

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)**
_____)

Case No. 19-00018-UT

**JOINT MOTION FOR ORDER TO
SHOW CAUSE AND ENFORCE FINANCING ORDER
AND SUPPORTING BRIEF**

COMES NOW Western Resource Advocates (“WRA”), by and through its attorneys
Cydney Beadles and Steven Michel, Coalition for Clean Affordable Energy and Prosperity
Works, by and through their attorney Cara R. Lynch, pursuant to §§1.2.2.11-12 NMAC¹, and for
their *Joint Motion for Order to Show Cause and Enforce Financing Order and Supporting Brief*
 (“*Motion*”), state the following:

MOTION

1. With regulators and policymakers distracted and focused on summer resource
deficiencies and potential service disruptions, PNM has devised a plan to unlawfully over-charge
its customers \$125 million during the next two years - in violation of Commission orders and New
Mexico’s recently-passed Energy Transition Act (“ETA”).² PNM’s plan is also contrary to
representations it made to the PRC in sworn testimony in this Case. This *Motion* requests that the
Commission order PNM to show cause why its rates should not be reduced at the time San Juan
Generating Station (“San Juan” or “SJGS”) is abandoned, and to otherwise enforce the April 1,

¹ For ease of reference, the *Motion* and *Brief* have been combined in this single pleading.

² §§62-18-1 NMSA

2020 *Final Order on Request for Issuance of a Financing Order* (“*Financing Order*”) ³ in this Case.

2. PNM’s overcharges will result from its intention to delay issuing low-cost bonds and thereby withhold a roughly ten percent rate decrease that its customers are entitled to receive when the San Juan Generating Station (“San Juan” or “SJGS”) closes later this year. This *Motion* asks the Commission to remedy PNM’s unlawful plan by providing PNM customers the rate reduction they are entitled to. PNM’s intended action would deprive customers of a substantial benefit that was promised to them with passage of the ETA.

3. Under the ETA, in exchange for being allowed to recover its remaining SJGS investment by issuing low interest bonds, PNM is to forego shareholder earnings on that investment. This resolution meant that, at the time of SJGS’s abandonment and refinancing, customers were to see the cost of serving them go down, with an annual savings \$94 million. The ETA established the State’s policy for how the costs, benefits and responsibility for abandoning SJGS were to be shared. PNM’s plan to purposefully delay the bond issuance by 18 months, however, turns this legislative solution on its head, because during that delay PNM will 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 harm to New Mexicans from PNM’s delay strategy does not stop with the potential \$125 million in excessive rates to customers, however. Unless halted by the Commission, PNM’s unlawful delay will 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 SJGS expenses, such as wages and benefits for employees that no longer work at the plant;

³ Case 19-00018-UT, issued April 1, 2020; affirmed by N.M. Supreme Court on 1/10/22 in Docket S-1-SC-38247

- 3) deprive communities impacted by San Juan's closure of \$14.9 million⁴ 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");⁵ 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.

Simply put, PNM's delay strategy, aside from being illegal, shows a callous disregard by Company management for the well-being of its customers, impacted communities and anyone that is not a PNM shareholder.

4. To remedy the harms caused by PNM's intended delay, this *Motion* requests the New Mexico Public Regulation Commission ("Commission" or "PRC") 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.

⁴ PNM has stated that it will advance 25% of the \$19.8M in transition funds prior to the bond issuance. *Financing Order - Recommended Decision*, pp. 29 (PNM Table HEM-2, lines 8,9,10), 38, 100

⁵ *Financing Order - Recommended Decision* at 85-6

5. The *Brief* which follows will describe in more detail PNM’s plan to delay refinancing San Juan costs, the harm to New Mexicans caused by PNM’s delay, why PNM’s delay is unlawful (violating both the *Financing Order* and the ETA), how PNM’s delay contradicts the Company’s sworn testimony and representations, and the remedies requested to protect the public interest and assure that PNM’s rates are just and reasonable.

