BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF MEXICO'S ABANDONMENT OF SAN JUAN GENERATING STATION UNITS 1 AND 4	)))))	**Case No. 19-00018-UT**

RECOMMENDED DECISION ON PNM'S REQUEST FOR AUTHORITY TO ABANDON ITS INTEREST IN SAN JUAN UNITS 1 AND 4 AND TO RECOVER NON-SECURITIZED COSTS

February 21, 2020

TABLE OF CONTENTS

The Hearing Examiners submit this Recommended Decision to the New Mexico Public Regulation Commission ("Commission" or PRC) pursuant to NMSA 1978, § 8-8-14, and the Commission's Rules of Procedure 1.2.2.29(D)(4) and 1.2.2.37(B) NMAC. The Hearing Examiners recommend that the Commission adopt the following statement of the case, discussion, findings of fact, conclusions of law, and ordering paragraphs in an Order.

I. STATEMENT OF THE CASE

On January 10, 2019, the Commission opened this docket in Case No. 19-00018-UT by its Order Requesting Response to Public Service Company of New Mexico's (PNM) Verified Compliance Filing Concerning Continued Use of San Juan Generating Station (SJGS) to Serve New Mexico Customers Pursuant to Paragraph 19 of the Modified Stipulation approved by the Commission's December 16, 2015 Final Order in Case No. 13-00390-UT.[1] The Commission found in the January 10, 2019 Order that it should open a new docket "to address the issue of PNM's abandonment of SJGS and seek the input of the signatories to the Modified Stipulation and the other parties" in Case Nos. 13-00390-UT and PNM's 2017 Integrated Resource Plan (IRP) proceeding in Case 17-00174-UT.[2] Thus, the Commission determined that

> [T]he issue to be addressed is whether the Commission should grant PNM's request to accept the December 31, 2019 filing as a compliance filing and take no further action pending PNM's filing of a formal abandonment application and request to approve replacement resources, or whether the Commission should not delay the abandonment proceeding any longer and should instead set a procedural schedule in the new docket requiring PNM to file testimony in support of already pending abandonment of SJGS. The respondents should also address whether and how the Commission should

[1] *In the Matter of the Application of Public Service Company of New Mexico for Approval to Abandon San Juan Generating Station Units 2 and 3, Issuance of Certificates of Convenience and Necessity for Replacement Power Resources, Issuance of Accounting Orders and Determination of Related Rate-Making Principles and Treatment*, Case No. 13-00390-UT, Final Order (Dec. 16, 2015).

[2] Jan. 10, 2019 Order, ¶ 10.

> address the matter of replacement resources in this new proceeding or a separate proceeding.[3]

The Commission therefore ordered the filing of pleadings addressing the issues identified above by January 18, 2019 and responses to the pleadings by January 22, 2019.

On January 18, 2019, pleadings responsive to the January 10, 2019 Order were filed by PNM, the Coalition for Clean Affordable Energy (CCAE), New Energy Economy (NEE), Sierra Club, Southwest Generation Operating Company (SWG), Western Resource Advocates (WRA), and the "SJC Entities" consisting of the Board of County Commissioners of the County of San Juan ("San Juan County"), the City of Farmington, State Senators Steven P. Neville and William Sharer, and State Representatives Sharon Clahchischilliage, Rod Montoya, Paul Bandy, and James Strickler.[4] Responses were then filed on January 22, 2019 by PNM, the Attorney General of New Mexico ("Attorney General" or NMAG) and joint respondents Albuquerque Bernalillo County Water Utility Authority ("Water Authority"), the Utility Division Staff ("Staff") of the Commission and New Mexico Industrial Energy Consumers (NMIEC), Interwest Energy Alliance ("Interwest"), NEE, SWG, and the SJC Entities.

On January 30, 2019, the Commission issued its Order Initiating Proceeding on PNM's December 31, 2018 Verified Compliance Filing Concerning Continued Use of and Abandonment of San Juan Generating Station, thereby initiating a proceeding to address the abandonment of SJGS Units 1 and 4 pursuant to NMSA 1978, § 62-9-5 of the Public Utility Act (PUA)[5] "and any other

[3] *Id*. ¶ 11.

[4] The Central Consolidated School District is also part of the SJC Entities.

[5] NMSA 1978, §§ 62-1-1 to 7 (1909, as amended through 1993), 62-2-1 to -22 (1887, as amended through 2013), 62-3-1 to -5 (1967, as amended through 2019), 62-4-1 (1998), 62-6-4 to -28 (1941, as amended through 2018), 62-8-1 to -13-16 (1941, as amended through 2019). *See Tri-State Generation and Transmission Ass'n v. N.M. Pub. Regulation Comm'n*, 2015-NMSC-013, ¶ 8 n.1, 347 P.3d 274 (listing the foregoing statutory provisions of the "entire PUA" and noting that § 62-13-1 specifies "the range of articles in Chapter 62 that comprised the PUA in 1993.").

applicable statutes and NMPRC rules, including [sic] §62-6-12."[6] Accordingly, the January 30, 2019 Order required PNM to file an application with supporting testimony by March 1, 2019 in support of its planned abandonment addressing all relevant issues, including, *inter alia*, all reasons justifying PNM's decision to abandon its ownership interests in SJGS Units 1 and 4; PNM's actions such as notice to its partners regarding termination of the SJGS related coal contract and write-offs taken; PNM's identification of the amount of costs associated with the abandonment; PNM's identification of the amount of costs it seeks to recover associated the abandonment; and PNM's proposed treatment and financing of undepreciated investments, decommissioning costs and reclamation costs.[7]

On February 27, 2019, PNM filed an Emergency Petition for Writ of Mandamus and Request for Emergency Stay with the New Mexico Supreme Court seeking to nullify the Commission's January 30, 2019 Order.

By order issued March 1, 2019, the New Mexico Supreme Court ordered responses to the Petition for Writ by March 19, 2019 while at the same time granting the Request for Emergency Stay. PNM's Petition for Writ expressly sought to delay the abandonment filing required by the Commission's January 30, 2019 Order until after an anticipated June 14, 2019 effective date of proposed legislation applicable to PNM's abandonment of SJGS.

On March 22, 2019, Governor Michelle Lujan Grisham signed into law Senate Bill 489 ("SB 489"), which included the Energy Transition Act (ETA) and amendments to the Renewable Energy Act (REA) and the Air Quality Control Act. The effective date of the provisions in SB 489 June 14, 2019.

[6] Jan. 30, 2019 Order, at 14, ¶ A.

[7] *Id*. at 14, ¶¶ B.1-5.

On June 26, 2019, the New Mexico Supreme Court issued an Order *sua sponte* that denied PNM's Petition for Writ and lifted the stay of the Commission's January 30, 2019 Order.

On July 1, 2019, PNM filed its Consolidated Application for Approvals for the Abandonment, Financing, and Resource Replacement for San Juan Generating Station pursuant to the Energy Transition Act ("Application") in a new docket – Case No. 19-00195-UT, rather than the existing docket in Case No. 19-00018-UT. In the Application, PNM requested the following approvals from the Commission:

> (A) Abandonment of the SJGS, including: (1) abandonment of the SJGS plant and facilities located at Waterflow, New Mexico; (2) decommissioning of the SJGS plant and facilities and reclamation of the coal mine that provides fuel for SJGS; and (3) recovery of abandonment costs and related energy transition costs as defined in the ETA of approximately $360.1 million.
>
> (B) Approval of new generating resources to replace the retired 497 MW of capacity and energy produced by PNM's share of the SJGS, including: (1) twenty-year purchased power agreements (PPAs) and energy storage agreements (ESAs) for the output from a 50 MW solar facility located on Jicarilla Apache tribal lands combined with a 20 MW battery storage agreement (the Jicarilla PPA/ESA) and for the output from a 300 MW solar facility located in McKinley County combined with a 40 MW battery storage agreement (the Arroyo PPA/ESA); (2) issuance of certificates of public convenience and necessity (CCNs) for (a) 40 MW and 30 MW utility-owned energy storage systems, referred to as the Sandia and Zamora facilities, respectively, located at two existing utility sites in Bernalillo County and (b) 280 MW of utility-owned natural gas-fired generating units, referred to as the Pinon Gas Plant, located in Waterflow, New Mexico at the SJGS site. In addition to the foregoing SJGS replacement resource proposals, PNM requests that consideration be given to a PNM-owned 20 MW solar facility to be installed at the SJGS site as a means of fulfilling PNM's obligation under Paragraph 40 of the Modified Stipulation approved in Case No. 13-00390-UT.
>
> (C) Approval of a financing order under the ETA providing for the issuance of highly-rated Energy Transition Bonds in the principal amount of approximately $361 million secured by a non-bypassable customer charge that will provide for recovery of: (1) PNM's undepreciated investments totaling $283.0 million; (2) costs for job training and severance for employees at SJGS and the coal mine in the amount of $20.0 million; (3)

> decommissioning and reclamation costs of $28.6 million; (4) transactional costs associated with issuing energy transition bonds and obtaining approval of abandonment of $8.7 million; (5) the Energy Transition Indian Affairs Fund to be administered by the Indian Affairs Department, in the amount of $1.8 million; (6) the Energy Transition Economic Development Assistance Fund to be administered by the Economic Development Department, in the amount of $5.9 million; and (7) the Energy Transition Displaced Worker Assistance Fund, to be administered by the Workforce Solutions Department, in the amount of $12.1 million.

