

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE )  
COMPANY OF NEW MEXICO’S )  
ABANDONMENT OF SAN JUAN )  
GENERATING STATION UNITS 1 AND 4 )**  

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**Case No. 19-00018-UT**

**PROCEDURAL ORDER**

**THIS MATTER** comes before the Hearing Examiners in this proceeding pursuant to NMSA 1978, § 8-8-14 and New Mexico Public Regulation Commission (Commission or NMPRC) Rules of Procedure 1.2.2.24 and 1.2.2.29 of the New Mexico Administrative Code (NMAC). Being fully informed, the Hearing Examiners **FIND and CONCLUDE:**

1. On February 28, 2022, Western Resource Advocates, Coalition for Clean Affordable Energy and Prosperity Works (“Joint Movants”) filed a Joint Motion for Order to Show Cause and Enforce Financing Order and Supporting Brief (“Joint Motion”). The Joint Motion requests that the Commission order Public Service Company of New Mexico (PNM) to show cause why its rates should not be reduced at the time San Juan Generating Station (“San Juan”) is abandoned and to otherwise enforce the April 1, 2020 Final Order on Request for Issuance of a Financing Order (“Financing Order”) in this case.

2. The Joint Movants allege that, under the Energy Transition Act (ETA) and the Financing Order issued in this case pursuant to the ETA, PNM is authorized to issue low-cost bonds to recover PNM’s undepreciated investments in San Juan Units 1 and 4 (collectively “Units”). The Joint Movants allege further that the Financing Order requires PNM to issue the bonds at the time PNM abandons Units 1 and 4, that the Financing Order requires PNM to reduce its rates to remove the costs of the Units upon the issuance of the bonds and that PNM is unlawfully delaying the issuance of the bonds to avoid reducing its rates until after the

Commission rules on a rate case that PNM intends to file in December 2022. The Joint Movants argue that PNM's plan will withhold a roughly ten percent rate decrease (i.e., an annual savings to ratepayers of \$94 million) that its customers are entitled to receive when the Units close in July and October of this year.

3. The Joint Movants state that PNM's plan will enable PNM to collect *all* of its San Juan costs in rates, even though the plant is no longer serving PNM customers and PNM is no longer incurring costs to operate the plant. The delay will also allow the Company to:

- 1) recover its stranded San Juan investment at its full cost of capital, which includes a shareholder profit, for an additional 18 months;
- 2) recover for an additional 18 months non-existent O&M and other San Juan expenses, such as wages and benefits for employees that no longer work at the plant;
- 3) deprive communities impacted by San Juan's closure of \$14.9 million in transition funding for 18 months after the closure date;
- 4) double-recover its undepreciated San Juan plant balance through the ETA bond issuance starting in 2024;
- 5) during the 18-month delay also recover from customers the costs of San Juan replacement power, which are automatically charged to customers through PNM's fuel and purchased power cost adjustment clause ("fuel clause"); and
- 6) jeopardize the Company's ability to secure a low-cost bond issuance, given that interest rates are expected to rapidly rise over the next couple years – having a long-term negative impact on PNM customers for the next 20-25 years.

4. To remedy the harms caused by PNM's intended delay, the Joint Motion requests that the Commission to take the following actions:

- 1) issue an order to PNM to show cause why it should not provide the rate credit to its customers (totaling \$94 million/year), to commence on the anticipated abandonment dates of San Juan Units 1 and 4;
- 2) following PNM's answer to the show cause, order PNM to provide the rate credits described in the Financing Order to its customers, reflecting the

removal of all costs of San Juan Units 1 and 4 when those units stop serving PNM customers;

- 3) require PNM to report to the Commission on the status and progress in obtaining any Securities and Exchange Commission (SEC) and rating agency approvals necessary to issue the bonds authorized by the Financing Order; and
- 4) require PNM to explain the prudence of delaying its bond issuance beyond the San Juan abandonment dates, and what actions, such as hedging interest rates, PNM will take to protect its customers from interest rate increases incurred as a result of PNM's intended bond issuance delay.

