BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF AVANGRID, INC., AVANGRID NETWORKS, INC., NM GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY OF NEW MEXICO AND PNM RESOURCES, INC. FOR APPROVAL OF THE MERGER OF NM GREEN HOLDINGS, INC. WITH PNM RESOURCES, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION	)	**Case No. 20-00222-UT**

NEW ENERGY ECONOMY'S RESPONSE BRIEF

September 28, 2021

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New Energy Economy ("NEE"), by and through its undersigned counsel, files its Response Brief pursuant to the Order of August 20, 2021. New Energy Economy specifically requests that silence on certain matters does not equal endorsement or approval.

I. Introduction

The status of the stipulation itself, the evidence admitted during the nine days of hearing and the positions taken by Iberdrola, Avangrid and PNM, taken separately or together, all militate strongly for denial of the Joint Applicant's request for approval of the merger. The parties will undoubtedly articulate many bases for disagreement on the various issues and sub-issues that have emerged in this proceeding, but there are certain fundamentals about which there are no disagreements, or at least no legitimate disagreements and those fundamentals are closely intertwined, with each casting light on the others.

The first fundamental is one that makes the others so important. It is found in the unabashed and surprising statement by Joint Applicants when they addressed their view of the nature of the obligations of the board of directors that will control the monopoly utility that they possess by the grace of the New Mexico public: "[D]irectors should have one sole objective: boosting shareholder gain."[1] As we explain below, at pp. 18-22, it is inappropriate for whichever board would control the New Mexico electric monopoly in the event of the merger to take the view that its decisions can be separated from its obligation to serve the public, protect the environment, acquire the most cost-effective resources, etc. But that is the attitude we face,

[1] Joint Applicants Post Hearing Brief-in-Chief ("JA Brief") p. 110.

coupled with the Joint Applicants' corollary view that the PRC has no business attempting to manage the utility's conduct.

The second fundamental that militates against approval is the history of Iberdrola's evasive behavior in responding to the PRC's Order that it be joined as a party. It has not signed off on the Stipulation and has never indicated that it has acquiesced in the Hearing Examiner's Order that it be subject to Commission jurisdiction. Thus, the parent corporation that has signaled that it would not consider itself bound by the Orders of the PRC, much less by the decisions of an independent board, resides at the top of a pyramid of corporations whose Boards, according to Joint Applicants, must devote themselves to "boosting shareholder gain."[2]

The third fundamental is that many of the critical details – as opposed to undefined and unenforceable promises – have been pushed off into the future on the apparent assumption that they need not be worked out until after the merger is approved. They are spelled out on pp. 15-17 below. For purposes of this introductory statement, however, the most critical is that there is no agreement on what authority PNM's board will have to manage the company. This gap in the agreement can only be seen as alarming in light of Iberdrola's evasiveness regarding its willingness to subject itself to PRC jurisdiction, its history of unreliability, and its abject unwillingness to agree that there should be any *significant* control of its proposal to have its immediate subsidiary take over the New Mexico monopoly that is currently under local management and independent control.

What these undisputed, fundamental matters point to is that the Joint Applicants want the PRC to approve the merger on the blind, in the hope that through some as yet unidentified, future process, the details of how authority will be distributed among the Spanish parent, its United

[2] *Id.*

States subsidiary and the New Mexico "PNM" company will be worked out in a way that is for the benefit of the ratepayers and the public. In light of Iberdrola's and the Joint Applicants' attitude about what their singular focus is – maximizing shareholder value – it seems unlikely in the extreme that at some future date, the local board's authority will be independent and financially powerful, and that it will be empowered to serve the New Mexico public well. Hoping that the Hearing Examiner forgive the sarcasm, "Fat chance!"

When, in addition to the foregoing, one considers the evidence of poor service elsewhere, second thoughts in other jurisdictions about Avangrid/Iberdrola take-overs, and evidence that Iberdrola is likely to have been involved in corrupt practices in Spain, its home country, and for all the other reasons NEE addresses, NEE respectfully submits that the Hearing Examiner recommend rejection of the proposed merger.

II. New Energy Economy's Refutation of Joint Applicants' Positions

A. Negative Inference Should Be Drawn

Joint Applicants and the Office of the Attorney General correctly state the criteria for evaluating Stipulations. NEE agrees, that the parties are represented by capable and knowledgeable counsel, yet a negative inference can be made by certain remarkable facts. The Commission must ask itself whether parties who had been vigorously challenging the merger wound up agreeing to "not oppose" in exchange for the relatively small additional concessions made because of extra-legal pressure:

- The Albuquerque Bernalillo County Water Utility Authority was an active participant, obtained relatively little (compared to their rather righteous testimony) without documentation substantiating the benefits they agreed to, and then submitted no brief. Were they speechless and unable to defend the Stipulation?

- Up to $350,000 for Marcus Rael to negotiate a settlement with the Attorney General

(and others), but curiously had not been paid by Petitioners Iberdrola and Avangrid as of mid-August, prior to hearing.

- An unusually demur Andrea Crane came alive at hearing when she spoke of the $300 million plus interest, in a non-bypassable charge from ratepayers for 25 years for undepreciated investments claimed by PNM, which it is seeking in NM PRC Case No. 21-00017-UT; she testified that $300M is a cost of the merger.[3] The Stipulation is largely silent on Four Corners costs and remains an unresolved issue.[4] "I recommend that [Four Corners costs] be treated as a transaction cost of the merger and absorbed by shareholders."[5]

- PNM has negotiated an agreement with NTEC to offload Four Corners that includes provisions impeding an early closure of the plant by other parties[6] that is a condition precedent of the merger,[7] and is contrary to the public interest because the *purpose* of the Energy Transition Act ("ETA") is the transition from coal burning in New Mexico.

- "Joint Applicants agree that during the pendency of any (future) PNM proceeding at the Commission, they will provide the attorney that has entered an appearance on behalf of any party prior notice of their intent to contact that party about substantive issues in dispute in the Commission proceeding. … *This provision does not prohibit contact that is not intended to change a party's position in a proceeding at the Commission or undermine regulatory counsel's representation of the party*."[8]

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[3] TR., 8/16/2021, Crane, pp. 1015-1017, 1048.
[4] *Id.,* 1049.
[5] *Id.,* 1057; *See also*, p. 1059-1060: "Obviously, in my testimony in Four Corners, I've challenged the recovery of that investment. I don't think that the -- I think that in this particular case, because I view it as a merger condition, and a transaction cost, I believe that there is a basis -- again, I'm not speaking as a lawyer, but I think there is a basis for excluding those costs."
[6] *Id.,* p. 1110.
[7] ABCWUA, Exhibit 2, Rebuttal Testimony of Mark E. Garrett, April 21, 2021, p. 5, 10-11 of 14; SC, Exhibit 1, Direct Testimony of Jeremy I. Fisher, PhD, April 2, 2021 p.14-15 of 32.
[8] JA Brief p. 95. This is an explicit admission that Joint Applicants have been in contact with Commission personnel (or other party's principles outside the party's attorney's presence) to influence and pressure the outcome of a case, and, that in the future, Joint Applicants will be conducting themselves in the same manner; yet, they agree to advise PRC Attorney(s) in advance that they *will be* in contact with those persons in the future. An end run? Political influence? No matter. All Joint Applicants agree to do is advise PRC Attorneys that their minions will be in contact with those persons and exert political influence and then they are free to conduct *their* business. It is similar to the reporting of reliability standards – notice of underperformance? Yes. Restrictions/violations/accountability? No. – *why is there a need to penalize or enforce codes of conduct*?

