BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, PURSUANT TO THE EFFICIENT USE OF ENERGY ACT AND THE PUBLIC UTILITY ACT, FOR APPROVAL OF A RATE ADJUSTMENT MECHANISM TO REMOVE REGULATORY DISINCENTIVES AND ORIGINAL RIDER NO. 52,	)	**Case No. 20-00121-UT**
PUBLIC SERVICE COMPANY OF NEW MEXICO,	)	
Applicant	)	

MOTION TO DISMISS PETITION AND SUPPORTING BRIEF

New Energy Economy ("NEE") pursuant to Commission Rules 1.2.2.12.A and B NMAC and based on the statutes, Commission rules and other legal authorities addressed below, move the Commission to dismiss with prejudice the May 28, 2020 Petition for Approval of Rate Adjustment Mechanism, Advice Notice No. 568 filed by Public Service Company of New Mexico ("PNM") on May 28, 2020 in this docket ("Petition") as a matter of law. New Energy Economy requests that the Commission dismiss with prejudice PNM's Petition and reject its proposed Original Rider No. 52- "Shared Cost of Service Rider" ("Revenue Decoupling Rider" or "Rider") as a matter of law because PNM requests that the Commission engage in:

(i) unlawful "retroactive" ratemaking beyond its authority; and

(ii) "single issue" and "piecemeal" ratemaking outside a PNM general rate case ("GRC"), contrary to the burden of proof and rate change provisions in the Public Utility Act ("PUA"), NMSA §§ 62-8-7.A through C, the "minimum data" filing requirements in Commission Rule 530 (17.9.530 NMAC), the requirement in the PUA and the Efficient Use of Energy Act

("EUEA"), NMSA §§ 62-17-3 and 62-17-5 (2019) that the Commission adequately balance the interests of utility ratepayers and shareholder investors in the ratemaking process, and the Commission's long-standing policy against such "single issue" and "piecemeal" ratemaking.

Contrary to PNM's Petition and supporting Direct Testimony, Commission approval of the retroactive, "single issue" and "piecemeal" ratemaking outside a PNM GRC as requested therein and in PNM's proposed Revenue Decoupling Rider is not authorized, required or lawfully justified by any provision in the PUA or in the EUEA as amended in 2019, including NMSA § 62-17-5(F)(2) (2019) specifically relied on by PNM for such authority. Commission approval of the "full decoupling" rate adjustment mechanism in PNM's proposed Rider outside a PNM GRC also is not lawfully authorized, required or justified by the Commission's adoption of the Revised Stipulation in Case No. 16-00276-UT (¶ 26) or by any of the other alleged "exceptional circumstances" relied on by PNM and would be inconsistent with applicable law addressing public utility recovery of costs for service to distributed generation ("DG") customers.

PNM's request for Commission approval of its proposed "full decoupling" Rider *in a stand-alone proceeding outside a PNM GRC* would be patently unlawful and defective even in normal times and circumstances. PNM's filing of its patently unlawful and defective Petition and proposed Rider outside a PNM GRC during the current pandemic, which places a strain on the resources of the Commission and affected residential and small business customers of PNM, as an alleged "compromise" instead of PNM filing a complete GRC and complying with the Commission's "minimum data" filing requirements in Rule 530, is particularly inappropriate,

egregious and tone deaf to those customers, who have been particularly hard hit by recent governmental shut-down orders and social distancing restrictions, and the public interest. PNM's Petition therefore should be summarily rejected and dismissed with prejudice pursuant to 1.2.2.12.B NMAC.

In support of this Motion, New Energy Economy states:

1. Commission Rule 1.2.2.12.A NMAC provides that motions may be made at any time during the course of a proceeding and that "[t]he commission discourages any delay in the filing of a motion once grounds for the motion are known to the movant."

2. Commission Rule 1.2.2.12.B NMAC provides: "**Motions to dismiss:** Staff or a party to a proceeding may at any time move to dismiss a portion or all of a proceeding for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown. The presiding officer may recommend dismissal or the commission may dismiss a proceeding on their own motion."