BRIEF

I. PNM’s Plan to Delay Bond Issuance

1. On April 1, 2020, PNM received final approval in this docket to abandon and refinance its remaining interest in San Juan Generating Station Units 1 and 4. According to PNM’s application, the intended and expected impact of that approval was, upon abandonment, to provide customers substantial savings on their electric bills. Those savings included rate benefits from refinancing San Juan stranded costs, as authorized by the ETA through the issuance of securitized, low interest rate, bonds.

2. PNM, however, has now determined that it will delay its refinancing of SJGS until the conclusion of a yet-to-be-filed next general rate case, which likely means January of 2024. This is 18 months after San Juan Unit 1 is to be abandoned, and 15 months after Unit 4.⁶

3. PNM has publicly stated its intention to not issue bonds until sometime after filing its next rate case in December, 2022.⁷ PNM’s intention to delay issuing ETA bonds until *the*

⁶ See, *Order on PNM Notice and Request for Modification to or Variance from Abandonment Date of San Juan Generating Station Unit 4*, Case 19-00018-UT, Feb. 23, 2022

⁷ See, Albuquerque Journal, “PNM asks regulators to extend coal plant operations,” by Kevin Robinson-Avila, February 17, 2022: “PNM expects to sell the bonds some time after it files its next rate case in December.”

conclusion of its next general rate case was confirmed in a February 23 email from PNM counsel to WRA.⁸ A rate case typically takes one year from filing to decision date.⁹

II. PNM's Delay Harms New Mexicans

4. By its purposeful delay in issuing the ETA bonds, PNM will divert to its shareholders the rate reduction benefits of the ETA that were intended for PNM customers. Those shareholder benefits result from PNM continuing to collect in rates, after abandonment, \$94 million dollars per year in profits and fictional expenses associated with SJGS after it stops operating. This includes O&M and other expenses, such as wages and benefits for former employees, that do not exist. This \$94 million per year is the amount the Commission ordered that rates be reduced upon the abandonment and bond issuance, in order to protect customers from double-recovery of costs and assure that the ETA's rate benefits properly went to PNM customers.¹⁰

5. For the period from the date of abandonment until the conclusion of PNM's next general rate case (assumed to be January, 2024), unless remedied by granting the *Motion*, the total amount that the delay will cost PNM customers, and unjustly benefit PNM shareholders, is approximately \$125 million.¹¹ The withheld savings to residential customers alone would be

⁸ February 23, 2022 email from PNM counsel Stacey Goodwin to WRA counsel Steven Michel: "Steve, thank you for your email expressing your concern on the timing for the issuance of securitized bonds. PNM disagrees that the Commission's Final Order set a date certain or other deadline for issuing the bonds. Nor does the ETA include such a requirement. As stated in PNM's testimony during the SJGS hearing, PNM anticipated that the bonds would be issued in conjunction with the implementation of new rates.... Stacey" (emphases added)

⁹ See, §62-8-7C NMSA, which provides for rate cases to be decided within 12 months

¹⁰ *Financing Order - Recommended Decision*, pp. 80-86

¹¹ The 125 million is calculated as follows: PNM's intention is to delay issuing ETA bonds until the conclusion of its next general rate case, likely January 1, 2024. That means a bond delay of 18 months after San Juan unit 1 (1/3 of PNM's SJGS interest) is abandoned on July 1, 2022, and 15 months after San Juan Unit 4 (2/3 of PNM's San Juan

0.0158810/kWh,¹² or \$9.53 per month for a typical customer consuming 600 kWh. Put another way, PNM's withholding of \$94 million per year in rate benefits, beginning in July of this year, will deprive its customers of a 10% rate reduction that the Commission required, and PNM accepted, as part of the *Financing Order* in this Case.