On July 10, 2019, the Commission issued a Corrected Order on Consolidated Application, whereby the Commission bifurcated the review of PNM's Application into two separate proceedings. The abandonment and securitization issues (items A and C above) are addressed in this proceeding, Case No. 19-00018-UT. The replacement resource issues (item B) are being addressed on a parallel but slightly staggered track in Case No. 19-00195-UT. The July 10, 2019 Order appointed the undersigned Hearing Examiners to jointly preside over Case Nos. 19-00018-UT and 19-00195-UT and issue recommended decisions within applicable statutory timeframes as established and extended by the Order.

The Hearing Examiners held a joint prehearing conference in this case and Case No. 19-000195-UT on July 23, 2019. Representatives of the following parties participated in the conference: PNM, the Attorney General, Bernalillo County, CCAE, Interwest, IUOE Local 953, NEE, NMIEC (now New Mexico New Mexico Affordable Reliable Energy Alliance or NM AREA), the San Juan Citizens Alliance (SJCA) and Diné C.A.R.E., San Juan County, Sierra Club, SWG, the Water Authority, WRA, and Staff.

On July 25, 2019, the Hearing Examiners issued a Procedural Order with an attached Notice of Proceeding and Hearing ("Notice"). The Procedural Order provided for, *inter alia*: (a) PNM to publish the Notice in a newspaper of general circulation available in every county where PNM provides service in New Mexico by August 14, 2019; (b) PNM to post the Notice on its public

website by August 1, 2019; (c) PNM to mail the Notice to its customers by September 3, 2019; (d) PNM to file a legal brief by August 23, 2019 regarding the issue of the extent to which N.M. Const. Article IV, § 34 prevents the application of the ETA to the issues in this case and, if PNM so chose, to allow PNM to file supplemental testimony regarding the foregoing issue by that date; (e) PNM to send the Notice by certified mail on or before August 1, 2019 to the proper regulatory officials or agencies of the affected government entities identified just below; (f) PNM to conduct face-to-face public community meetings in accordance with the Commission's Orders of July 10 and 12, 2019 with affected government entities, including specifically the Nenahnezad Chapter, the Tse daa K'aan (Hogback) Chapter, the Shiprock Chapter, the San Juan Chapter and the Navajo Nation Council, to educate and provide answers to the public, including affected coal miners, concerning PNM's plans and intentions with regard to the proposed shutdown of the San Juan Generating Station; (g) motions for leave to intervene by September 24, 2019; (h) Responses to the PNM legal brief filed on August 23, 2019 by October 18, 2019; (i) Staff and intervenor direct testimony by October 18, 2019; (j) rebuttal testimony filed by November 15, 2019; (k) motions *in limine*, motions to strike testimony, and other prehearing motions by November 22, 2019; (l) a prehearing conference on November 25, 2019; (m) a public comment hearing on December 9, 2019; and, finally, (n) evidentiary hearings starting on December 10, 2019 and running, as necessary, through December 19, 2019.

Pursuant to the July 10, 2019 Order, all motions to intervene filed in either this case or Case No. 19-00195-UT were accepted and treated as motions to intervene in both proceedings.

Twenty-six parties intervened or were deemed intervenors in this case. They include the following:

Attorney General
City of Albuquerque ("Albuquerque")
Bernalillo County

Central Consolidated School District (CCSD)
Citizens for Fair Rates and the Environment (CFRE)
Coalition for Clean Affordable Energy (CCAE)
City of Farmington ("Farmington")
County of Los Alamos ("Los Alamos")
Diné C.A.R.E.
International Brotherhood of Electrical Workers, Local 611 (IBEW)
International Union or Operating Engineers, Local 953 (IUOE)
Interwest Energy Alliance
M-S-R Public Power Agency
New Energy Economy
NM AREA (f/k/a NMIEC)[8]
New Mexico Legislative Delegation of San Juan County ("San Juan Legislative Delegation")
Prosperity Works
Renewable Energy Industries Association (REIA)
San Juan Citizens Alliance
San Juan County
Sierra Club
Greg Sonnenfeld
Southwest Generation Operating Company (SWG)
Water Authority[9]
Western Resource Advocates (WRA)
Westmoreland Coal, Inc. (Westmoreland)

On July 29, 2019, the Hearing Examiners issue a Protective Order that established procedures to facilitate discovery among the parties and provided for the expeditious handling of information that a party claimed Confidential Material.

On October 10, 2019, the Hearing Examiners issued an Order granting Greg Sonnenfeld's September 23, 2019 motion to intervene over PNM's objection.

[8] *See* NMIEC Amended Motion for Leave to Intervene and Request for Discovery (Aug. 21, 2019).

[9] The Water Authority subsequently withdrew its status as a party intervenor from this case and Case No. 19-00195-UT pursuant to its January 10, 2020 Notice of Withdrawal as Party Intervenor and Motion to Withdraw Previously Filed Pleadings and Supporting Documents.

On October 15, 2019, the Hearing Examiners issued an Order denying WRA's August 7, 2019 motion to strike the direct testimony of NEE witness Steven M. Fetter.

On October 16, 2019, the Hearing Examines issued an Order partially granting NEE's October 8, 2019 motion to compel discovery from PNM.

On October 17, 2019, the Hearing Examiners granted PNM's October 7, 2019 motion for leave to file the direct errata and supplemental and direct errata testimony of six PNM witnesses.

On December 2, 2019, the Hearing Examiners issued an Order denying PNM's October 25, 2019 request for confidential treatment of certain San Juan Coal Company severance payment information. The Hearing Examiners also issued on this date an Order partially granting NEE's November 22, 2019 second motion to compel outstanding discovery from PNM.

On December 4, 2019, the Hearing Examiners issued an Order denying NEE's November 19, 2019 motion *in limine* to exclude the rebuttal testimony of PNM witness Lauren Azar. The Hearing Examiners further issued on this date an Order denying PNM's November 19, 2019 motion to strike portions of witness testimony filed on behalf of NEE and the San Juan Legislative Delegation.

On December 9, 2019, the New Mexico House of Representatives, Governor Michelle Lujan Grisham, and Navajo Nation President Jonathan Nez (collectively "Petitioners") filed an Emergency Verified Petition for Writ of Mandamus ("Petition") with the New Mexico Supreme Court seeking, pursuant to Rule 12-504 NMRA, an emergency writ of mandamus directed to the Commission and individual PRC Commissioners, "mandating," as asserted in the Petition, "that they comply with their duties under the New Mexico Constitution and apply the chaptered version of SB 489 (the 'Energy Transition Act' or 'ETA'), Chapter 65, §§ 1 through 36, to [PNM's] *Application* to abandon,

finance and replace the coal-fired [SJGS], currently being considered in PRC dockets 19-00018-UT and 19-00195-UT."[10]

The Commission held a public comment hearing in this case on December 9, 2019. Sixty-six people provided oral comment during this hearing.

The evidentiary hearings in this case ran over nine days from December 10-19, 2019. The Commission received testimony from 35 witnesses. The transcripts of the evidentiary hearings, in nine volumes, were entered in the record between December 13 and 23, 2019.

On January 6, 2020, the Commission conducted a public comment hearing at San Juan College in Farmington, New Mexico. Sixty-four people provided oral comment during this hearing. Approximately sixty-six people filed written comments as of this date of this decision.

On December 20, 2019, the Hearing Examiner's issued a Briefing Order. They issued Briefing Order No. 2 on December 27, 2019.

Parties filed post-hearing briefs in chief on January 8, 2020. Response briefs were filed on January 21 and 24, 2020.

On January 29, 2020, the New Mexico Supreme Court issued an Order granting the December 9, 2019 petition for a writ of mandamus in Case No. S-1-SC-38041. The Supreme Court also issued the Writ of Mandamus ordering the Commission to apply the ETA to these proceedings and those in Case No. 19-00195-UT. The Writ of Mandamus commands the Commission to:

> apply the Energy Transition Act, 2019 N.M. Laws, ch. 65, to the proceedings for the Public Service Company of New Mexico's proposed abandonment, financing, and replacement of units one and four of the San Juan Generating Station; and
>
> . . . to vacate any provisions in provisions in prior orders issued by the Commission in Case Nos. 19-00018-UT and 19-00195-UT, including any

[10] Petition, Case No. S-1-SC-38041 (Dec. 9, 2019), at 1-2 (emphasis in original).