5. On March 4, 2022, the Commission issued an Order requiring PNM to file a response to the Joint Motion in accordance with 1.2.2.12(C) NMAC and that replies would be timely if filed within ten days of the filing of PNM's response.

6. PNM filed a Verified Response to the Joint Motion on March 14, 2022. PNM argues that the Financing Order requires the removal from rates of the costs of San Juan Units 1 and 4 at the time PNM issues the bonds and starts charging customers for the costs of bonds. PNM argues that the Financing Order does not require the rate reduction upon the abandonment of the units and that the Financing Order provides PNM the flexibility to delay the issuance of the bonds to the conclusion of PNM's next rate case. PNM states that it intends to file the rate case in December 2022.

7. Replies to PNM's Response were timely filed by the Joint Movants and New Mexico Affordable Reliable Energy Alliance and Bernalillo County (filing a joint reply). The Office of the New Mexico Attorney General (OAG), New Energy Economy (NEE), and the Utility Division Staff (Staff) of the Commission filed motions to file replies out of time.

8. On March 30, 2022, the Commission issued an Order Appointing Hearing Examiners on Joint Motion for Order to Show Cause and Enforce Financing Order. The Order appointed the undersigned to preside, take all actions necessary and convenient within the limits of

the Hearing Examiner's authority, to conduct any hearings, if deemed necessary, and take such other action in this case that is consistent with Commission procedure, to issue a recommended decision or decisions, including findings of fact and conclusions of law, for consideration by the Commission addressing the merits of the issues in controversy raised by the Joint Motion, Response and the Replies as well as the Commission's regulatory authority with respect to any claims for relief or alternative relief protecting ratepayers. The Order also directed the Hearing Examiners to endeavor to issue a recommended decision or decisions with sufficient time for the consideration of any exceptions and for the Commission to take action prior to the June 30, 2022 anticipated retirement date for San Juan Unit 1.

9. The March 30 Order also approved the OAG, NEE and Staff motions to file replies out of time.

10. Pursuant to the directive in the Commission's March 30 Order to expedite a Commission decision in this matter, the Hearing Examiners find it necessary to establish the procedural schedule and procedural details for this matter without conducting a scheduling conference. Thus, the Hearing Examiners find that the procedural schedule and procedural details set forth below are reasonable and necessary and should be adopted for this proceeding.

11. The Commission has jurisdiction over the parties and the subject matter of this case.

**IT IS THEREFORE ORDERED:**

A. The following schedule is adopted for this proceeding:

1) PNM shall file direct testimony by April 20, 2022 addressing, at a minimum, the issues described in Attachment 1 to this Procedural Order.

2) Staff shall and other parties may file responsive testimony by May 11, 2022.

3) All motions *in limine* and motions to strike PNM direct testimony and other parties' responsive testimony shall be filed on or before May 13, 2022.

4) Rebuttal testimony shall be filed on or before May 18, 2022.

5) A public comment hearing in this matter shall be held via the Zoom videoconferencing platform pursuant to 1.2.2.23(F) NMAC on May 19, 2022, commencing at 9:30 a.m. Mountain Daylight Time (MDT). To provide public comment, interested persons who are not affiliated with a party must register by 9:00 a.m. on May 19, 2022 by emailing [ana.kippenbrock@state.nm.us](mailto:ana.kippenbrock@state.nm.us). Written comments may be submitted before the Commission takes final action by sending the comment, which shall reference NMPRC Case No. 19-00018-UT, to [prc.records@state.nm.us](mailto:prc.records@state.nm.us). However, pursuant to 1.2.2.23(F) NMAC, public comments, whether oral or written, shall not be considered as evidence in this proceeding.

6) Motions *in limine* and motions to strike directed at rebuttal testimony, and all other prehearing motions shall be filed on or before May 20, 2022.

7) A prehearing conference will be held, if necessary, beginning at 9:30 a.m. MDT on May 20, 2022.