6. Adding to the ratepayer harm caused by PNM's intentional delay is that PNM customers would not only pay the full cost of an abandoned San Juan plant, which includes a profit to PNM investors, but also pay for whatever purchased power PNM acquired to replace San Juan, because those costs will automatically flow through PNM fuel clause. This was specifically identified in the *Financing Order* as an outcome to be avoided.¹³

7. Additionally, PNM's delayed bond issuance would provide the company a double recovery on its San Juan investment. That is because PNM would recover a full return of and on its San Juan investment for 15 to 18 months after abandonment, and then recover that investment again through the bond issuance because the costs to be securitized are the undepreciated San Juan investment *on the date of abandonment*. In other words, PNM would earn a full return on its stranded investment until the bonds are issued and then, despite intervening depreciation, recover those costs again through the bonds themselves.

8. But the harm to New Mexico from PNM's self-serving strategy goes well beyond its customers. A particularly harmful consequence of PNM's scheme is to also delay important transition funding to communities impacted by the San Juan coal-plant closure. While PNM has volunteered to advance 25% of the economic development, workforce and Indian Affairs funding

interest) is abandoned on September 30, 2022. The rate reduction upon abandonment was to be \$94 million per year, or \$7.8 million per month. $(7.8 \times 1/3 \times 18) + (7.8 \times 2/3 \times 15) = \124.8 million

¹² *Financing Order - Recommended Decision*, p. 81

¹³ *Financing Order - Recommended Decision* at pp. 85-6

provided by the ETA prior to the bond issuance, that means 75% of those funds, or \$14.9 million, will not be available until well after the plant closes.¹⁴ PNM's implicit position, that it somehow makes sense to not provide \$15 million in transition funds until 18 months after the transition occurs, by itself shows the untenable rationale, and cavalier and self-serving nature, of PNM's strategy to enrich its investors at the expense of New Mexicans.

9. Finally, by delaying its financing by a year or more, PNM jeopardizes its ability to obtain low-cost financing. It is well understood that interest rates will likely increase substantially in coming months.¹⁵ PNM's delay in issuing bonds risks saddling its customers with 20 to 25 years of inflated interest costs once the refinancing occurs.

III. PNM's Planned Delay is Unlawful

10. PNM's delay of its securitized bond issuance violates the Commission's *Financing Order* and the ETA. To understand why, some background is helpful.

11. The legislative policy trade-off embodied in the ETA is that, by accepting a foregone return on its investment through securitization, PNM would be able to avoid a write-off associated with the abandonment before the end of SJGS's depreciable life. PNM would be permitted to recover its stranded investment through low-interest-rate, securitized, bonds with no profit component, rather than through ratemaking mechanisms which might include a profit, but

¹⁴ PNM has stated that it will advance 25% of the \$19.8M in transition funds prior to the bond issuance. *Financing Order - Recommended Decision*, pp. 29 (PNM Table HEM-2, lines 8,9,10), 38, 100

¹⁵ See e.g., "How High Will Interest Rates Go?," Cover story in *The Economist*, Feb. 5-11, 2022, at 11; Factbox: What global banks forecast for Fed rate hikes in 2022, Feb. 17, 2022, Reuters: <https://www.reuters.com/business/finance/what-global-banks-forecast-fed-rate-hikes-2022-2022-02-11/>

also could include a write-off of stranded costs. This solution lowered the costs to customers of paying off the San Juan investment and allowed PNM to avoid a write-off on its books.

12. Pursuant to the ETA, the low-interest bond issuance is to occur at the time of abandonment. This is clear because the ETA locks in the amount to be financed to include the undepreciated plant balance *on the date of abandonment*.¹⁶ The ETA also provides that if rates have not been adjusted to remove San Juan from rates at the time the bond obligation starts being recovered from customers, then PNM must provide an immediate bill credit to remove San Juan and all its costs from each customers' electric rates.¹⁷ PNM, though, seeks to avoid providing a rate reduction by delaying its bond issuance until the conclusion of its next rate case. PNM shareholders do not lose any value from the delay because the amount PNM is authorized to recover through bonds does not depend on the date of issuance. It depends on the date of abandonment. And, in the meantime, PNM is able to recover its full costs of San Juan (\$94 million per year) until the bonds are issued.