3. The New Mexico Supreme Court has held that the Commission may reject and dismiss any filing that "'patently is either deficient in form or a substantive nullity'" because, for example, it fails "'to set forth all data relevant to the necessity and reasonableness of the relief requested.'" *In the Matter of the Rates and Charges of U.S. West Communications, Inc. v. New Mexico State Corp. Comm'n*, 1993-NMSC-074, ¶10, 865 P.2d 1192, 1194, 116 N.M. 548 ("*U.S. West*") (the Commission has the authority to dismiss), *quoting Municipal Light Bds. v. Federal Power Comm'n*, 450 F.2d 1341, 1345 (D.C. Cir. 1971), *cert. denied* 405 U.S. 989 (1972) and *Intermountain Gas Co. v. Idaho Pub. Util. Comm'n*, 98 Idaho 718, 722, 571 P.2d 1119, 1123

(1977). Also see, 14-00332-UT, *Initial Recommended Decision*, April 17, 2015, adopted unanimously by *Final Order Adopting Initial Recommended Decision Completeness of PNM's Filed Application*, May 13, 2015.

PNM's Proposed "Full Decoupling" Revenue Decoupling Rider

4. PNM's Petition requests Commission approval by December 31, 2020, in this stand-alone docket outside of a PNM GRC, of a proposed "permanent" "Rate Adjustment Mechanism to Remove Regulatory Disincentives" applicable only to its Residential and Small Power Rate Class customers as set forth in its Advice Notice No. 568 and proposed Original Rider No. 52-"Shared Cost of Service Rider", *effective January 1, 2021*, that would be "reset" in PNM's next GRC, which PNM plans to file in "mid-2021," and in subsequent PNM GRCs. Petition; Chan Direct at 17 and PNM Ex. SC-2, p.2; Fenton Direct at 5, 12.

5. PNM asserts that Commission approval of its Petition and proposed Revenue Decoupling Rider in this stand-alone docket outside a PNM GRC is authorized by Section 5.F of the EUEA as amended in 2019, NMSA § 62-17-5.F (2019), and two provisions in the PUA: NMSA §§ 62-8-1 (providing; "Every rate made, demanded or received by a public utility shall be just and reasonable") and 62-8-7 (addressing "change in rates" by a public utility). Petition; Fenton Direct at 8-9; Azar Direct at 3, 18-19.

6. PNM's proposed Revenue Decoupling Rider would modify PNM's existing rate design and rates approved by the Commission in PNM's most recent GRC filed in 2016, which was resolved by the Commission's adoption of a May 23, 2017 Revised Stipulation (settlement)

submitted in that case. Case No. 16-00276-UT, 1/10/18 *Revised Order Partially Adopting Certification of Stipulation* ("*2016 GRC Revised Final Order*").

7. As described by PNM, PNM's proposed Revenue Decoupling Rider is a "full decoupling" rate adjustment mechanism that is broader in scope than PNM's prior "Lost Contribution to Fixed Cost" ("LCFC") and "Lost Revenue Adjustment Mechanism" ("LRAM") decoupling proposals filed with the Commission. The Revenue Decoupling Rider would allow PNM to recover from all of its residential and small power class customers, beginning January 1, 2021. Thus, PNM's proposed Rider will only impact some of its ratepayers, even though PNM claims it to be "full decoupling." The Revenue Decoupling Rider would remain in effect until the Commission re-sets its proposed decoupling mechanism in PNM's *next* GRC, *all* of the "fixed cost" revenues PNM was authorized by the Commission to recover in PNM's *2015 GRC*, Case No. 15-00261-UT, but which PNM does not recover from those customers *for any reason* through its existing base rates. Petition; Chan Direct.[1]

8. The "regulatory disincentive" PNM asserts its proposed Decoupling Rider would remove is its *existing* rate design for its residential and small business customer classes, proposed and agreed to by PNM and other signatories in the Revised Stipulation adopted by the Commission in PNM's most recent (2016) GRC, Case No. 16-00276-UT. That Revised Stipulation provided PNM with that stipulated opportunity to recover the majority of its "fixed costs" of service to those customers through its variable energy (kWh) rates, thereby exposing PNM to the risk that it might

[1] As discussed below, PNM's proposed Revenue Decoupling Rider is not truly a "full decoupling" proposal for its customer since it would not apply to alleged PNM under- or over-

not recover those costs due to reduced energy usage by customers in those rate classes resulting *for any reason*, including their participation in Commission-approved PNM's energy efficiency ("EE") and load management programs, customer energy conservation actions independent of those programs (*e.g.*, simply turning thermostats down in the winter or up in the summer), installation of customer premise-sited solar distributed generation ("DG"), or fluctuations in weather or economic conditions. Petition, ¶¶ 10, 12; Fenton Direct at 13; Chan Direct at 2-11, 17-19 and PNM Ex. SC-3, p. 1 of 6.[2]

9. As explained by PNM, "[f]ixed costs in the context of PNM's decoupling proposal are the approved revenue requirements associated with customer-related and demand-related functions, which do not vary as a result of volumetric energy sales (kWh)," and include the (9.575%) return on equity ("ROE") authorized by the Commission in PNM's *2015* GRC. Chan Direct at 7; *see also* Case No. 15-00261-UT, 9/28/16 2016 *Final Order Adopting Corrected Recommended Decision*, ¶¶ 39-45.