B. Joint Applicants Say One Thing, But the Evidence Demonstrates Another

When the cameras are off and the spin is scrutinized the actual amount that Joint Applicants are offering is $94 million.[9] Joint Applicants state: "Of the $94 million in total rate benefits, $67 million will go directly to all customers as a credit on customer bills." Only $26M will be allocated to 500,000 residential ratepayers.[10]

Joint Applicants argue post hearing there are alleged advantages: "($15 million offered in the evidentiary record plus an additional $10 million in the compromise with Staff reached after the public hearing).[11] Seeming to elide the Hearing Examiner's orders Joint Applicants continue to include issues outside the record; he made it abundantly clear that post-hearing agreements would not be considered and then ordered the issue **closed**.[12] Yet, the Joint Applicants continue unabated to advocate for and detail their post-hearing deal[13] as if the Hearing Examiner's decisions had no import. Have they no regard for Commission rules, oral and written Orders of this tribunal, such that they continue to parade their position despite being advised otherwise?

Joint Applicants argue that PNM customers will benefit from "credit metrics and is expected to improve the credit ratings for PNM,"[14] but there is no record evidence that PNM lacked access to credit without the Iberdrola/Avangrid merger.[15]

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[9] Joint Applicants' Brief in Chief ("JA Brief"), p. 2.
[10] JA Exhibit 30 Rebuttal Testimony of Ronald N. Darnell July 29, 2021, p. 42 of 44, Exhibit RND-1.
[11] JA Brief p. 2.
[12] *Order Addressing Motion to Permit Filing of agreed-Upon Positions Or in the alternative for Limited Reopening of Evidentiary Record*, 8/27/2021, *passim*; *See also,* the Hearing Examiner's May 28, 2021 *Procedural Order for Proceedings Addressing Contested Stipulation;* August 20, 2021 *Order on Post Hearing Filings;* Oral Order, TR. 8/19/2021 p. 1825.
[13] JA Brief pp. 3, 96-102.
[14] JA Brief p. 3.
[15] NMAG Exhibit 2, Direct Testimony of Scott Hempling, pp. 63-65. ("Subordinating PNM to a $143 billion Spanish conglomerate is not a sensible way to solve a problem that PNM never said

Joint Applicants argue that PNM customers "will receive the benefit of sharing in the information about best practices throughout the Avangrid and Iberdrola family,"[16] but impeachment evidence exists that the "Avangrid and Iberdrola family" are to blame for utility unreliability, poor customer service, $60M in fines and penalties, increased utility rates and for negative outsized influence and improper interference in day-to-day operations.[17]

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existed.") Assuming arguendo that Ms. Lapson is correct, is a $2M savings per year for ratepayers of any material significance, as that would represent 0.2% of PNMR's 2020 retails sales revenues? Is this why all parties relinquished their right of cross-examination? (TR., 8/12/2021, p. 575.)

[16] JA Brief p. 3.

[17] For example: NEE's Post Hearing Brief-in-Chief, Exhibit 1, p. 3 ("According to the Third Amended Complaint, this was not the first time an Iberdrola subsidiary had dealt with issues surrounding its billing system. In 2014, another Iberdrola subsidiary, Scottish Power, was investigated by the United Kingdom's Office of Gas and Electricity Markets ("Ofgem") after its rollout of a billing system similar to SmartCare. Scottish Power customers received late or incorrect bills and experienced bill delays followed by a sudden demand for high bills to be paid, and Scottish Power call centers were overwhelmed by complaints and failed to respond to customers' issues."); in the Judges' analysis: "Iberdrola may not have had as large of a role in SmartCare's alleged problems as CMP/Avangrid, its role was at least material to SmartCare's allegedly rushed rollout." At p. 19. And at p. 20: "Here, multiple Iberdrola employees worked on the SmartCare project, including at least one employee that partially relocated to Maine for the task. It was certainly the voluntary, deliberate act of Iberdrola to send its employees to Maine to work on the SmartCare project, to incorporate the SmartCare project in Maine into its global system, and to direct CMP/Avangrid employees as to the timing of the SmartCare rollout. Accordingly, I conclude that Iberdrola did purposefully avail itself of this forum." At p. 21: "Iberdrola is located in Spain, it clearly has the resources to have its representatives travel to Maine, as it is a global energy company that has sent its executives and employees to Maine on many occasions. … this is a case in which Maine has an exceptional interest in adjudicating this case, as Iberdrola owns and influences the largest public utility in the state, which is alleged to have harmed thousands of Maine customers." At p. 23: "From the time that Iberdrola acquired [Avangrid] moving forward, there was a continuous team of people in [Avangrid's] New Gloucester, Maine corporate office from Iberdrola's home office in Spain." It states that meetings were held in Avangrid's New Gloucester, Maine offices with Iberdrola representatives in or around 2008 informing Avangrid and CMP employees that Avangrid was selling the company to Iberdrola, but that employees were not to share this information. "All of the regulated assets, accounting for all investments, vendor payments, payroll, and virtually everything involving money, was processed through the New Gloucester, Maine corporate office." [E]mployees working at the New Gloucester, Maine office "knew no distinction" between Iberdrola, CMP, and Avangrid. CMP implemented SmartCare "at the direction of Iberdrola and with the full cooperation of Avangrid." Avangrid employees—as well as Iberdrola

Joint Applicants state, without citation, that they have offered "protections against affiliate subsidization," but record evidence demonstrates the opposite. Evidence from regulatory cases, pending cases, management audits, and admissions in discovery or testimony demonstrate Iberdrola/Avangrid's interlocking financial, managerial, and business relationships actually control and subsume local management.[18]

Joint Applicants state that *all* of the Commission's legal requirements have been met because the Stipulation includes: "strong ring fencing and financial commitments to ensure no loss of Commission jurisdiction and protection against consumer harm."[19] Except, as noted by NEE in our Post Hearing Brief-in-Chief (pp. 14, 18, 25, 30-31) and NEE's Statement on Positions (3-4, 6-7, 8-14, 24) (together, "NEE filings") the Commission has *no* assurance of jurisdiction over Iberdrola, and limited jurisdiction over Avangrid, this despite the Commission's requirement for Iberdrola to be "joined" and therefore be bound by the Stipulation's regulatory commitments.[20]

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employees placed in Avangrid's New Gloucester office—were part of the team that led the SmartCare rollout." (citations omitted.)

