOT 4CP values at the time of the Transaction. The wholesale distribution service credit will be provided to wholesale distribution service customers subject to TNMP's wholesale distribution service tariff and rates on a per-customer basis.

- b. Charitable Giving – TNMP will make charitable contributions in accordance with its past level of contributions over the first three years after closing of the Transaction.
  - c. Dedicated Contact Person(s) – The Applicants commit to assign a dedicated contact person(s) to address issues related to Texas-New Mexico Power Company’s distribution system for electric consumers who take more than 3 MW of aggregate load from Texas-New Mexico Power.
54. The regulatory commitments addressing tangible and quantifiable benefits in this Order are reasonable.
55. The signatories agreed to the following regulatory commitments addressing governance:
- a. Governance – TNMP will have a seven member board of directors with at least three disinterested directors. A disinterested director will qualify as independent in all material respects in accordance with the rules and regulations of the New York Stock Exchange (NYSE) (which are set forth in section 303A of the NYSE listed company manual) from Avangrid, and its subsidiaries or affiliated entities and any entity with a direct or indirect ownership interest in TNMP, and also will have no material relationship with Avangrid or Iberdrola or their subsidiaries or affiliated entities or any entity with a direct or indirect ownership interest in TNMP, currently or within the previous five years. The President of TNMP shall be a member of the TNMP board of directors.
- The TNMP board of directors will have decision-making authority over TNMP dividend policy, debt issuance, issuance of dividends or other distributions (except for contractual tax payments), capital expenditures, management and services fees, operation and maintenance expenditures, and appointment or removal of board members as specified in these commitments. Decisions made by TNMP’s board of directors cannot be overruled by Iberdrola, Avangrid, or its affiliates and subsidiaries. Any amendment to these regulatory commitments require the prior approval of the Commission.
- i. Disinterested Director Appointment – The disinterested directors will be identified in a compliance filing made by TNMP within 90 days after closing of the transaction.

- ii. Terms of Disinterested Director – All disinterested directors will have a term of equal length, except the initial terms of the disinterested directors will be staggered, such that in each year only one of the terms of a disinterested director may expire and be filled by appointment of the other disinterested directors. A person appointed to fill a disinterested director position vacant due to death, resignation, removal, or other reason other than expiration of the term of the position will serve the remainder of that term.
  - iii. Disinterested Director Removal – A disinterested director may only be removed by the majority vote of the remaining directors, including both of the other disinterested directors.
  - iv. Director Compensation/Financial Performance – The compensation for being a TNMP or TNMP Holdings director will in no manner be tied to, reflect, or be related to the financial, operating, or other performance of any entity or interest other than TNMP.
  - v. Director Eligibility – To be eligible, a director must be a United States citizen and a resident of the state of Texas.
  - vi. The directors may not include any individual that is an employee of any competitive affiliates, any members of the boards of directors of any competitive affiliates, or any individuals with direct responsibility for the management or strategies of any such competitive affiliates.
- b. Board Duties and Independence
- i. The appointment or removal of the chief executive officer of TNMP and the chief financial officer of TNMP shall require a majority vote of the TNMP board of directors.
  - ii. The Compensation Committee of the TNMP board shall have sole responsibility to set the compensation and benefits for all directors and officers of the company consistent with the provisions of this ring fence.
  - iii. Neither TNMP Holdings nor TNMP nor any of their subsidiaries may without the prior written consent of Avangrid (1) enter into or authorize any material transactions with a third party outside the ordinary course of

business nor enter into any contract or other similar agreement to effectuate such material transactions; or (2) institute a TNMP bankruptcy filing.

- iv. A majority of the disinterested directors of TNMP must approve an annual budget or any multi-year budget if the aggregate amount of such capital expenditures in such budget is more than a 10% decrease or increase from the capital expenditure budget for the immediately prior fiscal year or multi-year period, as applicable. For five years following the close of the transaction, if the annual or multi-year capital expenditure budget is more than a 10% decrease or increase from the immediately prior fiscal year or multi-year period, as applicable, TNMP shall file a report providing the reasons for the variance consistent with the corresponding finding of fact in the Order approving this Stipulation.
- v. A majority of the disinterested directors of TNMP must approve an annual budget or any multi-year budget if the aggregate amount of such operating and maintenance expenditures in such budget is more than a 10% decrease or increase from the operating and maintenance budget for the immediately prior fiscal year or multi-year period, as applicable.
- vi. The TNMP board of directors' Compensation Committee will be made up exclusively of the three disinterested directors.
- vii. The disinterested directors of TNMP will have the responsibility for overseeing compliance with the provisions of this ring fence.
- c. TNMP Board's Right to Determine Dividends – The TNMP board, including the affirmative vote of a majority of the disinterested directors, will have the sole right to determine dividends or other distributions, except for contractual tax payments.
  - i. Any amendments or changes to the dividend policy must be approved by a majority vote of the directors, including the affirmative vote of a majority of the disinterested directors.
  - ii. The disinterested directors, acting by majority vote, shall have the authority to prevent TNMP from making any dividend or other distributions, except for contractual tax payments, if they determine that it is in the best interest of TNMP to retain such amounts to meet expected future requirements of

TNMP. Additionally, Avangrid agrees that neither Avangrid nor any of its affiliates will issue stock or ownership interest that supersede the foregoing obligations of TNMP or TNMP Holdings.