8) The evidentiary hearing in this matter shall be held on May 23-26, 2022, commencing at 9:00 a.m. MDT. The evidentiary hearing shall be conducted via the Zoom videoconference platform. Access to and participation in the evidentiary hearing shall be limited to party-participants (i.e., counsel and witnesses), the Commissioners, and other essential Commission personnel. The Zoom hearing will be livestreamed through YouTube and will be displayed on the Commission's website at <https://www.nm-prc.org>. Persons not participating in the evidentiary hearing as an attorney or witness may view the hearing on the Commission's website and shall not join the hearing via Zoom except to provide oral comment as provided above.

B. In view of the remote nature of the hearing, **all exhibits that the parties intend to admit into the evidentiary record, including pre-filed testimony, cross-examination exhibits and other documentary evidence, shall be uploaded to the Commission's file-sharing platform prior to the hearing.** Further details will be provided in a prehearing order issued closer to the date scheduled for the hearing.

C. Any person filing prepared testimony consistent with 1.2.2.35(I) NMAC on behalf of a party shall attend the hearing and submit to examination under oath and shall appear via the Zoom video feed. All pre-filed testimonies of a witness shall be moved into evidence when the witness is first presented. Unless otherwise ordered or approved by the Hearing Examiner, at the public hearing in this case only pre-filed testimony, in question-and-answer form and verified by the witness, and examination of witnesses on such pre-filed testimony shall be accepted, considered, and received in evidence along with other relevant and otherwise admissible exhibits. Thus, oral testimony elicited by a party or Staff presenting a witness (except for appropriate redirect examination) shall consist solely of the authentication and verification of each pre-filed testimony and identifications of any permitted corrections to that testimony. The party or Staff shall not elicit oral summaries of pre-filed testimony or other oral testimony.

D. The Certificate of Service for this case is attached to this Order. Subject to subsequent revision pursuant to 1.2.2.10(B)(4) NMAC, the attached service list shall be used for service of all pleadings, testimony, and other documents in the manner indicated to the individuals and addresses listed thereon.

E. The procedural dates and requirements provided herein are subject to further Order of the Commission or Hearing Examiners. Interested persons should contact the Commission for

confirmation of the hearing date, time and place, since hearings are occasionally rescheduled or canceled if deemed not required in the discretion of the Hearing Examiners.

F. The Commission's Rules of Procedure, §§ 1.2.2.1 NMAC, et seq., shall apply to this case except as modified by order of the Commission or Hearing Examiners. A copy of the Rules may be obtained at <http://www.srca.nm.gov/parts/title01/01.002.0002.html>.

G. Except as expressly provided in this Order or subsequently ruled, discovery matters, and any discovery disputes shall be governed by the Commission's discovery rules at 1.2.2.25 NMAC. The parties shall raise any disputes, questions, or concerns regarding discovery with the Hearing Examiners at the earliest available opportunity so that all such issues may be considered well in advance of the hearing.

**H. In view of the expedited schedule for this proceeding, discovery responses and objections to discovery requests shall be served within ten (10) calendar days after service of the request under 1.2.2.25 NMAC.**

I. Service of discovery requests and responses shall be by email only. Likewise, exhibits to discovery responses shall be served electronically at the same time as such responses. PNM may post its responses to discovery requests on PNM's file-sharing website.

J. A Commission order is not required for agreements between or among any of the participants regarding discovery matters. All other participants shall be notified of such agreements.

K. No motion regarding any discovery dispute shall be considered unless accompanied by a statement that the participants have made a good faith effort to resolve the dispute and were unable to do so.

L. Anyone filing pleadings, documents, or testimony in this case shall comply with the Commission's electronic filing policy, as amended from time to time. This includes filings in .pdf format, with electronic signatures, sent to the Records Bureau's e-mail address, as set out in the Commission's procedural rules at: [prc.records@state.nm.us](mailto:prc.records@state.nm.us), or another Records Bureau address as set out on the Commission's webpage,<sup>1</sup> within regular business hours of the due date in order to be considered timely filed. Documents received after regular business hours will be considered as being filed the next business day. Regular business hours are from 8:00 a.m. to 5:00 p.m. MDT.