> provisions in the Commission's orders dated January 10, 2019, and January 30, 2019, that are inconsistent with the order of this Court.[11]

On February 5, 2020, the Commission issued a Compliance Order Pursuant to Writ of Mandamus in this case and Case No. 19-00195-UT. The Commission's Order provides, in material part, as follows:

> A. Consistent with the provisions of the Writ of Mandamus and the Commission's July 30, 2019 Order, all provisions of the Energy Transition Act apply to and govern PNM's Application for Abandonment, Financing and Replacement of the San Juan Generating Station in these cases.
>
> B. Consistent with the Court's determination and mandate above, any provisions in any order of the Commission entered previously in this case and Case No. 19-00195-UT inconsistent with the terms of the mandate are vacated.
>
> C. The Hearing Examiners shall take such action is necessary to effectuate the terms of the mandate to the proceedings before them.

II. BACKGROUND

A. The Four Units of the San Juan Generating Station and Farmington's Efforts to Use Carbon Capture Technology to Continue Operating the Plant

The four coal-fired generating units of the San Juan Generating Station came on line in 1976 through 1982.[12] The Station has been operated by PNM on behalf of the Station's nine owners pursuant to the San Juan Project Participation Agreement ("Participation Agreement").[13] The Participation Agreement is set to expire on July 1, 2022.

Four of the owners negotiated the exit of their participation in 2015 rather than be responsible for their shares of the costs required to install pollution control technology required by the U.S.

[11] Writ of Mandamus, Case No. S-1-SC-38041 (Jan. 29, 2020), 2-3.

[12] CCNs for units were granted in Case No. 965 (Jan. 9, 1970), Case No. 1111 (Jan. 22, 1974) and Case No. 1221 (Sept. 2, 1975). The 340 MW Unit 1 came on line in 1976. The 340 MW Unit 2 came on line in 1973. The 496 MW Unit 3 came on line in 1979. The 507 MW Unit 4 came on line in 1982.

[13] The original nine owners included PNM, Tucson Electric Company, the City of Farmington, M-S-R Public Power Agency, the County of Los Alamos, the Southern California Public Power Authority, the City of Anaheim, Utah Associated Municipal Power Systems, and Tri-State Generation and Transmission Association, Inc. ("Tri-State").

Environmental Protection Agency and the New Mexico Environment Department to comply with the Regional Haze requirements of the federal Clean Air Act.[14]

To minimize the costs of complying with the EPA requirements, PNM and the remaining owners negotiated their ability to install a pollution control technology (i.e., Selective Non Catalytic Reduction or SNCR) instead of the technology (i.e., Selective Catalytic Reduction or SCR) originally required by the EPA and based upon the owners' willingness to close Units 2 and 3. PNM accordingly filed an application in Case No. 13-00390-UT to abandon its interests in Units 2 and 3 and seek cost recovery for the SNCR pollution controls. PNM also sought Commission approval to assume the remaining shares of the exiting owners in Units 1 and 4 to enable the continued operation of those units. In the context of Case No. 13-00390-UT, the remaining owners also negotiated an extension of the facility's coal supply agreement to June 30, 2022 to coincide with the expiration of the owners' Participation Agreement. The coal supply agreement had been scheduled to expire on December 31, 2017.

The service life of the San Juan units for depreciation purposes was originally expected to end in 2023, after the expiration of the Participation Agreement. PNM requested approval to extend the service lives to 2053 in 2005 to reflect capital upgrades to and replacements of the units' turbine and boiler components.[15]

With the upcoming expiration of the ownership and coal supply agreements on July 1, 2022, four of the five owners that remained after Case No. 13-00390-UT announced their intentions in

[14] The exiting owners included M-S-R Public Power Agency, the Southern California Public Power Authority, the City of Anaheim, and Tri-State. The California owners in San Juan were subject to a California statute, SB 1368, which restricted their ability to own or procure energy from coal-fired generation sources.

[15] *See,* Final Order Partially Approving Certification of Stipulation, Case No. 10-00086-UT, July 28, 2011, at 86-90, referencing October 19, 2015 PNM Letter to the Commission re San Juan Life Extension Depreciation Rates.

May through July 2018 not to continue their participation past July 1, 2022.[16] The City of Farmington, however, which owns a 5.076% interest in the plant, notified the exiting owners on June 14, 2018 of its interest in continuing the plant's operation.

The City has subsequently indicated its intention to exercise its right under the Participation Agreement to acquire the exiting owners' interests in an effort to continue the plant's operation. The City has entered into a series of preliminary agreements with an investment group and developer, Enchant Energy Corporation and Enchant Energy LLC (collectively "Enchant Energy"), and several equipment manufacturers and construction companies to investigate and pursue the potential retrofit of the plant with Carbon Capture and Utilization Storage (CCUS) technology. The CCUS technology could potentially enable the plant's continued operation with CO_2 emissions that satisfy the 1,100 pounds CO_2/MWh emissions limits specified in the ETA to become effective in 2023. The Sargent and Lundy engineering firm has conducted a pre-feasibility study that suggests that the CCUS retrofit could be feasible and the U.S. Department of Energy recently awarded $2.7 million in funding for a Front End Engineering Design Study (FEED Study) to further investigate the project's feasibility and provide the support for the further development of the project. Farmington states that the study will be completed by the first quarter of 2021.

Preliminary negotiations have begun with PNM and the other exiting owners for the transfer of their ownership interests to the City, but it is too early to know whether the City's efforts will be successful. Nevertheless, the City's efforts draw into question whether the plant will, in fact, close on July 1, 2022 (irrespective of the abandonment of PNM's interest) and the extent to which certain of the funds sought in PNM's securitization request (i.e., for decommissioning, reclamation,

[16] Tucson Electric Company provided its notice on May 22, 2018. The County of Los Alamos provided its notice on June 15, 2018. PNM provided its notice on June 29, 2018. The Utah Associated Municipal Power Systems provided its notice on July 26, 2018.

severance and job training for plant and mine workers, and funding for state Indian Affairs, economic development and displaced worker programs) will need to be expended.

B. Senate Bill 489 and the Energy Transition Act

Senate Bill 489 (2019 N.M. Laws, ch. 65) and the Energy Transition Act are often considered one and the same legislation. But the ETA is only one part of Senate Bill 489.

Senate Bill 489 includes 82 pages of double-spaced provisions. It contains primarily a new 49-page chapter of the Public Utility Act entitled Energy Transition Act (ETA),[17] major revisions to the Renewable Energy Act (REA),[18] an amendment to the Air Quality Control Act,[19] and several other related amendments to the Public Utility Act.

The ETA establishes mechanisms to facilitate the abandonment of PNM's interests in two coal-fired generating plants -- the remaining Units 1 and 4 of the San Juan Generating Station in 2022 and PNM's interests in the Four Corners Generating Station in 2031.[20] The ETA provides for the use of bonds, i.e., securitization, to recover for PNM the undepreciated costs of its interests in the two plants; the estimated costs of decommissioning and reclamation; the estimated costs of severance and job training for affected employees at the plants and mines; financing costs associated with the securitization; and payments required to the state-administered funds for Indian affairs, energy transition economic development, and the assistance of displaced workers. The bonds would be issued by a wholly-owned subsidiary of PNM newly created as a special purpose entity (SPE).

[17] NMSA 1978, §§ 62-18-1 to -23 (2019).

[18] NMSA 1978, §§ 62-16-1 to -10 (2004, as amended through 2019).

[19] NMSA 1978, § 74-2-5 (1967, as amended 2019).

[20] The San Juan and Four Corners stations are the only facilities in New Mexico that satisfy the ETA's definition of "qualifying generating facility." NMSA 1978, § 62-18-2(S).

The ETA then provides for the establishment of non-bypassable charges, i.e., Energy Transition Charges (ETCs), to be paid by PNM customers to cover the bonds' debt service costs over the estimated 25-year life of the bonds. The ETA also provides for ratemaking mechanisms designed (1) to eliminate the costs of the abandoned facilities at the time the ETC rates are first collected (upon the abandonment of the units), (2) to recover for PNM, separately from the ETCs, the difference between the estimated costs recovered through the bonds and PNM's future actual costs, and (3) to adjust the ETCs throughout the life of the bonds to ensure the full and timely payment of the bonds' debt service payments.

The amendment to the Air Quality Control Act is intended to facilitate the potential closure of the two generating stations. It requires the state Environmental Improvement Board to establish standards of performance for coal-fired electric generating facilities with an original installed capacity exceeding 300 MW to limit carbon dioxide emissions to no more than 1,100 pounds per MWh on and after January 1, 2023 – a level that is not attainable with the pollution controls used by most coal-fired generating plants.