13. What is critical to understand however, and what undermines PNM's ploy, is that the law, the Commission's *Financing Order*, and PNM's testimony in this Case all require PNM to issue those bonds, if at all, upon abandonment. While PNM can, within its discretion, time its next rate case to coincide with the date of abandonment and bond issuance, it cannot do the reverse: delay its bond issuance to coincide with the conclusion of its next rate case – which is what PNM intends to do. And while the Commission may be unable to require PNM to issue the bonds,¹⁸ it can nevertheless protect PNM customers from the consequences of delay by ordering PNM to

¹⁶ §62-18-2H(2)(c) NMSA

¹⁷ §62-18-5F (8) NMSA; §62-18-4B(10) and (11) NMSA

¹⁸ §62-18-11C NMSA

provide the intended rate credit to PNM customers at the time San Juan is abandoned. That, among other things, is what the *Motion* requests, and what is necessary to protect PNM customers and assure just and reasonable rates.¹⁹

14. In the *Final Order on Request of PNM for Authority to Abandon its Interests in San Juan Generating Station Units 1 and 4, etc.* (“*Abandonment Order*”), the Commission recognized that abandonment and bond issuance were to occur at the same time: “The ETA also provides for ratemaking mechanisms designed (1) to eliminate the costs of the abandoned facilities at the time the ETC rates [i.e. bond repayment] are first collected (upon the abandonment of the units)”²⁰

15. Similarly, in its *Financing Order*, the Commission adopted the recommendation of the Hearing Examiners “that the Commission adopt the substance of the proposals of Dr. Howe and Mr. Dauphinais.” NM-AREA witness Dauphinais proposed “that the Commission require that PNM file a rate adjustment mechanism that will automatically remove the revenue requirement in base rates associated with the San Juan units starting on the date of abandonment.” (emphasis added).²¹

16. Moreover, it was understood, and unquestioned, that the abandonment and refinancing would occur at the same time. In fact, the abandonment date and refinancing date were used interchangeably during the proceedings for approval of both:

In rebuttal, PNM agreed to the recommendations of Dr. Howe and Mr. Dauphinais for an immediate credit for ratepayers upon the abandonment of the San Juan plant. PNM agreed to create a rate mechanism to adjust customers’ bills immediately after PNM begins collecting the ETC for customers. (emphasis added)²²

¹⁹ §62-8-1 NMSA

²⁰ *Abandonment Order - Recommended Decision*, p.14

²¹ *Financing Order - Recommended Decision*, pp.82-4

²² *Financing Order - Recommended Decision*, p. 83

17. The *Financing Order* further recognized that abandonment and bond issuance were to occur at the same time in the following language: “As described in the Supporting Testimony, upon abandonment of the San Juan coal plant, the SPE will issue the Energy Transition Bonds.”²³ And the *Financing Order* also assumed that any advance payments for transition funding would be recouped in bond proceeds when the plant was abandoned: “PNM would recover the actual amounts of all of the advance payments in the bond proceeds expected to [accrue in] July or August of 2022....”²⁴

18. In recognizing that abandonment and financing were to occur at the same time, the *Financing Order* referenced and approved PNM’s description of the timing of the bond issuance, which is an ETA-required component of this Case. PNM described that timing as occurring “as promptly as possible” after abandonment.

28. As described in the Consolidated Application, including the Supporting Testimony, PNM expects to cause the issuance of the Energy Transition Bonds as promptly as possible after the last of the following events have occurred: (1) issuance of a final, non-appealable financing order acceptable to the Company; (2) the abandonment of the San Juan coal plant; (3) delivery of any necessary SEC approvals under the Securities Act of 1933; and (4) completion of the rating agency process. PNM estimated that the issuance of the Energy Transition Bonds would occur in 2022.” (emphases added)²⁵

Noteworthy is that the three non-abandonment events identified above would easily occur prior to the fourth event: abandonment: Event 1 was achieved with the N.M. Supreme Court’s affirmance of the Commission decision on January 10, 2022, in Case No. S-1-SC-38247.²⁶

Event 2 is the abandonment. PNM witnesses testified that events 3 and 4, the SEC approvals and