[18] For example: Commission Exhibit #5, p. 34; TR., 8/11/2021, Blazquez, pp. 95, 107 ("here [are] two alternatives. One will be Avangrid, which is publicly traded in the U.S., and then you have the parent company, you know, number one, or the second of the three largest companies in the world. You will have access to two avenues of equity instead of one. In addition to that, you know we have already financed this acquisition, the positions of Avangrid, and Iberdrola, after they closed the announcement of the conception, already, the finals, the proceeds that they needed to put into Avangrid. I think in addition to that, you know that if we give you access now to the Iberdrola group[.]") pp. 146-147; pp.154-155 ("[Azagra Blazquez is chief development officer and a member of the Executive Committee of Iberdrola, and also a member of the Board of Directors for Avangrid.") pp.157-159; pp. 165-182. *See also*, TR., 8/12/2021, Kump, pp. 457-458, pp. 485-488, pp. 506, 52. TR., 8/12/2021, Quilici, p.556-560.

[19] JA Brief p. 15-16.

[20] *Order Granting Joint Motion for Joinder of Iberdrola, S.A. for Just Adjudication*, 6/8/2021.

Joint Applicants state that "NMAG Witness Crane testified that each element for approval of a stipulation has been met," except that Ms. Crane also testified that while she was intimately involved in the EPE merger case during settlement negotiations, she was excluded from detailed settlement negotiations in the case herein and stopped analyzing the case after the Attorney General ("NMAG" or "AG") signed on, April 20, 2021.[21] Marcus Rael was the main driver in settlement negotiations between Joint Applicants and the AG.[22] While she was consulted, Ms. Crane was "out of the loop":

> I can't remember how long before [April 20, the date of the initial Stipulation], but I can tell you that -- I can tell you that there wasn't a lot of back and forth. I mean I can tell you that I was not involved, for example, in extensive modifications or anything like that. I mean, I was asked to look at some Regulatory Commitments, provide some input to the office of the Attorney General regarding my opinions about the document, did so, and that that happened once or twice, you know.
>
> As I said, I think I probably saw a clean version, provided some input, and then perhaps had been asked or sent a redline version and asked to comment on that.That happened in total, I would say -- I would guess, because I don't have a record -- two to three times.[23]
> …
>
> And I don't know over what period of time that transpired. It seems to me that it may have been a couple of weeks, you know, or maybe I saw something and then maybe didn't hear anything back for 10 days from the office of the Attorney General, so I wasn't sure where settlement negotiations were, since I was not directly participating in those negotiations.
>
> I was sort of out of the loop a little bit as to exactly what, you know, the status of those negotiations were.[24]

Again, Joint Applicants overstate Crane's endorsement of the Second Amended Stipulation ("Stipulation") and ignore her critique: "So, you know, if we're looking at the $300

[21] TR., 8/16/2021, Crane, p. 976 ("I mean generally if there's a stipulation, I more or less stop analyzing the case and therefore I generally stop issuing discovery at that point.)
[22] Office of the Attorney General's Post Hearing Brief, pp. 10-11.
[23] TR., 8/16/2021, Crane, p. 982.
[24] TR., 8/16/2021, Crane, p. 983.

million on one hand, and we're looking at the stated and quantified conditions, like the rate credits, and the economic development, then I may very well agree with you that $300 [million] of harm outweighs, you know, half of that in benefits or whatever."[25] Crane goes on to say that the Hearing Examiner and the Commission usually rely on quantifiable benefits but can take a broader view and consider unquantifiable potential benefits as well. Yet, even when those alleged unquantifiable potential benefits are considered the merger and Stipulation fall short. As more fully described in NEE's filings the merger may be detrimental given Iberdrola/Avangrid's track record for inadequate and inefficient electric service at reasonable rates, and woefully substandard customer service; combined with their flouting of government regulations (internationally, in the U.S and herein) and the "we'll pay if we get caught" attitude is especially worrisome as they bully their way into New Mexico, a poor state, which makes the people even more vulnerable.[26]

As Joint Applicants acknowledge Regulatory Commitment #36 requires that "PNM must report on the annual SAIDI and SAIFI metrics,"[27] but does NOT penalize Iberdrola/Avangrid/PNM for underperformance or other violations of safety and reliability standards. The Commission has the right to condition the merger on the metrics articulated by Staff witness Evans. NMSA §62-6-19.

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[25] TR., 8/16/2021, Crane, p. 1061.

[26] At p. 53 of JA Brief, Joint Applicants state "there is no *firm* evidence that PNM's quality of service will decline as a result." No, we don't have a crystal ball, but we do know that Iberdrola/Avangrid has its eye on extracting "growth" from New Mexico and exploiting PNM's electric monopoly as a platform to send profits elsewhere. When Iberdrola/Avangrid was more interested in their service to load centers in Massachusetts via their transmission line from Quebec they bulldozed over Maine's pristine forests and utility services suffered tremendously. At p. 54 Joint Applicants correctly point out that the Commission has never required specific reliability standards before, but this Commission has also never seen such incompetence and "abysmal" utility service before.

[27] JA Brief p. 56.

While it is true that, "The economic development commitments [of a total of $27M[28] has] more than doubled in total dollars [] compared to the benefits proposed in the Application"[29] that is not unusual or impressive because it still pales in comparison to what most Intervenors testified was appropriate (ranging from $75M – $114M[30]) and not in sync with the EPE merger agreement, Case No. 19-00234-UT. Joint Applicants argue that $27M "substantially exceed each of the prior economic development commitments approved in other utility mergers"[31] and then cite to fn. 89, "Case No. 19-00234 (sic), Amended Certification of Stipulation, p. 25 (Feb. 12, 2020) (economic development contribution of $20 million over 20 years)." While $27M is more than $20M, PNM has at least 400,000 more customers than EPE so if a per customer economic development analysis is made the merger's economic development commitment does not *exceed* the last approved merger case by the PRC but is in fact wholly deficient; the economic development funds offered in the EPE merger case was four times what is being offered here on a per customer basis.

Joint Applicants state that "PNMR's common stock will be delisted from the NYSE."[32] Then "Avangrid will transfer 100% ownership in PNMR to Networks, which is the corporate entity Avangrid uses to hold all of its public utility interests."[33] Remarkably absent is any

[28] JA Brief p. 35.
[29] JA Brief p. 15-19.
[30] NMAG witness Crane: rate credit of $80 million, NMAG Exhibit 1; *Direct Testimony of Andrea Crane*, April 2, 2021, p. 54 (At p. 25: "This 'benefit' also pales in comparison to the economic development benefit of $100 million over 20 years provided in the recent EPE acquisition case."); PRC Staff John Reynolds: $114 million over 20 years, PRC Staff's Exhibit 4, *Direct Testimony of John Reynolds,* April 2, 2021, p. 32.
[31] JA Brief p. 35, repeated again at p. 74.
[32] JA Brief p. 7.
[33] *Id*.

reference that Avangrid, Networks (or Iberdrola) will delegate any fiduciary duty to the "PNM Board". (Regulatory Commitment #17.)

"Finally, customer protections have also been significantly strengthened with the inclusion of independent evaluator commitments for new generation resources, a board of *directors at PNM with independent members who have significant powers*, and dividend restrictions based on stringent credit metrics." (emphasis supplied.) However, as more fully explained in NEE's filings these alleged customer protections are illusory, unenforceable and/or "legally impossible".