10. PNM's proposed "full decoupling" Rider would determine the total amount of "fixed cost" revenues authorized by the Commission in PNM's *2015* GRC (No. 15-00261-UT). Under that Rider "fixed cost" revenues would be recovered from its residential and small power

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collections of "fixed cost" revenues authorized by the Commission in Case No. 15-00261-UT, or in future PNM GRCs, from any of PNM's *other* rate classes.

[2] PNM witness Chan asserts that "[t]he primary drivers of the historical decline in average UPC [usage per customer] are energy efficiency improvements and the increased penetration of distributed generation" and that "[f]or the residential class, energy efficiency and load management improvements are in large part attributable to PNM-sponsored programs." Chan Direct at 19. As explained in PNM's Direct Testimony and addressed below, however, PNM's proposed Rider also would address, and allow PNM to recover revenues due to, declines in energy usage by its residential and small power customer classes due to *any* other reasons.

customers *prior to* the Commission's resolution of PNM's next GRC by charging those customers for *the difference* between (i) the "fixed cost" revenues recovered by PNM from those rate classes through its existing base rates during post-December 2020 months when the Rider is in effect and (ii) the "fixed cost" revenues PNM was authorized to collect from those rate classes based on PNM's "forecasted sales" (i.e., kWh billing determinants) for those classes for the Future Test Year Period (12-month period October 1, 2015 through September 30, 2016[3]) relied on by PNM in its Embedded Class Cost of Service Study ("ECCOSS") and rate design in its *2015* GRC, Case No. 15-00261-UT. Chan Direct at 2, 8-9 and PNM Ex. SC-3, p. 1 of 6, line 12 ("Energy Sales" component of "Authorized Fixed Cost per Energy" component).[4]

11. PNM's description of its proposed Rider makes it clear that the "fixed cost" revenues that Rider would recover from its residential and small power customers are based on

[3] PNM's reliance on one year in 2015-2016 to determine its 2021 decoupling rider that ratepayers will be obligated to pay (accounting that was conducted five years beforehand based on a whole other set of other PNM resources, depreciation schedules, environmental regulation (pollution control) costs, ROE percentages, O&M costs, staffing costs, fuel costs, etc.) is inconsistent with the Commission's requirement for contemporaneous and relevant documentation that forms the basis of substantial evidence that is worthy of reliance. 19-00102-UT, *Order on Petition for Investigation*, 1/8/2020. ("PNM [is] on notice of its obligation to perform continuing and timely updates of any analyses it may have performed that provide the basis for any decision it may reach.") 16-00276-UT, *Certification of Stipulation*, 10/31/2017, pp. 47-49 ("The Hearing Examiners find that PNM was imprudent in not conducting updated analyses. … Despite the potentially cost-changing events that occurred during the delay … PNM never conducted a further analysis[.]")

[4] PNM witness Chan states: "PNM's proposed rider establishes procedures that will permit PNM to recover (in the event of an under-collection) or credit (in the event of an over-collection) the difference between the authorized fixed costs per customer approved for recovery by the

PNM's *2015* "investment levels" to serve those (and PNM's other) customers and that its proposed Rider is *not* based on, and would not recover, "fixed cost" revenues resulting from PNM's 2016 level of investments to serve its customers or its cost of serving those customer classes authorized by the Commission in PNM's most recent (2016) GRC, Case No. 16-00276-UT, determining PNM's existing rates. *Id*.; Fenton Direct at 12.[5]

12. Under PNM's proposed Rider, "monthly fixed cost reconciliations are accumulated for twelve consecutive months in the Shared Cost of Service Deferral Account" and, based on "the difference between the authorized fixed costs per customer approved for recovery by the Commission in PNM's last litigated rate case, Case No. 15-00261-UT and the actual fixed costs recovered through base rates…PNM will have either over-recovered its fixed costs and will credit the overage to customers in the following year, or conversely, PNM will have under-recovered its fixed costs and will credit an amount that reflects this under-charge for each of the customer classes subject to the decoupling mechanism over the course of a *subsequent* twelve-month period." Chan Direct at 2 (Emphasis supplied).[6]

13. If the "full decoupling" mechanism in PNM's proposed Rider produces a rate increase that is more than 3% of each customer class's *2015* GRC forecasted revenues, before taxes and fees, the revenue amount above that 3% would be treated as a "deferral amount" and "will be

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Commission in PNM's last litigated rate case, Case No. 15-00261-UT and the actual fixed costs recovered through base rates." Chan Direct at 2.