²³ *Financing Order - Recommended Decision*, para. 44, p. 127

²⁴ *Financing Order - Recommended Decision*, p. 100

²⁵ *Financing Order – Recommended Decision*, para. 28, pp. 120-21; see also, *PNM Application*, p. 34, and Elisabeth Eden Direct testimony, p. 15

²⁶ Tr. 1029

completion of the rating agency process, would take perhaps two months, but no more than 6 months.²⁷ And that testimony was over two years ago.²⁸ And if the bonds are privately rather than publicly placed, no SEC approval would be needed. So, there should be no constraint on PNM's ability, and commitment, to issue the bonds at the time of abandonment - meaning that once abandonment occurred, the bonds could and should be issued.

19. The *Financing Order* also recognized that bond issuance was to occur with abandonment because it admonished against the possibility of double recovery of San Juan costs if PNM's next rate case did not coincide with San Juan's abandonment/refinancing. PNM's intended bond delay would cause such an unlawful double-recovery because the amount to be financed is the undepreciated plant balance as of the date of abandonment, without accounting for depreciation between abandonment and bond issuance.²⁹ If PNM continues to recover San Juan costs after abandonment, however, that would double-recover the San Juan investment for the period prior to bond issuance. And the Commission's Order specifically recognized that such an outcome was not to be tolerated: "Ratepayers should not bear the risk of the double recovery that would result if PNM's [2021] rate case filing is late."³⁰

20. The ETA also requires PNM to refinance upon abandonment. Any other interpretation creates an absurd result. That is because the ETA, as stated, locks in the amount to be financed as the undepreciated plant balance on the date of abandonment – showing a clear

²⁷ PNM witness Eden, Tr. 1011-15; PNM witness Atkins, Tr. 1092-93

²⁸ It is unknown whether PNM has begun the processes needed to get those approvals or if the placement will be public or private, and the Motion therefore asks the Commission instruct PNM to describe the progress it has made to secure those approvals, and when PNM expects them to be obtained.

²⁹ §62-18-2H (2)(c) NMSA; *Financing Order - Recommended Decision*, para.9, p. 113

³⁰ *Financing Order - Recommended Decision*, p. 85

legislative intent for bonds to be issued concurrent with abandonment. PNM estimated the level of undepreciated SJGS plant on the date of abandonment to be \$283 million.³¹

21. PNM’s planned delay, however, would have the Company continue collecting San Juan costs in rates at its full cost of capital after the plant is abandoned, and then issue securitized bonds in its discretion at some future date. By PNM’s logic, it could sit back for 30 years, taking no action to issue bonds and collecting a return both of and on its abandoned facility – to say nothing of the O&M and other costs reflected in rates. Then, 30 years later, after fully depreciating its stranded asset, issue its bonds and recover its stranded costs once again. This potential for double recovery of hundreds of millions of dollars demonstrates why PNM’s position is untenable. Well-accepted rules of statutory construction, and New Mexico law, make clear that a statute should not be interpreted to allow an absurd result.³² Yet that is exactly what PNM has posited.

IV. PNM’s Delay Contradicts the Company’s Sworn Testimony and Representations

22. PNM’s abandonment filing was premised on the assumption, and Company representations, that the securitized bond issuance would occur immediately following abandonment. PNM’s cost savings estimates characterized 2023 as the first full year of securitized savings – which obviously assumed the financing would occur in 2022, the year of abandonment.

³¹ *Financing Order - Recommended Decision*, para. 9, p. 113-4

³² §12-2a-18A NMSA: “A statute or rule is construed, if possible, to:… (3) avoid an unconstitutional, absurd or unachievable result.” *See, e.g.*, *United States v. Granderson*, 511 U.S. 39, 47 n.5 (1994) (dismissing an interpretation said to lead to an absurd result); *Dewsnup v. Timm*, 502 U.S. 410, 427 (1992) (Scalia, J., dissenting) (“If possible, we should avoid construing the statute in a way that produces such absurd results.”); *Public Citizen v. Department of Justice*, 491 U.S. 440, 454 (1989) (“Where the literal reading of a statutory term would compel ‘an odd result,’ ... we must search for other evidence of congressional intent to lend the term its proper scope.”).