When PNM argued on February 27, 2019, in its *Emergency Verified Petition of PNM for Writ of Mandamus, Request for Emergency Stay, and Request for Oral Argument,* to the New Mexico Supreme Court, Case No. S-1-SC-37552, that it couldn't possibly file a San Juan Generating Station abandonment application because it had not yet evaluated replacement power it stated:

> It is not within the NMPRC's purview to try to force PNM to do the impossible. *See Com. Dep't of Envtl. Res. v. Pennsylvania Power Co.*, 461 Pa. 675, 696 (1975). (recognizing that the regulated entity was unable to comply with the agency order and impossibility was a defense to sanctions). Similarly, in the context of civil contempt, the contemnor must have "an ability to comply." *In re Hooker*, 1980-NMSC-109, ¶ 4, 94 N.M. 798. The Abandonment Order and its associated filing requirements are impossible for PNM to adequately comply with through the filing of a complete and defensible application by the set deadline.

At p.22.

The PNM Board does not have the ability to issue stockholder dividends; it is not listed on the NYSE and therefore does not have the legal authority to issue or restrict the issuance of dividends. Only with a "Delegation of Authority" is this possible. There is no "Delegation of Authority" in this record. Should the Commission try and *enforce dividend restrictions based on stringent credit metrics* will a post-merger PNM claim that *it is not within the NMPRC's purview*

to try to force PNM to do the impossible? Of what consequence is a majority independent directors if it has no authority and has no financial control?

NEE will not reiterate our positions articulated in our previous filings but refutes certain points raised by Joint Applicants:

1. Of particular importance is the skimpy and unconvincing argument, just 7 lines long, that the proposed transaction will *not* result in improper subsidization of non-utility activities.[34] As argued in NEE's filings this is THE reason for Iberdrola/Avangrid's (unaudited) "goodwill" payment – the belief that the investment in PNM will provide the "opportunity," the political and economic leverage and access for *their* future fortunes. Will there be so much money to be made that they can sprinkle $350,000 to persuade necessary political leaders and shower decision makers with dark money contributions? Yes, that is a cost of business and the way Iberdrola/Avangrid roll. Mr. Kump told Commissioner Maestas in no uncertain terms that they have created Political Action Committees ("PACs") and will use them again if they determine they are needed to get the job done (in that case, it was to build a transmission line and oppose a popular bi-partisan legislative and electoral referendum to create a publicly-owned utility).[35]
2. Iberdrola/Avangrid/PNM agree to follow the Commission's rules with Class I transactions.[36] Those are the rules. Further, Joint Applicants advance the argument that there are sufficient New Mexico and Federal laws to protect against improper

[34] JA Brief p. 58.
[35] TR., 8/19/2021, Kump, pp. 1807-1808 (At 1807: "yes, we've had PACs on this, and quite frankly, now we've had to commit a PAC because certain legislators are attacking the company with respect to government-controlled power, or basically having the government buy all the utilities in the State of Maine." At 1808: we would certainly do that again.)
[36] JA Brief p. 59.

subsidization.[37] Indeed, there are FERC and PRC rule provisions which are intended to minimize the ability of utilities and their unregulated affiliates to improperly move costs between those entities. But the efficacy of those rules depends in the first instance on the willingness and ability of the regulatory bodies to vigorously enforce those rules. The protections to which Joint Applicants refer are not self-effectuating: they must be put into action by regulators in order to have their intended salutary effect. Given Joint Applicants' demonstrated lack of respect for regulatory norms and requirements, it is to be expected that they will seek every opportunity to evade the restrictions on cross-subsidization and to minimize the ability of regulators to use whatever protective mechanisms may be available.[38]

3. Joint Applicants rely on Ms. Quilici's direct rate credit per customer to demonstrate the superiority of this merger compared to other mergers.[39] First, she testified that "Each transaction is different, and therefore should be assessed and treated on its qualities alone, and not, essentially, relative to other transactions."[40] (internal quotations omitted.) Yet she strays from her own *mergers can't be compared – they are each individual animals* - to comparing the merger benefits of the monetary distributions to ratepayers, but refusing to make a comparison to ratepayers benefits and those showered upon shareholders or senior management.[41] Second, Joint Applicants tout the $123 per customer amount

[37] JA Brief 61.
[38] *See*, for example, PRC Staff Exhibit 4, Direct Testimony of John Reynolds, April 2, 2021 pp. 15-19 (Avangrid's two New Mexico renewable projects, El Cabo and La Jolla, are non-compliant with regulatory requirements.)
[39] JA Brief pp. 29-32.
[40] TR., 8/12/2021, Quilici, p. 556 ("each transaction needs to be evaluated on its own merits."
[41] TR., 8/12/2021, Quilici, p. 572; JA Exhibit 19, Rebuttal Testimony of Lisa Quilici, 7/29/2021 (At p. 3: "While the Transaction should be assessed on its own merits and not in comparison to other transactions[.]"; At p. 6: "The fact that shareholders will receive a premium for the

(based on the $65 million rate credit divided by 530,000 customers) used in Ms. Quilici's graph as far exceeding the median rate credit of 17 other mergers of $50.94. But if the rate credit is allocated as Mr. Darnell has in RND-1, with only $26,046,014 being allocated to residential ratepayers[42] then the rate credit per customer is in line with the median, at approximately $54.26, and far less than the El Paso Electric rate credit of $86.14.[43] In fact Mr. Darnell testified that it would amount to approximately $59.04 based on the kWh usage.[44]

4. Joint Applicants are shameless: "The evidence reflects that Iberdrola provides excellent utility service to tens of millions of customers."[45] A recent article from the New York Times reports that after thousands of Spaniards took to the streets in protest, the President of Spain will curb the extraordinary increase in electricity rates, a 35 percent hike in costs from a year earlier; Iberdrola says it will not be restrained by the government.[46]

C. The Commission is Being Asked to Approve the Merger with Virtually *No Current Knowledge of Governing Terms*

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acquisition of a controlling interest in PNMR, the holding company, does not mean that customers and the public interest will not benefit, or will not benefit enough, from the transaction.")

[42] JA Exhibit 30 Rebuttal Testimony of Ronald N. Darnell July 29, 2021, p. 42 of 44, Exhibit RND-1.

[43] TR., 8/12/2021, Quilici, pp. 564-571.

[44] TR., 8/13/2021, Darnell, pp. 767, 842.

[45] JA Brief p. 68.