[5] "Implementing decoupling on January 1, 2021 provides assurance that at least *the 2015 investment levels authorized for residential and small commercial cost of service* will be realized…" Fenton Direct at 12. (Emphasis supplied).

[6] PNM witness Chan states that, pursuant to that rate adjustment mechanism, "customers would not actually see a change to their bill until January 2022." Chan Direct at 15.

carried over in the mechanism's Shared Cost of Service Deferral Account for recovery in a future year, to which a carrying charge at PNM's Customer Deposit Interest Rate (currently 1.67%) would be applied. Chan Direct at 5, 15.

14. PNM's proposed Rider would allow PNM to charge all of its residential and small power customers respectively, in addition to its existing base rates applicable to those customers, a fixed monthly amount to recover any under-collection of its "fixed costs per customer approved for recovery" in its 2015 GRC regardless of a customer's individual energy/kWh usage or whether a customer has participated in a Commission-approved PNM EE or load managed program or installed DG. Chan Direct at 6-7 and PNM Exs. SC-2, p. 1 and SC-3, pp. 1-2.

15. PNM's Petition also requests Commission approval of PNM's creation of a "regulatory asset" and recovery from its residential and small power customers through its proposed Rider of an estimated $350,000 for its "notices, regulatory, legal, consulting and related expenses associated with PNM's decoupling petition" regardless of whether that Rider results in an under-collection or over-collection of PNM's alleged "fixed cost" revenues from those rate classes. PNM asserts those expenses would have been part of its claimed rate case expenses if PNM had filed its decoupling proposal in the second quarter of this year, as it previously had planned. Fenton Direct at 17-18; Chan Direct at 12.

16. PNM acknowledges that its Petition asks the Commission to approve "single issue" ratemaking--"whether to adopt decoupling"—as proposed by PNM in this docket (*i.e.*, "full decoupling") outside a PNM GRC where the Commission (and stakeholders) can examine PNM's entire cost of service (costs and revenues) for a specific test year period. Azar Direct at 4, 21.

17. PNM asserts that "[w]hile PNM's decoupling proposal is a single issue, it is not entirely clear that it constitutes 'piecemeal ratemaking.'" Azar Direct at 21.

18. PNM acknowledges that the Commission has a long-standing policy against piecemeal ratemaking "which involves 'changing rates for one item and ignoring all of the other cost of service elements.'" Azar Direct at 22.

19. PNM acknowledges that "like much utility law," both the PUA and the EUEA (NMSA §§ 62-17-3 and 62-17-5.F) require that the Commission balance the interests of public utility ratepayers and investors in the ratemaking process to determine or "arrive at the public interest." Fenton Direct at 6; Azar Direct at 19.

20. PNM asserts that the following "exceptional circumstances" justify an exception to the Commission's long-standing policy against piecemeal ratemaking for PNM's Petition:

- A global pandemic that is prompting a partial shutdown of the economy;
- Changes in electricity usage and difficult to predict *post-pandemic* usage;
- PNM foregoing a full-blown rate case that would have proposed a large increase in revenue requirement;
- A new law that expressly demonstrates the Legislature's desire for "a rate adjustment mechanism that ensures that the revenue per customer *approved by the commission in a general rate case proceeding* is recovered by the public utility without regard to the quantity of electricity actually sold by the public utility." NMSA 1978, § 62-17-5(F)(2); and
- *Most importantly*, the NMPRC adopted a Stipulation in which PNM agreed to submit a stand-alone mechanism to eliminate the regulatory disincentives to energy efficiency and load management.

Azar Direct at 22-23 (Emphasis supplied).

21. PNM witness Chan testifies: "To be sure, it is difficult to predict what the resulting bill impacts of decoupling might be in 2022 considering the potential impact of COVID-19 on the economy and customer usage patterns in 2021" and that, "[w]hile impacts from COVID-19 are hard to predict and are constantly changing, PNM estimated in April 2020 that potential impacts to load resulted in an *increase* in residential load of approximately 5 percent and a decline in commercial load of approximately 15 percent." Chan Direct at 11-12. (Emphasis supplied).