The amendments to the Renewable Energy Act are intended more generally to increase the use of renewable energy by the state's electric public utilities. Senate Bill 489's amendments to the Renewable Energy Act require that renewable energy comprise the following minimum percentages of each public utility's total retail sales to New Mexico customers:

(1) 20% by January 1, 2020;
(2) 40% by January 1, 2025;
(3) 50% by January 1, 2030; and
(4) 80% by January 1, 2040.

Ultimately, the REA amendments require, by January 1, 2045, that zero carbon resources supply 100% of all retail sales of electricity in New Mexico.

C. Order on Abandonment and Costs Ineligible for Securitization

The current proceeding in Case No. 19-00018-UT addresses PNM's request for approval to abandon its interest in San Juan Units 1 and 4, to recover certain costs through securitization eligible under the ETA and other costs not eligible for securitization under traditional ratemaking methods. The ETA, however, requires the Commission to address the securitization issues and all other issues in separate orders. It thereby avoids delaying the implementation of the Financing Order waiting for the appellate resolution of issues unrelated to the securitization.[21]

Accordingly, the Hearing Examiners are today issuing a separate Recommended Decision on PNM's request for a Financing Order contemporaneous with the Recommended Decision that follows below. The Recommended Decision in this document addresses PNM's requests to approve the abandonment of San Juan Units 1 and 4 and the recovery of costs ineligible for securitization through the traditional ratemaking process.

Finally, the Recommended Decisions issued today in this Case No. 19-00018-UT address PNM's requests for abandonment and securitization authority. As indicated above, the hearings on these requests were conducted in December 2019. A second set of hearings was held in January 2020 in Case No. 19-00195-UT on PNM's request for the approval of replacement resources. A Recommended Decision on that request will be issued in the near future.

[21] NMSA 1978, §62-18-8(A).

D. Evidentiary Standards

As the applicant in this administrative adjudication, PNM's burden of proof is established as a matter of law.[22] The rule in administrative proceedings in general, and adjudications before this Commission in particular, is that unless a statute provides otherwise, the proponent of an order or moving party has the burden of proof.[23] The burden of proof is two-pronged: it includes both the *prima facie* burden of adducing sufficient evidence to go forward with a claim and the burden of ultimate persuasion. The quantum of proof in administrative adjudications is, again unless expressly provided otherwise, a preponderance of record evidence.[24]

---

[22] *See, e.g., Southwestern Public Service Company's Application Requesting: (1) Acceptance of its 2014 Annual Energy Efficiency and Load Management Report; (2) Approval of its 2016 EE/LM Plan and Associated Programs; (3) Approval of its Cost Recovery Tariff Rider; and (4) a Determination Whether a Separate Process Should be Established to Analyze a Smart-Meter Pilot Program,* Case No. 15-00119-UT, Certification of Stipulation, at 16 (Dec. 18, 2015) (citing *Gray v. State ex rel. Wyoming Workers' Safety and Compensation Div.,* 193 P.3d 246, 251 (Wyo. 2008)). *See also* NMSA 1978 § 62-8-7(A) ("At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.").

[23] 3 Davis, Kenneth Culp, Administrative Law Treatise § 16.9 at 255-57 (2d ed. 1980). *See Int'l Minerals and Chemical Corp. v. N.M. Pub. Serv. Comm'n*, 81 N.M. 280, 283, 466 P.2d 557, 560 (1970) ("Although the statute does not specifically place any burden of proof on [complainant] International, the courts have uniformly imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof.").

[24] *See* Davis, *supra,* § 16.9 at 256 ("One can *never* prove a fact by something less than a preponderance of the evidence") (emphasis in original). *See El Paso Electric Co. et al. v. N.M. Pub. Serv. Comm'n*, 1985-NMSC-085, ¶ 12 ("This Court, however, does express its deep concern regarding the reasonableness of this heightened standard of proof ['clear and convincing evidence'], especially *since a 'preponderance of evidence' standard is customary in administrative and other civil proceedings*.") (emphasis added); *Re Southwestern Public Service Co.,* Case No. 2678, Recommended Decision of the Hearing Examiner (Nov. 15, 1996) ("No matter how the Commission describes its standard of review, SPS bears the burden of proof in this case. SPS must demonstrate that a preponderance of evidence exists in the record on which to base approval of the requested authorizations surrounding the merger.").

The prevailing evidentiary standard of proof for decisions rendered in administrative agency adjudications should not be confused with the standard of "substantial evidence in the record as a whole," the appellate standard of review applied by the New Mexico Supreme Court in reviewing Commission orders. *See, e.g., New Mexico Indus. Energy Consumers v. PSC*, 1986-NMSC-059, ¶ 32 (". . . *our review* of Commission decisions must be based on *substantial evidence in the record as a whole*") (emphasis added); *New Mexico Exchange Carrier Group v. N.M. Public Regulation Comm'n,* 2016-NMSC-015, ¶ 13 ("A party *challenging a PRC Order* must establish that the order is arbitrary and capricious, *not supported by substantial evidence*, outside the scope of the agency's authority, or otherwise inconsistent with law.") (emphasis added; internal quotation marks and citation omitted). *See also* Davis, *supra* § 16.9 at 256 ("The requirement of 'clear, unequivocal, and convincing evidence' imposed by the Woodby case applies only to the agency, not to the reviewing court; the standard of substantial evidence applies at the court level. Espinoza-Espinoza v. Immigration and Naturalization Service, 554 F.2d 921, 924 (9th Cir. 1977).'").

III. DISCUSSION

A. Abandonment

1. Parties' positions

PNM asks the Commission to approve the abandonment of PNM's interests in the operation of the San Juan coal plant effective on or around July 1, 2022, to authorize PNM to take steps to abandon the coal plant, and to thereafter expend funds for the purposes of plant decommissioning and mine reclamation.[25]

PNM cites four reasons for its decision to abandon its remaining interest in Units 1 and 4 of the San Juan plant. PNM witness, Nicholas Phillips, stated that the analysis performed to support PNM's Application shows that, by abandoning its share of the San Juan coal plant and supplanting this capacity with PNM's recommended replacement portfolio for Scenario 1, PNM's customers can expect economic and environmental benefits over the next 20 years. He said PNM's analysis is consistent with PNM's recommendation in its 2017 IRP to pursue retirement of the remainder of PNM's interest in Units 1 and 4 at the San Juan coal plant.[26]

Mr. Phillips said PNM has considered the early retirement of San Juan several times over the ten years preceding the 2017 IRP and, until the 2017 IRP, found each time that continuing to operate at least some of the generating capacity at the plant was less expensive than the costs of abandoning and replacing the plant.[27] In PNM's 2017 IRP, however, PNM recommended abandoning its remaining interest in Units 1 and 4 at the San Juan coal plant. Phillips asserted that the same

[25] *See* PNM Exh. 1, Application, at 5-6, 12-14.

[26] PNM Exh. 10, Phillips Dir., 2-3.

[27] Mr. Phillips said that in its 2008 IRP, PNM considered retiring 240 MW of San Juan and found the cost of replacement options to be too high to be economic for PNM's customers. In the 2011 IRP, PNM examined retiring its share of SJGS Units 1 and 2 in 2022 and once again found the cost of replacement options to be too high to be economic for PNM's customers. He said a similar analysis was performed in the 2014 IRP concurrently to Case No 13-00390-UT, where PNM proposed the abandonment of San Juan Units 2 and 3 to comply with a settlement agreement with state and federal environmental agencies to address regional haze. Phillips Dir., 4.

conclusions reached in the 2017 IRP concerning the retirement of the plant in 2022 still support retirement – that the early retirement of Units 1 and 4 will result in long-term cost savings for PNM's retail customers and net public benefits.[28]

Second, Phillips stated that retiring the San Juan coal plant will provide the opportunity for PNM to replace the plant with resources that better match varying loads and are better suited to accommodate the anticipated deployment of more renewable energy in New Mexico and the regional market.[29]

Third, Phillips said the recent enactment of the ETA adopts an energy policy favoring the closure of coal generation facilities and the development of more renewable and carbon-free energy.[30] The ETA imposes new and costly emissions limitations in 2023 which will render the San Juan coal plant even less economic to operate. [31]

Fourth, the decision by the other remaining plant owners, except the City of Farmington, not to continue operations after the San Juan coal agreement and ownership agreements expire in 2022 is also a driver for a plant closure in 2022.[32] PNM witness Thomas Fallgren said any continued operation would have to be under a very different ownership structure than currently exists. He said there is no economic or practical way for the plant to continue to serve PNM customers past 2022.[33]

Phillips explained that PNM used a series of resource planning models to determine the cost-effectiveness of continuing to use Units 1 and 4 after July 2022. He said PNM evaluated different scenarios that met various factors described in the ETA and using the bids received in the request for

[28] Phillips Dir., 5, *see also* PNM Exh. 5, Fallgren Dir., 31-32.