[46] https://www.nytimes.com/2021/09/14/business/spain-rising-electric-bills.html?unlocked_article_code=AAAAAAAAAAAAAAACEIPuonUktbfqohkQVUaBybfQMMmqBCdnr_U2LU9gDrkLTOUTzkHwuAYCJSa-kyIb6tnY8B13yieQJUJFo4Tc8FI770VOV1xGU7vq4GYmZ8BLmJp94jqVD1ugdedBO9ntGLgMzj8Iusjmfjm5RjdPTbrDKGO0nMxNU0y98seAFKp3HINw6bBE-dniJIpjbp6WMcMFXpXbzKKvvLrFxx1JN2BCxja4QExUOpcMirByZ_es_lTNVUPVi-VCS938m0-69tDOdMIP6aZLhMoeMb2grt5GXVRu4CymEV6uwX9v1yDD-Z0&referringSource=articleShare

Joint Applicants state that "Ultimately, these [settlement] discussions resulted in the resolution of multiple issues[.]"[47] EXCEPT, the specifics remain largely unclear and undocumented. Are Joint Applicants asking the Commission to approve the merger despite the lack of sufficient factual detail?[48] Parties ask this Commission to do the work that Joint Applicants and Signatories couldn't accomplish, for example:

1. Allocate rate credits on a per customer basis, as opposed to the per kilowatt hour allocation methodology the Joint Applicants demand.[49]
2. Resolve the dispute between Joint Applicants and NM AREA: Joint Applicants state that all but minor agreements are resolved[50] and NM AREA states that it "approve[s the Stipulation] with NM AREA's proposed amendments to the conditions and commitments, as reflected" in its Brief-in-Chief.[51] Where are these commitments

[47] JA Brief p. 17.
[48] 13-00390-UT, *Certification of Stipulation*, 4/8/2015 (At 67: "As of the close of the record in this case, however, PNM has not submitted an agreement[.]" … At 69: "From the very beginning of this case, PNM has assured the Commission that PNM would provide sufficient information to be able to evaluate the reasonableness of PNM's proposed acquisition[.]" At 70: Although the Hearing Examiner "found that PNM's Application was sufficiently complete… [he] however, put the parties on notice at that time that, given the preliminary and incomplete nature of the information included in PNM's Application, the Commission 'could approve or deny PNM's Application in total, approve some but not all of the requests, or approve requests with conditions.'" At 80: "It is not known what terms the parties are currently negotiating and what costs PNM will likely be incurring." At 86: "PNM has consistently assured the parties and the Commission that it would have sufficient agreements in place .. [t]o date, however, no final agreement has been executed[.]"At 88 "It is difficult to identify and measure the risks associated with the Stipulation, given the limited information PNM has presented in regard to these issues. PNM has not presented an agreement that shows the terms[.]" At p. 110 "The Commission, however, is being asked to act with virtually *no current knowledge* about the interests, concerns and intentions of the San Juan owners regarding the restructuring of the ownership[.] If the [current] owners are not willing to accept the risks of a restructuring agreement [] it is not reasonable to ask the Commission to act with even less knowledge[.] It is also unreasonable to assign those risks to ratepayers based on such a record.") (emphasis in the original.)
[49] Office of the Attorney General's Post Hearing Brief, pp. 10-11.
[50] JA Brief p. 87.
[51] NM AREA Brief-in-Chief p. 27.

memorialized?

3. Resolve the dispute between Joint Applicants and Bernalillo County. Joint Applicants still find fault with Bernalillo County's requirements, but state that they have "been largely" resolved. Remaining, however, are issues of enormous consequence:
   a) impose customer service call response metrics on PNM[52];
   b) support of PRC Staff expert Evans' "reliability metrics and penalties"[53];
   c) the Commission order PNM to require that Four Corners be shut down as soon as possible.[54]

4. Resolve the dispute between Joint Applicants and ABCWUA. Not that we know what ABCWUA's positions are exactly, but those parties are asking the Commission to write the resolution of regulatory commitments up for them. Are they as Joint Applicants have stated?[55]
5. Resolve the dispute between Joint Applicants and PRC Staff. First, Joint Applicants agreed that they will not oppose the initiation of a Commission-inquiry into El Cabo. This is hardly a resolution. Staff accused Avangrid of skirting Commission rules and failing to have required authorizations in place. Avangrid/Staff have apparently agreed that Avangrid won't oppose a Commission inquiry. This is a terrible outcome for the public! What this means is that Staff can already do what it has the right to do,

[52] JA Brief p. 92. ("This suggestion appeared to be raised because regulated Avangrid utilities in other jurisdictions have call center metrics as part of an overall performance-based rate structure.")
adopted by law or regulation
[53] *Id.*
[54] *Id.*
[55] JA Brief pp. 92-94.

Avangrid won't oppose the initial filing, and there will be a protracted procedure with an unknown outcome. Iberdrola/Avangrid gamesmanship at its best!

While Joint Applicants state that "Staff's Objections Have Largely Been Resolved,"[56] they also state that Staff is "unwilling to compromise."[57] Which is it? Joint Applicants decry "Staff's position on reliability is unduly restrictive and punitive."[58] "The Joint Applicants do not agree with, and do not voluntarily accept, Staff's rigid and unduly punitive litigation position on reliability metrics as a requirement for the Proposed Transaction."[59]

NM AREA, ABCWUA, NEE, Bernalillo County and NMAG Crane all supported Staff's expert's Evans' reliability and safety metrics and underperformance penalties, and then all of a sudden PRC Staff caved. Now, the Joint Applicants want the Commission to resolve the discrepancy between the Evans testimony, the insufficient reliability and safety standards in the Second Amended Stipulation and the post-hearing "compromise" that guarantees intentions and goals and little for consumer protection.

6. Provide the "Delegation of Authority" document.
7. Provide a Third Amended Stipulation.[60]

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[56] JA Brief p. 94.
[57] JA Brief p. 99.
[58] JA Brief p. 100.
[59] JA Brief p. 101.
[60] If the Hearing Examiner recalls at the very first procedural hearing NEE and NM AREA requested a more reasonable schedule so that issues could be worked out but Avangrid/PNM was insistent on an expedited schedule. Now we find ourselves, exactly as Mr. Gould predicted, with an incomplete record, a Second Amended Stipulation lacking in specificity, enforceability, inconsistent with Orders of this tribunal and more. This mess is of the Petitioners own making.

D. Joint Applicants Misstate the Law, Ignore the Public Utility Act and Raise Far-Fetched Legal Theories in their Effort to Defend Against the Imposition of an Independent Board

Joint Applicants state that NEE's "opposition is unconditional".[61] That actually isn't true. At first NEE was excited by the prospect of a renewable energy company with experience, expertise and commitment coming to replace PNM's slow walk from fossil fuels to renewables given the climate crisis. However, what has transpired in the intervening months, in addition to some of the concession amounts, and the branding placed on those concessions, is that the Avangrid/Iberdrola public relations promise is vacuous. As a result of the actions and inactions of Avangrid/Iberdrola NEE is now fervently opposed to the merger. What has been discovered about Iberdrola and Avangrid is *their* utter disregard for the rule of law, concern for the public good, incompetence, and the shocking understanding that Iberdrola/Avangrid's preeminent purpose is to exploit New Mexico for their own profit and extract that profit at all costs to the people and our way of life. It is for these reasons NEE is opposed to the merger and believes that the Iberdrola/Avangrid merger will be a net detriment for New Mexico.