The representations of savings that PNM used to justify the abandonment also relied upon a financing that occurred before 2023.³³ Equity requires PNM be held to its representations.

23. PNM’s representations to the Commission that it would refinance SJGS costs at the time of abandonment occurred throughout the Case. Here are but some examples:

a) PNM’s *Application* in this Case stated that “[t]he bonds are to be issued at or around the time the San Juan coal plant is closed.”³⁴

b) PNM witness Monroy testified: “The bonds are to be issued around the time the San Juan coal plant is abandoned.”³⁵ He also testified, when asked about the ETA Section 4B(11)’s required rate credit, that: “Upon abandonment, the SPE will issue the Energy Transition Bonds.”³⁶ And Mr. Monroy again recognized that abandonment and bond issuance were to be at the same time in the following testimony, which reflected that while PNM’s rate case timing might be uncertain, the bond issuance was to be accomplished upon abandonment:

However, if there is a timing difference between commencement of the collection of the energy transition charge from customers when bonds are issued upon the abandonment and the time that base rates are adjusted to reflect the abandonment of the San Juan coal plant, then a regulatory liability will protect customers from double recovery of the undepreciated investments. (emphasis added)³⁷

c) PNM also recognized that bond issuance and abandonment were to occur together when it used July 2, 2022, the abandonment date, as the expected bond issuance date. For example, this appeared in PNM witness Settlage’s Direct testimony:³⁸

³³ Monroy Direct testimony at 63.

³⁴ PNM *Application* p. 8

³⁵ PNM *Application* p. 21

³⁶ Monroy Direct testimony, p.39

³⁷ Monroy Direct testimony, p. 41

³⁸ Settlage Direct testimony, p. 20

... PNM Chart MJS-2 displays the timing of the bond payments and the effective dates of the adjusted transition charges.

PNM Chart MJS-2. Sample energy transition charge Adjustment and Bond Payment Timeline

<u>Date</u>	<u>Activity</u>
7/2/22	Bonds are issued
8/1/22	Initial ETC becomes effective
12/1/22	Adjusted ETC effective date
3/1/23	Bond payment #1
6/1/23	Adjusted ETC effective date
9/1/23	Bond payment #2
12/1/23	Adjusted ETC effective date
3/1/24	Bond payment #3

d) PNM witness Settlage's testimony also assumed an issue date coincident with abandonment when he described the effective date of the ETC:

For example, if the bonds were issued on July 2, 2022, PNM anticipates the energy transition charge would become effective on August 1, 2022 and would be assessed for electric service provided thereafter.³⁹

e) PNM witness Eden testified that the bonds would be issued promptly after four items were complete: issuance of an order, abandonment of San Juan, SEC approval and rating agency process.⁴⁰ As discussed earlier, all of these items could be completed prior to abandonment, meaning that upon abandonment the bonds were to be promptly issued.

f) PNM's Application stated that the first full year after issuance of the bonds would be 2023, meaning the bonds would be issued in 2022, the year the plant was to be abandoned, and not at the beginning of 2024 as PNM now intends:

³⁹ Settlage Direct testimony, p. 3

⁴⁰ Eden Direct testimony p. 15, also Tr. 1011 (12/13/19)

PNM estimates that the Energy Transition Charges for the initial full year (2023) following issuance of the Energy Transition Bonds will be approximately \$23 million.⁴¹

g) The *Financing Order* recognized and relied upon PNM's representations on the timing of the bond issuance: "PNM plans to issue the Energy Transition Bonds through the SPE upon the abandonment of its interest in the plant and to start charging the ETCs soon after."⁴²

V. The Remedy Requested by the *Motion*

24. While the Commission cannot order PNM to issue bonds,⁴³ the Commission nevertheless has the ratemaking tools it needs to counter the harms that would be caused by PNM's bond issuance delay. §62-8-7 NMSA and §62-10-1 NMSA provide the PRC authority to adjust rates to protect the interest of consumers and the public interest. The *Motion* asks the Commission to use those tools and exercise its authority to assure that PNM rates are just and reasonable, as required by law.⁴⁴

25. If PNM delays issuing bonds past the date of abandonment, the Company should be responsible for the harm such a delay would cause to customers and New Mexico. The PRC's rate authority allows the Commission to order an appropriate rate adjustment to remedy PNM's abuse of its presumed discretion to delay the bond issuance. That is what the *Motion* requests.