[29] Phillips Dir., 5-6.

[30] Phillips Dir., 6.

[31] Fallgren Dir., 32.

[32] Phillips Dir., 6.

[33] Fallgren Dir., 32.

proposals (RFP), developed four scenarios that were optimized to minimize a 20- year cost net present value (NPV) for each. PNM then compared the cost of continuing to operate the San Juan coal plant against the scenarios and found that PNM's preferred scenario, which includes a mix of natural gas, solar energy and battery storage would be $399 million lower cost on an NPV basis than continuing to operate the plant beyond 2020.[34]

Based upon PNM's analyses, PNM witness Mark Fenton testified that PNM's Application satisfies the general standards in the Public Utility Act for the abandonment of public utility facilities and the more specific requirements in the ETA for the abandonment of coal-fired generation facilities. He said Section 62-9-5 of the Public Utility Act provides that the Commission shall approve a request for abandonment "upon finding that the continuation of service is unwarranted or that the present and future public convenience and necessity do not otherwise require the continuation of the service or use of the facility [.]" The statute states further that in: "considering the present and future public convenience and necessity, the commission shall specifically consider the impact of the proposed abandonment of service on all consumers served in this state, directly or indirectly, by the facilities sought to be abandoned."[35]

Mr. Fenton asserted that the public convenience and necessity is equated with a net public benefit and that PNM's evidence shows a net benefit to customers in abandoning the San Juan coal plant. Customers, Fenton submitted, will be better off with the abandonment than the status quo.[36]

[34] Phillips Dir., 17-21.

[35] PNM Exh. Fenton Dir., 5 (citing NMSA 1978, § 62-9-5).

[36] Fenton Dir., 6.

He also testified that the Commission has also applied the four factors used in *Commuters' Committee v. Pennsylvania Pub. Util. Comm'n*[37] in determining whether the proposed abandonment is consistent with the public convenience and necessity:

> (1) 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;
>
> (2) the use of the service by the public and prospects for future use;
>
> (3) a balancing of the carrier's loss with the inconvenience and hardship to the public upon discontinuance of service; and
>
> (4) the availability and adequacy of substitute service.[38]

Fenton said the first factor of the *Commuters' Committee* factors relating to a loss on the service provided does not apply to the abandonment proposed here. He said financial losses to PNM from operating Units 1 and 4 are not a consideration and not a reason for seeking abandonment. Both units are in rate base and are currently serving customers. The Commission has granted PNM an opportunity to receive its authorized rate of return on its investments, and the units are no more or less profitable than any other assets included in PNM's rate base from that perspective.[39]

Mr. Fenton asserted PNM's request satisfies the second factor, i.e., the use of the service by the public and the prospects for future use. He said the future availability of the units to serve PNM's customers after 2022 is in doubt because a majority of the San Juan coal plant owners do not intend to continue to operate the plant after the ownership operating agreements and the current coal supply agreement expire. He said PNM's economic analyses show that it will be beneficial to customers if

[37] 88 A.2d 420, 424 (Pa. Super. Ct. 1952).

[38] Fenton Dir., 5-6.

[39] Fenton Dir., 7.

Units 1 and 4 are retired in 2022 before the end of the facilities' operable life and replaced with other resources.[40]

Fenton further contented that PNM's request also satisfies the third and fourth *Commuters' Committee* factors. He explained the third factor, which requires a balancing of the carrier's loss with the inconvenience and hardship to the public upon discontinuance of service, is directly related to the fourth factor, which is the availability of substitute service. He said PNM has determined that it is economically beneficial for customers if Units 1 and 4 are retired in 2022 and replaced with more flexible and more environmentally sustainable replacement resources.[41]

Fenton said cost savings for customers are inherently considered in the last three *Commuters' Committee* factors. He said PNM's analyses show that the abandonment of Units 1 and 4 by June 30, 2022, and the replacement of these units with more flexible and environmentally sustainable resources, will save customers' money over the long-term.[42]

Fenton also said environmental considerations are relevant to determining whether there is a net public benefit to retiring the San Juan coal plant. He asserted the retirement will reduce PNM's carbon footprint and facilitate the deployment of renewable resources on PNM's system.[43]

Finally, Fenton maintained the retirement will further the public interest and the public policy under the ETA. He said the ETA makes clear that there will be public benefits arising from abandonment of coal-fired generation using securitization and establishes new emissions and renewable energy standards that make abandonment of the San Juan coal plant consistent with the

[40] Fenton Dir., 7-8.

[41] Fenton Dir., 8.

[42] *Id*.

[43] Fenton Dir., 9 (citing 17.7.3.6 NMAC).

state's newly adopted energy policy.[44] Fenton concluded that the ETA focuses the Commission's attention on the economic impacts of the closure of the San Juan coal plant on the Four Corners region by expressing a preference for replacement resources located in the region, as well as creating an economic development assistance fund for the affected region.[45]

WRA supports PNM's abandonment request. WRA's witness, Douglas Howe, noted the finding in PNM's 2017 IRP that abandoning PNM's remaining share of the San Juan plant would be in the public interest: "The most significant finding of the IRP is that retiring PNM's 497 MW share of SJGS in 2022 would provide long-term cost savings for PNM's customers."[46] He also noted that, more recently, to determine whether PNM's customers would benefit economically from the retirement of San Juan, PNM conducted multiple RFPs for the replacement capacity, one of which it compared to the NPV of 20-year operating costs compared to the 20-year NPV of San Juan operating costs. The comparison showed that closing San Juan would produce a 20-year NPV benefit to PNM customers of almost $399 million.[47]

Dr. Howe also noted that Senate Bill 489 passed in 2019 will require that the continued operation of San Juan beyond December 31, 2022 meet the statutory limit of CO_2 emissions of 1,100 pounds per megawatt-hour.[48] Citing San Juan's 2017 CO_2 emission rate of 2,289 pounds per megawatt-hour,[49] he said that modifying the plant to achieve that reduced emission rate would require a substantial capital investment that would likely be in excess of $1 billion.[50]

---

[44] Fenton Dir., 9 (citing NMSA 1978, § 62-9-5 (as amended 2005)).

[45] Fenton Dir., 10.

[46] WRA Exh. 1, Howe Dir., 3 (citing PNM 2017-2036 Integrated Resource Plan (July 3, 2017), p. 1).

[47] Howe Dir., 3, (citing Phillips Dir., PNM Table NLP-1A, p. 19-Corrected).

[48] *Id*. (citing NMSA 1978, § 74-2-5 (1967, as amended through 2019)).

[49] *Id*. (citing U.S. Energy Information Agency (EIA), Form EIA-923 (2017)).

[50] Howe Dir., 3-4.

NM AREA also supports PNM's request. NM AREA's witness, James Dauphinais, stated that, despite some shortcomings, PNM's analysis supports there being at least one replacement resource portfolio that is forecasted to be reliable and have a lower 20-year net present value revenue requirement than continued operation of San Juan Units 1 and 4 beyond 2022. He said PNM's analysis supports that the abandonment of SJGS Units 1 and 4 as of July 1, 2022 would maintain the provision of reliable electric service at lowest reasonable cost to PNM's customers in 2022 and thereafter.[51]

The SJC Entities also support PNM's abandonment request subject to the outcome of the replacement resources phase of the case in which the Commission can consider all potential replacement resources, including the continuation of the San Juan plant as a merchant plant with carbon capture technology. They state that the regulatory abandonment of the plant will not have a negative impact on PNM's operations as a whole. They state that PNM has exercised its contractual right and is irrevocably committed to terminating PNM's continued operations of the SJGS on June 30, 2022 and that PNM cannot operate the plant under its current configuration because it will exceed the emissions requirements beginning in 2023. They state that the public benefits of removing the plant from rate base will far exceed any hardship on the public from keeping the plant open and operating. And they state that the Enchant Project is a viable alternative for the plant to continue providing power while not exceeding ETA emissions requirements.[52]

The SJC Entities also agree that there is substantial financial risk to PNM's ratepayers in upgrading the SJGS to comply with the CO_2 requirements of the ETA. They cite the testimony of Mr. Phillips that the plant's continued operation would be subject to additional environmental

[51] NM AREA Exh. 2, Dauphinais Dir., 11-17.