In their brief, Joint Applicants trash New Energy Economy expert Christopher Sandberg who was an attorney working with the Minnesota Public Utilities Commission and as an Assistant Attorney General in the Minnesota Attorney General's Office for 10 years. After leaving State service, he was an associate and partner in a top-25 Minnesota law firm, where Mr. Sandberg led the firm's Utilities and Technology Law practice area, emphasizing regulatory issues, business development, administrative law, and civil litigation. He was an adjunct

[61] JA Brief p. 102.

professor for twenty years at two universities.[62] Mr. Sandberg's four sets of testimony were comprehensive, compelling and thorough. Joint Applicants did not impeach Mr. Sandberg's credibility or challenge him on his positions in any meaningful way. Even after Mr. Haverly was "done" the Hearing Examiner said "You sure?"[63]

Joint Applicants argue "that the Commission may not intrude on the policymaking authority of the Legislature by imposing requirements" including a majority independent PNM Board and cite NMSA §§ 53-11-35 and 53-11-36 as authority. Joint Applicants frame this as a separation of powers issue. However, there is no conflict with NMSA §§53-11-35 and 53-11-36 and any conditions reasonably set by the Commission to ensure that the statutory criteria for the "public interest" is met; the legal authority provided by Joint Applicants are inapplicable in a merger context, except for the EPE case, which they cited and included an independent board. Joint Applicants misread NMSA §§ 53-11-35 and 53-11-36 and ignore the Public Utility Act. The requirement for a majority or supermajority independent board, save the PNM CEO, as it is today,[64] is consistent with law cited by NEE in its Brief-in-Chief that the setting of conditions, including, specifically in merger cases, for the acquiring entity and its parent, are necessary and appropriate to protect consumers and the public interest.[65] As more fully articulated in NEE filings the requirement of an independent board is not only critical for the reasons stated by all the other parties and their experts, but because the evidence included in the various management audits, legal cases, and regulatory opinions repeatedly condemn the overarching role of Iberdrola

[62] NEE Exhibit 52, pp. 2-3 and Exhibit CKS-1, contained therein.
[63] TR. 8/19/2021, Sandberg, p. 1708.
[64] See Commission Exhibit 12.
[65] NEE's Brief-in-Chief pp. 19-21, and 27-29, citing especially, *PG&E Corp. v. Pub. Utilities Com.*, 118 Cal. App. 4th 1174, 13 Cal. Rptr. 3d 630, (2004).

and Avangrid in day-to-day utility management, which has proven to be to the detriment of customers. Perhaps that is *why* Mr. Sandberg's position evolved, seeking greater protections than he originally thought necessary. His position changed from a majority independent board to the entire PNM Board because of his growing concerns during the pendency of this case with the actions and inactions of Iberdrola and Avangrid, after he wrote his initial testimony on April 2nd: 2500 pages of penalties and violations and management audits were provided by Avangrid on May 18; Iberdrola has still not signed the Second Amended Stipulation as Ordered post June 8; the June 23rd, Spanish investigation into three Iberdrola Executive Committee members, including the CEO for bribery and falsification of documents are pending; the July 2021 Liberty management report raises serious concerns regarding the company's professional competence; Iberdrola/Avangrid's hiring of Marcus Rael for up to $350,000 points to the undue influence of the Rael/Balderas relationship, illuminating why evidence of incompetence, unreliability, poor management didn't move NMAG Balderas to retract his support for the Stipulation; the *Mark Levesque et al. v. Iberdrola S.A. et al.* U.S. Dist. Ct. Dist. of Maine, No.2:19-cv-00389-JDL opinion was issued on 8/6/2021, and more.

Mr. Sandberg testified that the independent board members must act in the best interest of the company,[66] which includes shareholders, but not exclusively. His opinion may be at odds with the reactionary and outdated positions espoused by Joint Applicants in their brief that "directors should have one sole objective: boosting shareholder gain … and directors owed no fiduciary duty to stakeholders"[67] but NEE thinks that Mr. Sandberg's perspective is far more

[66] TR. 8/19/2021, Sandberg, pp. 1691-1692, accurately describing what the statute requires: "that directors have a good faith obligation to do things that they believe to be in the 'best interests of the corporation.'"
[67] JA Brief p. 110.

enlightened and aligns with the statutes cited by the Joint Applicants, and the public interest standard that the Commission, Legislature, and the Courts must uphold. Sandberg's ethical and moral positions are correct, regardless of the number of independent board members decided by the Commission. *See*, NMSA § 53-11-35 B (the director may serve, in good faith, in a manner the director believes to be in or not opposed to the best interests of the corporation, and with such care as an ordinarily prudent person) NMSA § 53-11-35 D (a director, in determining what he reasonably believes to be in or not opposed to the best interests of the corporation, shall consider the interests of the corporation's shareholders and, in his discretion, may consider any of the following: (1) the interests of the corporation's employees, suppliers, creditors and customers; (2) the economy of the state and nation; (3) the impact of any action upon the communities in or near which the corporation's facilities or operations are located; and (4) the long-term interests of the corporation and its shareholders, including the possibility that those interests may be best served by the continued independence of the corporation.) If Avangrid/Iberdrola admit that their non-independent board members are *only* going to consider Avangrid/Iberdrola shareholders' interests, contrary to law, then they have made our point for us! If the merger is approved at all, then the Commission must act on the Avangrid/Iberdrola admission and condition a majority independent board (and institute many other public interest conditions). *See*, NMSA §62-6-4 (The commission shall have general and exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations and in respect to its securities, all in accordance with the provisions and subject to the reservations of the Public Utility Act and to do all things necessary and convenient in the exercise of its power and jurisdiction.) and NMSA §62-13-13.3 ("the commission shall approve any new application for creation of a holding company filed by a public utility… provided that the creation of the holding

company *shall be subject to such terms and conditions as are in the public interest*. The creation of a holding company under this subsection shall not result in any loss of the Commission's jurisdiction over corporate allocations to the utility or over costs that are charged to ratepayers.") (emphasis supplied.) Perhaps Avangrid/Iberdrola don't understand that it is not just applying to acquire a generic corporation; the merger is between private corporations and a regulated public utility monopoly and therefore the public service utility must submit to the authority of its regulator. The regulator decides the rules to which the utility must abide and at the heart of its constitutional duties is to protect the public; this includes for instance, requiring cost recovery for utility acquisitions only if it is the most cost effective resource among feasible alternatives, the disallowance of imprudent costs, the consideration of environmental and regulatory risk when determining resources, etc. There is no separation of powers problem – the condition of an independent board is not only entirely consistent with the Legislature's mandate, it fulfills their obligation to protect the public interest.

E. A Regulatory Commitment is Not a Commitment if it Does Not Obligate Action

NEE has argued the inadequacy of rate credits and economic development funds (compared to the 19-00234-UT merger, regardless of FERC Administrative Law Judge Hempling's equitable rate control premium allocation theory[68]), and whether in balancing the interests between shareholders and ratepayers the proposed acquirers should forgive the COVID arrearages for the poorest among us. NMSA §§62-3-1, 62-3-2 B.

[68] JA Brief pp. 114-117.

The definition of commitment is: 1) the state or quality of being dedicated to a cause, activity, etc. and 2) an engagement or obligation that restricts freedom of action.[69] NEE's and Mr. Sandberg's point is that there is no "regulatory commitment" if it doesn't require, obligate or guarantee anything. So, for instance, there is no impeachment of Mr. Sandberg if he supports the communities' cries for decommissioning, remediation and restoration of the toxic San Juan Generating Station site[70] – even if *he* is not intimately familiar with the details of that requested clean-up as compared to PNM's unjust plan to "retire-in-place" with no clean-up for twenty-five years. Unfortunately, Regulatory Commitment No. 56 does not provide any assurance of anything except that PNM will engage in "good faith negotiations," not clean-up.