26. The Commission has already identified what that rate adjustment to protect customers should be – it is the rate credit that was to go into effect if PNM's rates included San Juan costs at the time of abandonment. As the Commission held in approving the rate adjustment

⁴¹ PNM *Application*, p. 28

⁴² *Financing Order* at 70

⁴³ §62-18-11C NMSA

⁴⁴ §62-8-1 NMSA

that would go into effect if a rate case was not concluded concurrent with San Juan abandonment and financing:

The credit should include the full value of the revenue requirement of the abandoned facilities. The credit should be applied until the conclusion of the first PNM general rate case that includes the full cost impact of the abandonment in PNM's base rates.

Section 4(B) (11) [of the ETA] only requires an adjustment for the value of the abandoned units' capital costs, but the ETA does not deprive the Commission's other authority under the Public Utility Act to ensure that the rates charged to customers are just and reasonable. This additional authority supports the broader adjustment recommended here.⁴⁵

The specific relief requested by the *Motion* is two-fold.

27. First, the *Motion* asks that the Commission order PNM to show cause why it should not reduce its rates immediately upon abandonment of SJGS Units 1 and 2 to remove the full costs of those facilities from rates – and unless that showing demonstrates that such a rate reduction is not just and reasonable, order those rate reductions. The show cause should specifically require PNM to describe the steps it has taken so far, and expects to take, to obtain any needed SEC or rating agency approvals prior to the bond issuance, as well as the anticipated date those approvals will be obtained. The rate reduction requested by the *Motion*, and its allocation and structure, were spelled out in the *Financing Order* in this case, and equated roughly \$0.015881 per kWh for residential customers, or \$94 million per year system-wide. The reductions described in the *Financing Order*, should go into effect for Units 1 and 4 on the dates of their abandonment.⁴⁶ Because PNM is able to recover the principal amount of its undepreciated SJGS investment as of date of abandonment, regardless of when the bonds are issued, removing the plant from rates on

⁴⁵ *Financing Order - Recommended Decision*, pp. 84-5

⁴⁶ *Financing Order - Recommended Decision*, paragraphs 33, 44. pp. 44, 84-5, 127-8, 157

the date of abandonment does not harm PNM, but rather avoids an unjust double-recovery and unjustified profit for PNM shareholders.

28. Second, the *Motion* requests that the Commission notify PNM that it will evaluate the prudence of any delay in refinancing San Juan costs beyond the date of abandonment. That evaluation should specifically examine any increased interest rate that PNM's bonds incur as a result of the delay, and whether PNM shareholders should be responsible for those added costs. Such an inquiry is important in light of widely-held expectations that interest rates will increase substantially over the next couple years, meaning that, unless redressed with an imprudence adjustment, the cost to customers of refinancing will increase if the bond issuance is delayed as PNM plans. The requested inquiry should include PNM's justification for any delay, and whether or not PNM has acted responsibly to protect customers from avoidable interest rate hikes, for example by the use of hedging mechanisms to lock in interest rates.

Conclusions

Joint Movants have requested parties to provide their positions on the *Motion*, and received the following responses: Sierra Club and New Energy Economy support the *Motion*. NEE requests an opportunity to reply to responses that are filed. Commission Staff does not oppose the *Motion*. LAC/MSR, NM-AREA, City of Farmington and San Juan County take no position, or no position at this time. Other parties did not respond.

WHEREFORE, for the foregoing reasons, Western Resource Advocates prays for a Commission order granting the relief requested herein, and such other and further relief as the Commission deems just and proper.

Respectfully submitted,

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I sent to the parties and individuals listed here,

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DATED this February 28, 2022.



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