[52] SJC BIC, 4.

compliance costs and that merchant entities and regulated utilities operate for different reasons, have different cost structures, and are subject to different risk profiles, laws and regulations and that Enchant can better assume those risks.[53]

The SJC Entities emphasize, however, that they only support regulatory abandonment of PNM's interest and that regulatory abandonment will not necessarily result in the plant's closure. They state that PNM's abandonment will allow the Enchant Project to move forward.[54]

Two citizens groups from the San Juan area, SJCA and Diné C.A.R.E., also support PNM's abandonment request. They say that, despite the uncertainty regarding the City of Farmington's and Enchant's efforts to implement carbon capture technology at the plant, it is clear that PNM has no intention to continue its ownership and operations. They believe that the Commission's approval will provide clarity and benefit to ratepayers and will benefit the surrounding community and jump-start its economic transition away from a legacy of fossil fuel dependence and associated externalities. They conclude that, in addition to the ratepayer benefits, the community will receive environmental and public health benefits, the prospect of economic diversification and an approximately $1.5 billion social benefit from reduced carbon emissions.[55]

NEE, CCAE, and Sierra Club support PNM's abandonment request for similar reasons.

Only Staff recommends that PNM's request be denied, but they recommend that it only be denied at this time. Staff believes that PNM should further evaluate the economics of continuing the plant's operation with carbon capture technology. Staff recommends that PNM re-file an

[53] SJC BIC, 5 (citing Phillips Dir., 16); PNM Exh. 12, Phillips Reb., 18.

[54] SJC BIC, 6.

[55] SJCA/Diné C.A.R.E. BIC, 1, 12.

abandonment application if PNM's further analysis continues to show that abandonment is less costly than continued operations with carbon capture technology.

Staff claims that the analysis in PNM's Application contains a "fatal flaw."[56] Staff argues that PNM's comparisons of the cost of continued operation of Units 1 and 4 versus the costs of other resource portfolios is invalid, because the continued operation scenario fails to include the costs that would be required to comply with the increased air quality standards in the ETA effective January 1, 2023. Staff witness Dhiraj Solomon states that PNM should have included the costs of a carbon capture facility in the "continued operation" scenario. Staff recommends that PNM's Application be denied at this time and that it should be reconsidered after PNM files a revised application with the further analysis recommended by Mr. Solomon.[57]

In response, PNM contends there was no valid reason for PNM to have modeled a carbon capture retrofit in its original filing. PNM states it was well aware of the excessive costs and risks presented by a carbon capture retrofit of the San Juan coal plant based on a 2010 study of carbon capture retrofit on the four units at the San Juan coal plant.[58] PNM also maintains that it is common knowledge in the utility industry that carbon capture technology is still in the development stage in terms of retrofitting large coal plants such as the San Juan plant and is not considered an established, commercialized technology for large coal plants.[59]

Nevertheless, PNM modeled and analyzed a carbon capture retrofit in its rebuttal testimony. PNM's EnCompass modeling showed that a carbon capture retrofit would be between $343 million and $1.334 billion more costly than its preferred portfolio of replacement resources in PNM Scenario

[56] Tr. (12/18/19) 1810, 1830 (Solomon).

[57] Tr. (12/18/19) 1830-32 (Solomon).

[58] Phillips Reb., 7.

[59] *Id.*

1.[60] PNM also cited an analysis performed by PNM Witness Frank Graves that indicated that PNM Scenario 1 would be approximately $400 million less expensive than the carbon capture retrofit of the San Juan coal plant.[61]

2. Recommendation

The Hearing Examiners find that PNM's request to abandon San Juan Units 1 and 4 should be approved. The statutory standard for abandonment of a facility is whether the present and future public convenience and necessity requires the continued use of the facility.[62] The "public convenience and necessity" standard has been interpreted as requiring the showing of a "net benefit to the public."[63] The Commission has also applied the abandonment standards from the *Commuters' Committee* case.

The evidence indicates that the abandonment of PNM's interest in San Juan Units 1 and 4 satisfies both the net public benefit and *Commuters' Committee* standards. The modeling presented at the hearing shows that the abandonment will cost ratepayers less over the next 20 years than PNM's continued operation of the plant. The modeling conducted by PNM also shows that the abandonment will cost substantially less than PNM's continued operation of the plant retrofitted with carbon capture technology, and no party has presented contrary evidence. Furthermore, PNM and other parties have presented modeling that shows that a variety of generating resources can be

[60] Phillips Reb., 10-15, Table NLP-1 (Reb.).

[61] PNM Exh. 9, Graves Reb., 53.

[62] NMSA 1978, § 62-9- 5.

[63] *See e.g., Re Alto Lakes Water Corporation*, Recommended Decision, Case No. 07-00398-UT, February 6, 2008, at 6, approved in Final Order (Feb. 14, 2008); *Re Valle Vista Water Co. Inc.*, Recommended Decision, Case No. 3571, March 18, 2001, at 6-7, approved in Final Order (June 19, 2001); *Re Southwestern Public Service Co.,* Corrected Recommended Decision, Case No. 2678, (Nov. 25, 1996), at 19-20 approved in Final Order (Jan. 28, 1997). *See also*, *New Energy Econ., Inc. v. Pub. Regulation Comm'n*, 2018-NMSC-024, ¶ 14, 416 P.3d 277.

acquired to replace the San Juan capacity by the date of the proposed abandonment and that the costs to do so will be less than PNM's continued operation of the plant.

The evidence also shows that, for additional reasons, it would not be in the public interest for the Commission to require PNM to install CCUS technology to continue operation of the plant. The Commission would have to require PNM to acquire the interests of the other San Juan owners, likely including their liabilities for the decommissioning and reclamation. It would also require PNM to spend at least $1.3 billion to install the CCUS technology.[64]

What's more, the potential for the project's success is far from clear. And the federal tax credits on which its potential success depends are set to expire in 12 years, after which time even the promoters of the project anticipate its potential closure.[65] Given that the Commission will have ordered PNM to acquire the plant and make the capital expenditures, it is likely that PNM's ratepayers would be held responsible for the undepreciated costs of the investment at that time. Those undepreciated costs would be significantly greater than the undepreciated costs PNM ratepayers are being held responsible for with the abandonment of San Juan Units 1 and 4.

Moreover, the abandonment of PNM's interest in San Juan Units 1 and 4 will not, in itself, necessitate the plant's closure. The City of Farmington and Enchant will still be able to negotiate the plant's acquisition from PNM and the current owners, and they will be able to seek private financing to install the carbon capture technology and operate the plant. They may also be able to prepare a PPA proposal for PNM in the future if the plant's retrofitted operation is successful. The

[64] Sierra Club Witness Schlissel estimated that it would cost between $1.3 billion to $3.3 billion to retrofit the San Juan coal plant. He cited the $1.3 billion estimate in the Sargent & Lundy report, a mid-capital cost of $2.21 billion (representing 50% of the cost of building the Petra Nova); and a high capital cost of $3.31 billion (representing 75% of the actual Petra Nova cost). Sierra Club Exh. 3, Schlissel Reb., 30-31.

[65] *See, e.g.,* Solomon Dir., 15-16.

risk of proceeding on this latter path, however, will be on Enchant and its investors and not on PNM's ratepayers.

B. Recovery of costs ineligible for securitization

1. PNM's proposal to recover non-securitized costs through regulatory assets

In addition to the recovery of Energy Transition Costs through the securitization process, PNM asks the Commission to approve the creation of regulatory assets in this case to enable PNM to recover certain one-time costs that do not qualify as Energy Transition Costs, that would not be securitized, and that PNM proposes be recovered, instead, in PNM's base rates. The regulatory assets would be amortized in base rates determined in future general rate cases. The assets are summarized in the following table excerpted from the direct testimony of PNM witness Henry Monroy.[66]

Regulatory Asset	Amortization Period (Years)	Estimated Amount (in Millions)
One-time costs – Obsolete inventory	25	6.3
One-time costs –External legal costs associated with closure of San Juan coal plant	25	1.2
RFP and regulatory approval costs allocated to PPAs	20	0.8

The San Juan coal plant currently has inventory balances, consisting of tools, spare equipment, and other materials and supplies that are necessary to have on hand to operate the plant. PNM plans to minimize the inventory levels necessary through 2022, transfer any materials and supplies that are used and useful to other generation facilities, and sell any remaining inventory at salvage value, but PNM estimates a remaining balance of $6.3 million that it proposes to recover from customers as the result of the abandonment of San Juan coal plant.[67]

[66] PNM Exh. 13, Monroy Dir., Exh. HEM 13 (Corrected).

[67] Monroy Dir., 44.