F. The Merger Condition of Four Corners Divestiture is Contrary to the Public Interest

The merger agreement between Joint Applicants regarding Four Corners Divestiture states as follows:

> SECTION 6.19 **Four Corners Divestiture**. The Company acknowledges that Parent, Iridium and the Company each have stated goals relating to decarbonization and, in this regard, the Company has previously announced its intention to exit from the Four Corners Power Plant earlier than the date on which its ownership agreement currently provides. Accordingly, the Company agrees that, as soon as reasonably practicable following the date of this Agreement, PNM, shall (a) enter into definitive agreements providing for exit from all ownership interests in the Four Corners Power Plant, substantially in the form made available to Parent prior to the date of this Agreement or in such other form as is reasonably acceptable to Parent (collectively, the "Four Corners Divestiture Agreements") and (b) make all applicable regulatory filings and take all commercially reasonable actions in order to obtain required approvals from applicable Governmental Entities, all with the objective of having the closing date for such exit to occur as promptly as practicable but in any event no later than December 31, 2024.

[69] https://www.google.com/search?client=safari&rls=en&q=commitment&ie=UTF-8&oe=UTF-8

[70] JA Brief p. 123-124.

There are a number of conditions to closing in the Merger Agreement, including the conditions in SECTION 7.2(g) that:

> Each of the Four Corners Divestiture Agreements shall have been duly executed and delivered by each of the parties thereto, and shall be in full force and effect as of the Closing, and PNM shall have made all applicable regulatory filings to obtain required approvals from applicable Governmental Entities, including for abandonment authority and securitization from the NMPRC.

(Emphasis supplied.)

Joint Applicants require that Four Corners Divestiture shall be in full force and effect at the Closing of the merger. If the abandonment, sale and securitization is approved in 21-00017-UT it is a transaction cost. If the abandonment, sale and securitization is denied in 21-00017-UT will that constitute a "material adverse effect" (also defined in the merger, in Section 9.5 (gg), "certain definition section") to allow Iberdrola/Avangrid to walk away from the deal? Mr. Kump says he doesn't know and that he'd have to discuss it with attorneys.[71] At this point there is little dispute that: 1) Iberdrola/Avangrid internal policies forbid coal in its portfolio[72]; and that 2) Even if PNM was seeking an exit from FCPP in 2018[73], just mere months after it deceitfully stated the value of participating in that plant to the Commission, and was permitted to extend the life of that plant and invest significant capital expenditures thereafter [74], the merger with

[71] TR., August 12, 2021, Kump. p. 424-429.
[72] Revised NEE Exhibit 23, JA Response to CCAE 1-1; R-NEE Exhibit 4b (August 25, 2020 proposal letter from Iberdrola to PNMR CEO, pp. 9-10.); TR., 8/11/2021, Azagra Blazquez, p. 196.
[73] TR., 8/13/2021, Darnell, p. 732.
[74] 16-00276-UT Certification of Stipulation, 10/31/2017; *Order Partially Adopting Certification of Stipulation,* 12/20/17; *Revised Order Partially Adopting Certification of Stipulation issued on January 10, 2018.*

Iberdrola/Avangrid accelerated those efforts to exit[75]; and 3) that Joint Applicants are counting on the ETA to bail them out of their imprudence at FCPP[76]; and 4) that the Commission could deny Four Corners Divestiture based on the ETA, Public Utility Act and the fact that there will be a net detriment from PNM's proposed sale to NTEC and securitization of imprudent undepreciated investments[77] and because it is contrary to the public interest. Joint Applicants ask "the Commission issue a finding that this closing condition under the Merger Agreement has been met'[78] but the Commission can't make this determination until a final decision has been rendered in the NM PRC Case No. 21-00017-UT, because §6.19 must be read in conjunction with §7.2 (g) of the merger agreement.

G. Sanctions Are Warranted Against Avangrid and Iberdrola

Lastly, Joint Applicants claim that it would be "inappropriate to sanction Iberdrola" because they were not a party to the case before June 14, 2021,[79] however, there is no dispute

[75] R- NEE Exhibit 54, Exhibit CKS-5, a series of emails and presentations from Chuck Eldred to Pedro Azagra Blazquez updating him on PNM's exit of FCPP. See also Sierra Club's Initial Brief-in-Chief, pp. 7-10.
[76] R- NEE Exhibit 54, Exhibit CKS-5p. 28 of 139 ("Upon abandonment of Four Corners, PNM will be entitled to recovery of its investment through the ETA.")
[77] NMSA §62-18-5 E requires in relevant part "If the commission finds that a qualifying utility's application does not comply with Section 4 of the Energy Transition Act, the commission shall advise the qualifying utility of any changes necessary to comply with that section and provide the applicant an opportunity to amend the application to make such changes." According to the relevant part of NMSA §62-18-4A: "To obtain a financing order, a qualifying utility shall obtain approval to abandon a qualifying generating facility pursuant to Section 62-9-5 NMSA 1978." PNM has not met its burden of proof under Section 62-9-5 NMSA 1978 that abandonment is a net public benefit because the sale to NTEC will prolong the burning of coal, contrary to the ETA's purpose and the policy of the State of New Mexico. An additional subject that is being considered in that 21-00017-UT is the prudence of the FCPP investments and any associated disallowance. *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n*, 2019-NMSC-012*,* ¶¶ 32, 35, 38-42, 47, 52, 444 P.3d 460. (full disallowance of imprudently incurred costs a possibility where necessary to protect ratepayers).
[78] JA Brief p. 131.
[79] JA Brief p. 132.

that Iberdrola and Avangrid were working in concert from the very beginning of the merger courtship.[80] They also argue "Moreover, there is no evidence that there was any responsive information on behalf of Iberdrola" but that belies the facts because Iberdrola was intimately involved in the actions that were the subject of the discovery and were also involved in refusing to produce information about Marcus Rael,[81] Four Corners Power Plant,[82] and the Spanish government investigation into Iberdrola[83] raised in the three Motions to Compel and Motion for Sanctions, regarding penalties and violations of both Avangrid and Iberdrola.[84] In fact, despite

[80] *See*, e.g., R-NEE Exhibit 4b (Iberdrola proposal letter) and *Order Granting Joint Motion for Joinder of Iberdrola, S.A. for Just Adjudication*, 6/8/2021, *passim*.

[81] *See*, *New Energy Economy's Motion to Compel Outstanding Discovery*, April 12, 2021, the first question that Iberdrola's Mr. Pedro Azagra Blazquez refused to answer was about Iberdrola's hiring of Marcus Rael to negotiate a settlement on behalf of Iberdrola and Avangrid. *See also*, R-NEE Exhibit 18, 18a and 18b.