56. The regulatory commitments addressing governance in this Order are reasonable.

**Tangible and Quantifiable Benefits to Texas Customers**

57. In determining whether the transaction is in the public interest under PURA §§ 14.101, 39.262, and 39.915, the Commission has evaluated whether the transaction would provide tangible and quantifiable benefits to ratepayers that are specific to the transaction at issue.

58. Based on regulatory commitments in finding of fact 53 as set forth in this Order, the transaction will result in tangible and quantifiable benefits to Texas customers on a timely basis.

**Evaluation of the Transaction**

59. Based on the record evidence and regulatory commitments made by the applicants, a reasonable value is being paid for the ownership interest of TNMP.

60. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not adversely affect the health or safety of TNMP's customers or employees.

61. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not result in the transfer of jobs of citizens of this state to workers domiciled outside of this state.

62. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not result in a decline in service to TNMP's customers.

63. Based on the record evidence, the transaction does not involve the sale, lease, or transfer of TNMP's assets.

64. Based on the record evidence and regulatory commitments relating to transaction costs and transition costs set forth in this Order, the transaction will not result in Texas ratepayers bearing transaction-related costs unrelated to the corresponding benefits to Texas ratepayers.

65. Based on the record evidence and regulatory commitments made by the applicants, the transaction will not adversely affect TNMP's reliability of service, availability of service, or cost of service.

66. The regulatory commitments regarding rate credits that will be given to TNMP customers ensure that ratepayers will receive a tangible and quantifiable benefit from the transaction in a timely manner.
67. The benefits of the transaction to Texas ratepayers exceed its corresponding costs and risks.
68. Based on the record evidence and regulatory commitments, the transaction provides tangible and quantifiable benefits to Texas ratepayers.
69. If all regulatory commitments described in this Order are met, the transaction is in the public interest.

### **III. Conclusions of Law**

The Commission makes the following conclusions of law:

1. TNMP is an electric utility as defined by PURA § 31.002(6).
2. TNMP is a transmission and distribution utility as defined in PURA § 31.002(19).
3. The Commission has jurisdiction over the parties and the subject matter of this docket under PURA §§ 14.101, 39.262(*l*) through (*o*), and 39.915.
4. Notice of the transaction at issue in this proceeding and the events in this docket was provided in accordance with 16 Texas Administrative Code (TAC) § 22.55.
5. The agreement reached by the signatories resolves all issues pending in this docket.
6. The agreement is a just and reasonable resolution of the issues, is supported by a preponderance of the evidence, is consistent with the relevant provisions of PURA, and is in the public interest.
7. The Commission's consideration of the settlement agreement complies with PURA § 14.054 and 16 TAC § 22.206.
8. The transaction and the provisions of the agreement are consistent with the public interest within the meaning of PURA §§ 14.101, 39.262, and 39.915, and otherwise satisfy the applicable requirements of those sections.
9. The Commission may enforce any representation or commitment made by the joint applicants under PURA §§ 39.262(*o*) and 39.915(*d*).

### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the proposed transaction, as modified by the agreement filed on March 30, 2021, and to the extent provided in this Order.
2. TNMP, Avangrid, and Green Holdings must comply with the regulatory commitments as set forth in findings of fact 43 through 55.
3. For a period of five years after the closing of the transaction, TNMP must make annual reports to the Commission regarding its compliance with the terms stated in this Order and the agreement.
4. No more than 30 days after the closing of the transaction, TNMP and TNMP Holdings must approve the necessary amendments to their LLC agreements or corporate bylaws to give effect to the provisions of this Order.
5. No more than 30 days after the closing of the transaction, the applicants must file in the compliance docket for this Order the amended LLC agreements with the Commission.
6. No later than 45 days after the closing of the transaction, TNMP must make a tariff filing in the compliance docket for this Order to implement the \$16.2 million rate credit to be provided to TNMP's customers.
7. Within 45 days of the closing of the transaction, TNMP will file with the Commission for authority to amend and update its code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by this Order.
8. No later than 90 days after closing of the transaction, TNMP will make a filing in the compliance docket for this Order to identify the disinterested directors, which Commission Staff must review to confirm that the directors comply with the disinterested director definition and must file within 20 days of TNMP's filing a statement of its confirmation.
9. Within six months of the closing of the transaction, Iberdrola Solutions LLC dba Iberdrola Texas must file an application with the Commission to voluntarily relinquish REP certificate number 20213 or transfer this REP certificate to an unaffiliated third party.
10. All filings required by this Order must be made in *Compliance Filing for Docket No. 51547 (Joint Report and Application of Texas-New Mexico Power Company, NM Green Holdings, Inc. and Avangrid, Inc. for Regulatory Approvals Under PURA §§ 14.101, 39.262, and 39.915)*, Docket No. [REDACTED].
11. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as

precedent as to the appropriateness of any principle or methodology underlying the agreement, except for the purpose of enforcing the agreement or this Order in any future proceeding.

12. The Commission denies all other motions and other requests for general or specific relief that have not been expressly granted.

**Signed at Austin, Texas the \_\_\_\_\_ day of March 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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