M. Service of all documents filed in this proceeding and discovery requests and responses shall be via email delivered by no later than 5:00 p.m. MDT on the date they are filed with the Commission.

N. All filings shall be emailed to the Hearing Examiners on the date filed at [anthony.medeiros@state.nm.us](mailto:anthony.medeiros@state.nm.us) and [ashley.schannauer@state.nm.us](mailto:ashley.schannauer@state.nm.us) by no later than 5:00 p.m. MDT. Such filings shall include the Word or other native version of the filing (e.g., Excel or Power Point) if created in such format. All PDF documents provided to the Hearing Examiners shall be text-searchable. Any filings not emailed to the Hearing Examiners in compliance with the foregoing requirements are subject to being summarily rejected and stricken from the record in the Hearing Examiners' discretion.

P. The public record for this case may be examined under "Case Lookup E-docket" on the Commission's website at <https://edocket.nmprc.state.nm.us/>.

R. Friendly cross-examination prohibited: Cross-examination in which the advocate questions the witness of a non-adverse party to elicit testimony favorable to, aligned with, or supportive or corroborative of the advocate's position or side of the controversy shall be prohibited

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<sup>1</sup> See 1.2.2.7(R)(1) NMAC.



unless expressly allowed by the Hearing Examiners; if not allowed, an offer of proof may be made in lieu of such examination.

S. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the Commission at 505-467-9116 at least 24 hours prior the commencement of the hearing.

**ISSUED** at Santa Fe, New Mexico this **1<sup>st</sup>** day of **April 2022**.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*/s/ Anthony F. Medeiros*  
**Anthony F. Medeiros**  
**Hearing Examiner**

*/s/ Ashley C. Schannauer*  
**Ashley C. Schannauer**  
**Hearing Examiner**

## Attachment 1

1. When does PNM plan to issue the Energy Transition Bonds that have been approved in this case? Describe why PNM's plan is reasonable. Include citations to the record in this case where PNM has proposed this plan to the Commission and where the plan has been approved.

2. When does PNM plan to remove the costs of San Juan Unit 1 from PNM's rates? Describe why PNM's plan is reasonable. Include citations to the record in this case where PNM has proposed this plan to the Commission and where the plan has been approved.

3. When does PNM plan to remove the costs of San Juan Unit 4 from PNM's rates? Describe why PNM's plan is reasonable. Include citations to the record in this case where PNM has proposed this plan to the Commission and where the plan has been approved.

4. Provide the annual revenue requirements for calendar years 2022 and 2023 for San Juan Unit 1 in the format of PNM Exhibit HEM-14 attached to the July 1, 2019 Direct Testimony of Henry Monroy (Case Nos. 19-00018-UT & 19-00195-UT, PNM Exh. 13 (Corrected)).

5. Provide the annual revenue requirements for calendar years 2022 and 2023 for San Juan Unit 4 in the format of PNM Exhibit HEM-14 attached to the July 1, 2019 Direct Testimony of Henry Monroy (PNM Exh. 13).

6. Provide the amounts contributed by PNM to date for the following purposes specified in PNM Table HEM-2 at page 9 of the July 1, 2019 Direct Testimony of Henry Monroy (PNM Exh. 13):

- Upfront Financing Costs - Section 2(H)(1) of the ETA
- Coal Mine Reclamation Costs - Section 2(H)(2)(a)
- Plant Decommissioning Costs - Section 2(H)(2)(a)
- Job Training and Severance Costs for PNMR and PNM Employees - Section 2(H)(2)(b)

- Job Training and Severance Costs for Westmoreland Coal Mine Employees - Section 2(H)(2)(b)
- Other Costs Required to Comply with Law Changes After 1/1/19 - Section 2(H)(3)
- Payments Made to Indian Affairs Fund - Section 2(H)(4)
- Payments Made to Economic Development Fund - Section 2(H)(4)
- Payments Made to Workers Assistance Fund - Section 2(H)(4)