In addition, PNM has allocated a portion of the costs incurred in the RFP and regulatory approval process for replacement resources to the PPAs identified in PNM's proposed Scenario 1 replacement portfolio in Case No. 19-00195-UT. PNM estimated these costs to be $0.8 million. PNM further estimates that $1.2 million in external legal counsel costs associated with the closure of the San Juan coal plant will be needed to facilitate the necessary contractual negotiations with the remaining owners over the exit of the San Juan coal plant.[68]

PNM is requesting authority to establish a regulatory asset for these $8.3 million in one-time costs. PNM proposes to recover the regulatory assets for stranded inventory and external legal costs associated with the exit of San Juan coal plant over the same 25-year period PNM will collect the energy transition charges. PNM is proposing to recover the regulatory asset for the RFP and regulatory approval process costs associated with PPAs over the 20-year life of the PPAs. PNM will include the unamortized balance in rate base. The estimated annual revenue requirement in 2023 for these regulatory assets is $880,204 -- $658,259 for the stranded inventory, $126,103 for the legal costs, and $95,841 for the RFP and regulatory process costs allocated to the PPAs.[69]

2. Issues and recommendations

a. The Attorney General's and NM AREA's objections to PNM's refusal to propose regulatory liabilities for decreases in non-securitized costs

The Attorney General Crane recommends that all requests in this filing for regulatory assets that are not provided for under the ETA be denied. The Attorney General's witness, Andrea Crane, said PNM has not offered to offset its request for regulatory assets with regulatory liabilities for expenses that will be eliminated before new rates take effect. Ms. Crane stated that PNM acknowledges that less capital expenditures and operating expenses will be required to operate the

[68] *Id.*

[69] Monroy Dir., 45, Exh. HEM-11.

plant as PNM approaches the proposed abandonment date for San Juan and that the salaries of severed employees will persist in base rates after their severance. She contended that PNM's one-sided mismatch of savings and expenses only benefits PNM, and that PNM should not be allowed special ratemaking treatment for such discrete items at the expense of ratepayers.[70]

Ms. Crane observed the denials modestly improve the balancing of interests between investors and ratepayers. She said denying the request will at least require shareholders to make a token contribution to the costs resulting from the early retirement of the San Juan plant – a cost for which shareholders would be entirely responsible under a traditional regulatory mechanism.

More specifically, Crane said PNM will have several years to manage its materials and supplies in order to minimize the amount of obsolete inventory when the plant is finally shut down. She postulated that approving a regulatory asset for the obsolete inventory will diminish the Company's incentive to minimize the inventory over the next few years, to transfer the inventory to other facilities, and to use best efforts to maximize the salvage value of the assets.[71]

Crane asserted that the $1.2 million in outside legal costs that PNM anticipates will be necessary to exit its ownership agreement with the other owners does not rise to a level requiring special regulatory treatment. She said there are numerous legal expenses that occur between base rate cases, as well as numerous legal settlements, some of which would likely benefit PNM. She also said requiring PNM's shareholders to absorb this cost would also provide an incentive to PNM to manage these costs – an incentive that will not be present if PNM is guaranteed recovery from ratepayers.[72]

[70] NMAG Exh. 1, Crane Dir., 43-44.

[71] Crane Dir., 46.

[72] Crane Dir., 47.

Finally, Ms. Crane said the allocation of 40% of the $2.1 million in regulatory approval costs to the PPAs, based on PNM's proposed equal cost allocations to each of the five replacement assets included in PNM's proposed Scenario 1 of replacement resources, is not a sufficient basis to ask for special rate treatment of the portion allocated to the PPAs. She said no individual expenses were tracked and reported for work spent on the PPAs themselves and about 15% of the total regulatory approval expense is for internal labor costs. She said the internal labor costs could have been directly assigned in employee timesheets and used as a basis to allocate the remaining costs that are not directly assigned.[73]

NM AREA also objects. NM AREA asserts, first, that, PNM's estimated cost for obsolete inventory may never be incurred if the Enchant-Farmington CCUS project is successful. At the very least, the Commission should defer granting PNM a regulatory asset for this cost until there is more certainty regarding the CCUS project. If the estimated $6.3 million actually turns out to be a cost that is stranded as a result of the SJGS abandonment, PNM can seek recovery in a general rate case.[74]

Second, NM AREA argues that PNM has not shown that the one-time costs are not already included in its cost of service, and given the minor, incidental nature of these costs, PNM's request should be denied. NM AREA states that the PPA and external legal costs PNM seeks to recover in a regulatory asset are included as a matter of course in its current base rates[75] and the creation of a regulatory asset is inappropriate for these relatively minor costs.[76]

---

[73] Crane Dir., 48-49.

[74] NM AREA BIC, 18.

[75] *Id*. (citing Mr. Monroy's testimony at Tr. (12/11/2019) 637-38).

[76] NM AREA states that the creation of regulatory assets is generally reserved for one-time costs that are substantial and material in the context of the utility's overall cost of service:

> [A cost may be postponed for inclusion in rates until a future period] when a utility has a major future liability, and before collecting anything through rates, its management decides

(Cont'd on next page)

In the alternative, NM AREA asserts that a decision on these costs should be deferred to PNM's replacement resource Case No. 19-00195-UT. Mr. Dauphinais said the one-time costs are related to PNM's proposed replacement resource portfolio for San Juan Units 1 and 4, not the abandonment of San Juan Units 1 and 4.[77] Further, in the event the Commission does grant PNM's request to create a regulatory asset for any of these costs, NM AREA states that the carrying costs should be set at PNM's cost of debt rather than its WACC.[78]

PNM disagrees. Mr. Monroy contended that disallowance of validly incurred costs that are not financed through the bond issuance is not a means to balance the interests of customers and shareholders. He said the Attorney General's proposal is a punitive measure as there is no evidence that the costs were imprudently incurred. He also said the ETA does not indicate an intent to disallow any non-securitized costs incurred as the result of the abandonment of a generating facility.[79]

Having evaluated the evidence, the Hearing Examiners recommend that PNM be authorized to create regulatory assets to preserve its ability to recover the costs in a future general rate case. The Hearing Examiners recommend, however, that this authority only extend to the recording of the costs and that it not be considered an approval of any ratemaking treatment. As the Attorney General points out, the expenses related to obsolete inventory and outside legal expenses to exit the San Juan

---

> that the books should reflect the liability. Under these circumstances, a utility may apply for [regulatory] approval to fund an account, and to reflect on its books a deferred debit or regulatory asset . . . which later can be charged to ratepayers and amortized over a future period. Regulatory assets are often created to spread out the recovery of nonrecurring costs over a period of years so as to avoid substantial rate increases, which may occur if full recovery was allowed as soon as the utility made an expenditure.

New Mexico Attorney General v. NMPRC, 2015-NMSC-32 ¶ 31, 359 P.3d 133 (emphasis added by NM AREA) (Quotations and citations omitted), citing *City of Corpus Christi v. Pub. Util. Comm'n of Tex.,* 51 S.W.3d 231, 244-45 (Tex. 2001).

[77] Dauphinais Dir., 27-28.

[78] *Id.* at 28.

[79] Monroy Reb., 11-12.

ownership agreement have not yet been incurred, and it is appropriate to place the burden on PNM to justify the reasonableness of the costs to be incurred and to provide an incentive to minimize the costs. As for the costs associated with the RFPs for the resource replacements, it is premature to make any ratemaking determinations in advance of the Commission's decision in Case No. 19-00195-UT about the appropriate selection of a replacement resource portfolio.

b. Costs to be addressed in PNM's next general rate case

The Attorney General asks that the final order in this case make clear that certain issues will be addressed in PNM's next rate case, not here. Ms. Crane cited $0.6 million of on-going operating expenses associated with the San Juan plant after its abandonment.[80] Mr. Fallgren identified the costs but stated PNM is not claiming their recovery in this case.[81]

The second issue is how Excess Deferred Income Taxes (EDIT) associated with San Juan Units 1 and 4 resulting from the Tax Cut and Jobs Act of 2017 should be returned to ratepayers. Ms. Crane stated that PNM has indicated that both protected and unprotected EDIT are being credited back to ratepayers over a period of approximately 46 years. However, PNM admits that there is uncertainty regarding the required timeframe for crediting EDIT back to customers once the underlying plant assets are removed from utility rates. Crane surmised that further clarification may be available in the future from the Internal Revenue Service and U.S. Treasury on what rules apply to the return of the EDIT to ratepayers.[82]

PNM agrees with the Attorney General.[83]

The Hearing Examiners also agree.

---

[80] Crane Dir., 49.

[81] Fallgren Dir., 42.

[82] Crane Dir., 49-50.

[83] Monroy Reb., 14.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Statement of the Case, Discussion and all findings and conclusions therein, whether or not separately stated, numbered or designated as findings and conclusions, are incorporated by reference herein as findings and conclusions. Based on the foregoing Statement of the Case and Discussion, the Hearing Examiners also recommend that the Commission make the following further Findings of Fact and Conclusions of Law:

1. The abandonment of San Juan Units 1 and 4 will produce a net public benefit, is consistent with the *Commuters' Committee* standards and should be approved as in the public interest, subject to the Commission's approval of sufficient replacement resources in Case No. 19-00195-UT.