[82] *See*, *New Energy Economy's Motion to Compel Outstanding Discovery Regarding Four Corners Power Plant*, June 4, 2021, which among other things, relied on PNM's Definitive Proxy Statement, filed on 1/5/2021, with the U.S. Securities & Exchange Commission, https://sec.report/Document/0001140361-21-000193/ as evidence that, quoting from PNM's Definitive Proxy at p. 23: "completion of the merger is subject to the satisfaction of a number of other conditions, including [] the receipt of required regulatory approvals and entry into agreements regarding the Four Corners divesture" and at p. 44: "On June 5, 2020, the PNMR board met telephonically in executive session, with Mr. Eldred and PNMR's General Counsel and representatives of Troutman Pepper participating. Management provided the PNMR board with an update on New Mexico operational matters, including plans to exit Four Corners."; *See also*, NEE Exhibit 52, Sandberg Dir, Exh. CSK-7 at pdf page 10) ("Also on September 14, 2020, Latham & Watkins sent a new draft of the merger agreement and a draft of the Avangrid Shareholder Agreement to Troutman Pepper. The merger agreement contained a revised covenant and a closing condition providing for PNMR's entering into definitive agreements providing for the exit from Four Corners").

[83] *See, Order Addressing New Energy Economy's Objection to Joint Applicants' Notice, Motion to Compel Discovery and Request Remedy Regarding Spain's Official Investigation into Avangrid/Iberdrola's Board Chairman Ignacio Galan & Other Executive Committee Members for Spying, Bribery and Fraud*, 7/19/2021, *passim*.

[84] NEE INTERROGATORY 4-55:

ROBERT D. KUMP
IDENTIFY ALL CURRENT OR PENDING INSTANCES OF NON-COMPLIANCE WITH ANY STATE, FEDERAL LAW OR COMMISSION RULE OR ORDER BY **IBERDROLA, AVANGRID, OR ANY OF ITS AFFILIATES** FOR WHICH THE

the Hearing Examiner's Order, to this day Iberdrola never answered NEE 4-55 regarding penalties and violations, for which they may be civilly or criminally liable, as pertained to that entity.

While Joint Applicants acknowledge that "the Commission has been granted the ability to enforce its orders under NMSA 1978, Section 62-12-4 [and that] [t]his section is not limited to public utilities, and instead references persons and companies" and they accept the Commission's jurisdiction over Avangrid and Avangrid Networks[85] they glaringly omit, and hence deny, the Commission's jurisdiction over Iberdrola. Iberdrola is thumbing its nose at the Commission and daring it to hold Iberdrola accountable, despite the Hearing Examiner's Order of Joinder,[86] and the fact that the NMAG, a Signatory, argued that the Second Amended Stipulation "contains provisions that ensures the Commission's jurisdiction over Iberdrola."[87] Rather than raise their objection to Iberdrola being joined head on, Joint Applicants ignore their culpability (like they do with the penalties and violations) and hope they won't get caught by parties or punished by the Commission. The child metaphor is appropriate here again, because law-abiding and responsible adults don't ignore authority, they submit to the rules and/or challenge them transparently.

New Energy Economy stands on its Brief-in-Chief regarding why sanctions should be awarded. Nothing in the brief of Joint Applicants is persuasive on this point. Joint Applicants

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COMPANY MAY BE LIABLE AND SUBJECT TO CIVIL OR CRIMINAL PENALTIES FOR THE LAST TEN YEARS.

(Emphasis supplied.)

[85] JA Brief p. 132.

[86] *Order Granting Joint Motion for Joinder of Iberdrola, S.A. for Just Adjudication*, 6/8/2021.

[87] NMAG's *Response to Joint Applicants'* (sic) *Motion to Join of Iberdrola, S.A. for Just Adjudication,* 5/28/2021.

avoided discovery, provided incomplete answers repeatedly, overdesignated material as "confidential" without basis, ignored Orders in this case, and continued their behavior during and after the hearing.

Regarding the issue of Marcus Rael, this also needs no further argument except to state that the Disciplinary Board, as of 9/20/2021, has reversed the earlier finding, and while the investigation is not yet complete the decision thus far is that further investigation is warranted in the concurrent conflict of interest issue.

III. Conclusion

The record contains sufficient evidence to cause the Commission to accord the stipulation less deference than the Commission might in other circumstances provided under its standard of review of stipulations because the information about corruption, fraud, regulatory non-compliance, electric utility unreliability, high rates, poor customer service, and legal entanglement is unprecedented.[88] The naked truth is stated in the brief of Joint Applicants – they are coming here to "boost shareholder gain" at the expense of PNM ratepayers and New Mexicans. New Energy Economy asks this Commission to reject the merger because the Stipulation benefits do not outweigh the harms of this merger and is not in the public interest. No

[88] *Order Disqualifying Iberdrola Attorney*, 8/6/2021, p.28 ("The Hearing Examiner and the Commission can and will consider Iberdrola's and the Attorney General's actions as they weigh the reasonableness of the Stipulation and the parties' supporting testimony.") *Order Addressing Notices of Supplemental Authority, Requests for Administrative Notice and the Joint Applicants' Motion for Partial Reconsideration of Order*, 8/23/2021, p. 5 ("Whether a concurrent conflict of interest exists or not, Mr. Rael's representation of Iberdrola is evidence of the manner in which the Joint Applicants have attempted to gain the Commission's approval of the proposed merger.").

entity wants to see senior leadership at PNM change more than NEE, but Iberdrola/Avangrid will cause more harm to PNM ratepayers, New Mexicans, and our democracy than sticking with PNM. Iberdrola/Avangrid *will stop at nothing to get their way* and *will settle if they get caught* stories from around the globe are alarming and must be heeded. Their own SEC report warns that profit is their singular goal and their interests are not ours!

September 28, 2021.

Power to the People.

New Energy Economy,

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF AVANGRID, INC., AVANGRID NETWORKS, INC., NM GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY OF NEW MEXICO AND PNM RESOURCES, INC. FOR APPROVAL OF THE MERGER OF NM GREEN HOLDINGS, INC. WITH PNM RESOURCES, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION	)	**Case No. 20-00222-UT**

SELF-AFFIRMATION

STATE OF NEW MEXICO)
) SS
COUNTY OF SANTA FE)

Mariel Nanasi affirms that she is the Executive Director of, and attorney for, New Energy Economy, and she wrote the foregoing Brief-in-Chief and that the contents are true and correct to the best of her knowledge and belief, specifically in regard to the fact that the Disciplinary Board of the State of New Mexico, as of 9/20/2021, has reversed its earlier finding, and while the investigation is not yet complete the decision thus far is that further investigation is warranted in the concurrent conflict of interest issue.

Respectfully submitted this 9/28/2021,

Mariel Nanasi, Esq.
Executive Director
New Energy Economy

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF AVANGRID, INC., AVANGRID NETWORKS, INC., NM GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY OF NEW MEXICO AND PNM RESOURCES, INC. FOR APPROVAL OF THE MERGER OF NM GREEN HOLDINGS, INC. WITH PNM RESOURCES, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION	)	**Case No. 20-00222-UT**

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email to the parties and individuals listed below a true and correct copy of:

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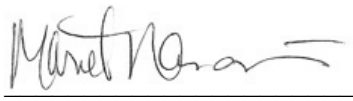
Respectfully submitted this 28th day of September, 2021.

New Energy Economy,



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