7. Provide the dates when PNM plans to contribute the remaining required funds for the purposes in Question 6 above.

8. Provide the net book value (i.e., undepreciated investment) of San Juan Unit 1 on each of the following dates:

- June 30, 2022
- September 30, 2022
- December 31, 2022
- December 31, 2023
- June 30, 2024

9. Provide the net book value (i.e., undepreciated investment) of San Juan Unit 4 on each of the following dates:

- June 30, 2022
- September 30, 2022
- December 31, 2022
- December 31, 2023
- June 30, 2024

10. Provide copies of PNM's Annual FPPCAC Reconciliation Reports for 2019, 2020, and 2021.

11. Provide PNM's estimates of the items to be included in PNM's Annual FPPCAC Reconciliation Reports for 2022 and 2023.

12. Provide the following financial statements for PNM:

- Income statement for calendar year 2021
- Income statement for first quarter 2022
- Balance sheet as of December 31, 2021
- Balance sheet as of March 31, 2022

13. Provide an exhibit showing a calculation of PNM's return on equity for calendar year 2021 and the first quarter of 2022 with supporting details.

14. Describe each of the steps PNM has taken to date to obtain each of the Securities and Exchange Commission (SEC) and rating agency approvals required to issue the bonds authorized by the Financing Order in this case. Include the dates of the steps taken.

15. Describe each of the steps PNM still needs to take to obtain each of the SEC and rating agency approvals required to issue the bonds authorized by the Financing Order in this case. Include the dates on which PNM plans to take those steps up to and including the anticipated date of issuance of the Energy Transition Bonds.

16. Provide PNM's current estimates of the interest rates at which the Energy Transition Bonds would be issued on the following dates:

- June 30, 2022
- September 30, 2022
- December 31, 2022
- December 31, 2023
- June 30, 2024

17. If the Commission decides to order a rate credit to remove the costs of San Juan Units 1 and 4 from PNM's rates, how would PNM recommend that the credit be allocated to PNM's various customer classes?

18. Provide the amount of the rate credit per month for the average residential customer if a rate credit is adopted for the full annual revenue requirement of San Juan Unit 1 under the class revenue allocation recommended above by PNM.

19. Provide the amount of the rate credit per month for the average residential customer if a rate credit is adopted for the full annual revenue requirement of San Juan Unit 4 under the class revenue allocation recommended above by PNM.

20. Address (in testimony and/or legal brief) the reasonableness of the Commission potentially requiring an interim rate reduction/rate credit effective July 1, 2022 pursuant to 1.2.2.27 NMAC to remove the costs of San Juan Unit 1 from customer rates. *See Pennsylvania Public Utility Commission et al. v. Metropolitan Edison Company*, Docket No. I-79040308, 1979 WL 462104, 29 P.U.R.4th 502 (Pa.P.U.C. June 15, 1979); *Pennsylvania Public Utility Commission v. Metropolitan Edison Company*, Docket No. I-79040308, 1980 WL 642586, 37 P.U.R.4th 77 (Pa.P.U.C. May 23, 1980) (balancing of investor and consumer interests requires summary removal of plant costs from rates when plants are no longer used and useful and utility is fully recovering costs of replacement power).

21. Describe how and when (e.g., regulatory liability, rate credit, simultaneous rate case, etc.) the revenue requirement comprising the 50% of undepreciated costs of San Juan Units 2 and 3 that were disallowed for recovery in Case No. 13-00390-UT were removed from PNM's rates. Include whether the costs were removed before, after, or simultaneous with the dates the units were closed.

22. Provide the annual revenue requirement and net book value (i.e., undepreciated investment) of San Juan Unit 2 on the date it was closed.

23. Provide the annual revenue requirement and net book value (i.e., undepreciated investment) for San Juan Unit 3 on the date it was closed.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

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

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**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 **Procedural Order** issued on April 1, 2022.

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**DATED** this April 1, 2022

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*Ana C. Kippenbrock*

**Ana C. Kippenbrock, Law Clerk**