2. PNM's request for approval to create regulatory assets to recover the costs discussed above that are not eligible for securitization under the ETA should be approved as recommended in Section III.B.2 above. PNM should be authorized to create regulatory assets to record the costs for which it requests recovery, but the ratemaking determinations on PNM's right to recover the costs and any associated carrying charges should be reserved until the general rate case in which PNM seeks the recovery of the costs.

V. DECRETAL PARAGRAPHS

Based upon the record, the Findings of Fact and Conclusions of Law set forth herein and, or the reasons stated above, the Hearing Examiners recommend that the Commission **ORDER** as follows:

A. The findings, conclusions and the ordering paragraphs herein are adopted, approved, and ordered by the Commission.

B. PNM's request for approval to abandon San Juan Units 1 and 4 is hereby approved, subject to the Commission's approval of sufficient replacement resources in Case No. 19-00195-UT.

C. PNM's request for approval to create regulatory assets to recover the costs discussed above that are not eligible for securitization under the ETA is approved as recommended in Section II.B.2 above. PNM is authorized to create regulatory assets to record the costs for which it requests recovery, but the ratemaking determinations on PNM's right to recover the costs and any associated carrying charges is reserved until the general rate case in which PNM seeks the recovery of the costs.

D. In accordance with 1 .2.2.35(D) NMAC, the Commission has taken administrative notice of all Commission orders, rules, decisions and other relevant materials in all Commission proceedings cited in this Order.

E. Any matter not specifically ruled on during the course of this proceeding or in this Order is disposed of consistent with this Order and the Commission's Rules.

F. This Order is effective immediately.

G. A copy of this Order shall be served on all parties listed on the official service list for this case via e-mail where such e-mail addresses are known and if not known, by regular first-class postal delivery.

ISSUED at Santa Fe, New Mexico this **21st** day of **February 2020**.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros

Anthony F. Medeiros
Hearing Examiner

Ashley C. Schannauer
Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S ABANDONMENT OF SAN JUAN GENERATION STATION UNITS 1 AND 4	))))	**Case No. 19-00018-UT**

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent to the parties listed here, via email only, a true and correct copy of the **Recommended Decision on Financing Abandonment.**

Stacey Goodwin	Stacey.Goodwin@pnmresources.com;	**Anna Sommer**	ASommer@energyfuturesgroup.com;
Ryan Jerman	Ryan.Jerman@pnmresources.com;	**Chelsea Hotaling**	CHotaling@energyfuturesgroup.com;
Richard Alvidrez	Ralvidrez@mstlaw.com;	**Tyler Comings**	tyler.comings@aeclinic.org;
Robert Edwards	Bob.Edwards@troutman.com;	**Don Hancock**	sricdon@earthlink.net;
Dan Akenhead	DAkenhead@mstlaw.com;	**Stephen Curtice**	stephen@youtzvaldez.com;
Mark Fenton	Mark.Fenton@pnm.com;	**Shane Youtz**	shane@youtzvaldez.com;
Carey Salaz	Carey.salaz@pnm.com;	**James Montalbano**	james@youtzvaldez.com;
Steven Schwebke	Steven.Schwebke@pnm.com;	**Barry W. Dixon**	bwdixon953@msn.com;
Heather Allen	Heather.Allen@pnmresources.com;	**Kyle J. Tisdel**	tisdel@westernlaw.org;
Mariel Nanasi	Mariel@seedsbeneaththesnow.com;	**Erik Schlenker-Goodrich**	eriksg@westernlaw.org;
Aaron El Sabrout	Aaron@newenergyeconomy.org;	**Thomas Singer**	Singer@westernlaw.org;
Joan Drake	jdrake@modrall.com;	**Mike Eisenfeld**	mike@sanjuancitizens.org;
Lisa Tormoen Hickey	lisahickey@newlawgroup.com;	**Sonia Grant**	sonia@sanjuancitizens.org;
Jason Marks	lawoffice@jasonmarks.com;	**Carol Davis**	caroljdavis.2004@gmail.com;
Matthew Gerhart	matt.gerhart@sierraclub.org;	**Robyn Jackson**	chooshgai.bitsi@gmail.com;
Katherine Lagen	Katherine.lagen@sierraclub.org;	**Thomas Manning**	cfrecleanenergy@yahoo.com;
Ramona Blaber	Ramona.blaber@sierraclub.org;	**Debra S. Doll**	Debra@doll-law.com;
Camilla Feibelman	Camilla.Feibelman@sierraclub.org;	**Katherine Coleman**	Katie.coleman@tklaw.com;
Michel Goggin	MGoggin@gridstrategiesllc.com;	**Thompson & Knight**	Tk.eservice@tklaw.com;
Nann M. Winter	nwinter@stelznerlaw.com;	**Jane L. Yee**	jyee@cabq.gov;
Keith Herrmann	kherrmann@stelznerlaw.com;	**Larry Blank, Ph.D.**	lb@tahoeconomics.com;
Dahl Harris	dahlharris@hotmail.com;	**Saif Ismail**	sismail@cabq.gov;
Peter Auh	pauh@abcwua.org;	**David Baake**	david@baakelaw.com;
Jody García	JGarcia@stelznerlaw.com;	**Germaine R. Chappelle**	Gchappelle.law@gmail.com;
Andrew Harriger	akharriger@sawvel.com;	**Senator Steve Neville**	steven.neville@nmlegis.gov;
Donald E. Gruenemeyer	degruen@sawvel.com;	**Senator William Sharer**	bill@williamsharer.com;
Joseph A. Herz	jaherz@sawvel.com;	**Rep. James Strickler**	jamesstrickler@msn.com;
Steven S. Michel	smichel@westernresources.org;	**Rep. Anthony Allison**	Anthony.Allison@nmlegis.gov;
April Elliott	April.elliott@westernresources.org;	**Rep. Rod Montoya**	roddmontoya@gmail.com;
Pat O'Connell	pat.oconnell@westernresources.org;	**Rep. Paul Bandy**	paul@paulbandy.org;
Douglas J. Howe	dhowe@highrocknm.com;	**Patrick J. Griebel**	patrick@marrslegal.com;
Bruce C. Throne	bthroneatty@newmexico.com;	**Richard L. C. Virtue**	rvirtue@virtuelaw.com;
Rob Witwer	witwerr@southwestgen.com;	**Carla R. Najjar**	Csnajjar@virtuelaw.com;
Jeffrey Albright	JA@Jalblaw.com;	**Philo Shelton**	Philo.Shelton@lacnm.us;
Amanda Edwards	AE@Jalblaw.com;	**Robert Cummins**	Robert.Cummins@lacnm.us;
Michael I. Garcia	mikgarcia@bernco.gov;	**Kevin Powers**	Kevin.Powers@lacnm.us;
Greg Sonnenfeld	greg@sonnenfeldconsulting.com;	**Steven Gross**	gross@portersimon.com;
Charles F. Noble	Noble.ccae@gmail.com;	**Martin R. Hopper**	mhopper@msrpower.org;

Stephanie Dzur	Stephanie@Dzur-law.com;
Vicky Ortiz	Vortiz@montand.com;
Peter J. Gould	pgouldlaw@gmail.com;
Kelly Gould	kellydarshan@gmail.com;
Jim Dauphinais	jdauphinais@consultbai.com;
Michael Gorman	mgorman@consultbai.com;
Randy S. Bartell	rbartell@montand.com;
Sharon T. Shaheen	sshaheen@montand.com;
John F. McIntyre	jmcintyre@montand.com;
Marvin T. Griff	Marvin.Griff@thompsonhine.com;
David Ortiz	DOrtiz@montand.com;
Jennifer Breakell	jbreakell@fmtn.org;
Lorraine Talley	ltalley@montand.com;
Cholla Khoury	ckhoury@nmag.gov;
Gideon Elliot	gelliot@nmag.gov;
Robert F. Lundin	rlundin@nmag.gov;
Elaine Heltman	Eheltman@nmag.gov;
Andrea Crane	ctcolumbia@aol.com;
Douglas Gegax	dgegax@nmsu.edu;
Michael C. Smith	Michaelc.smith@state.nm.us;
Bradford Borman	Bradford.Borman@state.nm.us;
John Bogatko	John.Bogatko@state.nm.us;
Jack Sidler	Jack.Sidler@state.nm.us;
Milo Chavez	Milo.Chavez@state.nm.us;
Marc Tupler	Marc.Tupler@state.nm.us;
Beverly Eschberger	Beverly.Eschberger@state.nm.us;
Georgette Ramie	Georgette.Ramie@state.nm.us;
Dhiraj Solomon	Dhiraj.Solomon@state.nm.us;
Anthony Sisneros	Anthony.Sisneros@state.nm.us;

DATED this February 21, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

Ana C. Kippenbrock, Law Clerk