22. PNM asserts that its Petition for Commission approval of its proposed "full decoupling" Rider in a stand-alone proceeding outside a PNM GRC also is justified and in the public interest because, even though it would not eliminate PNM's need to file new GRCs to address its "changing resource mix and customer needs, it would reduce the regulatory burden on the Commission not only this year, but into the future as well because approving decoupling will reduce the need to file rate cases to recover revenues lost due to declining usage per customer." Fenton Direct at 7.

Grounds for Dismissal of PNM's Petition

I. ***PNM's Request to Implement Prohibited "Retroactive" Ratemaking***

23. Under established ratemaking principles, the legal effect of the Commission's *Final Order Partially Adopting Certification of Stipulation* in PNM's last (2016) GRC, Case No. 16-00276-UT, was to approve rates that provided PNM with a reasonable or fair "opportunity," *not a*

guaranteed right, to recover the costs and revenues authorized by that Order during the period those (existing) rates remain in effect.

24. As described by PNM and stated above, PNM does not assert that its proposed Revenue Decoupling Rider would recover its *existing* fixed costs and associated revenues, or even the fixed costs and associated revenues for service to its residential and small power customers authorized in its most recent (2016) GRC, Case No. 16-00276-UT; rather, PNM asserts that its proposed Rider would permit PNM to recover from its residential and small power class customers, beginning in 2022, "the difference between the authorized fixed costs per customer approved for recovery by the Commission in PNM's last litigated rate case, No. 15-00261-UT and the actual fixed costs recovered through [its existing] base rates," based on PNM's forecasted energy usage (billing determinants) for those classes in that *2015* GRC, beginning January 1, 2021.[7]

25. Commission approval of PNM's proposed Rider would constitute retroactive ratemaking because that rate adjustment mechanism would modify the Commission's *Revised Final Order* in PNM's most recent (2016) GRC, Case No. 16-00276-UT, to: (i) allow PNM to recover from its residential and small power customers "fixed" costs and associated revenue requirements based on PNM's "2015 investment levels" and forecasted class energy usage (kWh billing determinants) for those rate classes authorized by the Commission in a *prior* and now stale 2015 GRC;[8] and (ii) thereby change PNM's *existing* rate design and the balancing of the interests of

[7] As discussed below, PNM cites nothing in the Commission's *Final Order* in Case No. 15-00261-UT indicating that the Commission authorized PNM to recover any specific amount of "fixed costs per customer" for customers in its residential or small power customers.

[8] Ironically, in the GRC, which PNM now relies for its (non-Commission approved) "revenue per customer" cost goal post, the Hearing Examiner found reliance on a 2011 analysis for a 2014

PNM's ratepayers and investors regarding PNM's existing rates ordered by the Commission in Case No. 16-00276-UT in a manner that would transform the reasonable or fair opportunity granted to PNM therein to recover costs and revenues associated with service to those customers authorized in that 2016 GRC into *a guarantee* that PNM will recover the *distinct* "fixed cost" revenues for service to those customers authorized by the Commission in PNM's *prior* (2015) GRC, Case No. 15-00261-UT, contrary to established ratemaking principles.

26. PNM's Petition and proposed Rider are patently unlawful and deficient in form because, as the New Mexico Supreme Court has held, the Commission lacks authority to engage in retroactive ratemaking, which is contrary to well-established ratemaking principles.

II. ***PNM's Request for Unlawful and Unjustified "Single Issue"/"Piecemeal" Ratemaking***

27. NMSA § 62-8-7 governing any change in rates sought by a public utility applies to PNM's Petition because it requests that the Commission approve a change in the rates approved by the Commission in its last (2016) GRC, No. 16-00276-UT.

28. PNM's Petition and Direct Testimony do not assert or show that PNM's proposed Rider is revenue neutral.

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decision was "stale". 15-00261-UT, *Corrected Recommended Decision*, 8/15/2016, pp. 93-94. *Final Order Partially Adopting Corrected Recommended Decision*, 9/28/2016, P.32 ¶¶103-104. (affirming that the old analyses "were stale by the time of PNM's decision, having been completed at least 4 years prior.) *Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n,* 2019-NMSC-012, ¶¶ 33-38, 32, 52, 444 P.3d 460. (upholding "the Commission's determination that PNM's decisions were imprudent was supported by substantial evidence.") In this case, PNM would have this Commission leap-frog over the last rate case, 16-00276-UT, but rely on PNM's 2015 rate case, which would use six-year-old data (at the time the Rider would be implemented) to determine the amount of recovery.

29. Due to its inclusion of a regulatory asset to recover expenses associated with PNM's Petition and proposed Rider, PNM's proposed Rider will result in an *increase* in rates to PNM's residential and small power class customers *regardless* of whether it also results in any decoupling surcharges (or credits) to customers in either of those rate classes.

30. NMSA § 62-8-7.A provides: "At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility."

31. NMSA § 62-8-7.B provides, in pertinent part: "Unless the commission orders otherwise, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect *and other information as the commission by rule requires*." (Emphasis supplied).

32. NMSA § 62-8-7.C provides, in pertinent part, that the Commission may conduct a hearing concerning the reasonableness of a rate proposed by a public utility "[w]henever there is filed with the commission by any public utility *a complete application as prescribed by commission rule* proposing new rates." (Emphasis supplied).

33. Commission Rule 530 (17.9.530 NMAC) specifies "minimum data" filing requirements that investor-owned electric utilities like PNM must satisfy to support a "tendered new rate schedule or rate schedule that will supersede, supplement, or otherwise change the provision of a rate schedule required to be on file with this Commission," including but not limited to data

addressing the utility's Base Period and Test Year Period overall cost of service. *See, e.g.*, 17.9.530.13 NMAC ("Appendix A Minimum Data Standard Requirements").

34. The Commission has made it clear that compliance with the "minimum data" filing requirements in its rules governing proposed changes in rates by an investor-owned electric public utility (current Commission Rule 530, formerly "General Order No. 40) that would or could increase its revenues is necessary (i) for a public utility to meet its burden of proof regarding such rate changes, as currently provided in NMSA § 62-8-7.A, (ii) for the Commission to adequately balance the interests of a public utility's ratepayers and investors in the ratemaking process, as required by the PUA, and (iii) to comply with the Commission's long-standing policy against "single issue" or "piecemeal" ratemaking. *See, e.g., Final Order*, Case No. 2058.

35. As a matter of law and contrary to assertions by PNM's witnesses in their Direct Testimony, the Commission's adoption of the Revised Stipulation (¶ 26) in Case No. 16-00276-UT did not obligate or authorize PNM to file, or obligate the Commission to consider approval of, the "full decoupling" rate adjustment mechanism effective prior to resolution of PNM's next GRC as requested in PNM's Petition and proposed Revenue Decoupling Rider, outside a PNM GRC, *without* complying with the minimum data filing requirements in Commission Rule 530.[9]

36. Commission Rule 530.10 (17.9.530.10 NMAC) provides: "The failure of the applicant to fulfill the minimum data requirements specified in Appendix A shall constitute

[9] As discussed further in the supporting brief below, Commission approval of settlement stipulations does not constitute Commission precedent or bind future Commission decisions. More importantly, paragraph 26 of that Revised Stipulation repeatedly stated that the "outcome" of any "hearing on EUEA disincentive identification and removal issues for PNM" should "be *implemented as part of PNM's next general rate case*." (Emphasis supplied).

sufficient cause for the Commission to reject the applicant's filing pursuant to NMPUC [sic] Rule 210 [17.1.10 NMAC]."

37. Commission Rule 210.11.H (17.1.210.11.H NMAC) provides, in pertinent part, that "Rates, Rules, or Forms which are not in substantial compliance with Commission rules, orders, or applicable statutes may be rejected," that Rates, Rules or Forms which have been rejected shall not be entered on the Commission's docket," and that "[a]cceptance of a document for filing is not a determination that the document complies with all requirements of the Commission and is not a waiver of such requirements."

38. The Commission previously has rejected and dismissed incomplete public utility applications that failed to comply with its rules. *See, e.g.*, Case No. 14-00332-UT, *Final Order Adopting Initial Recommended Decision Completeness of PNM's Filed Application,* May 13, 2015, (dismissing PNM's 2014 GRC Application for its failure to comply with the Future Test Period Filing Requirements in 17.1.3 NMAC).

39. As stated above, one of the statutory bases PNM relies on to support its assertion that Commission approval of its proposed "full decoupling" Rider in this stand-alone proceeding outside a PNM GRC would not constitute improper "single issue" or "piecemeal" ratemaking is the 2019 amendment to the EUEA codified as NMSA § 62-17-5(F)(2) (2019).

40. NMSA §§ 62-17-3 addressing the "Policy" of the EUEA provides:

> It is the policy of the Efficient Use of Energy Act that public utilities, distribution cooperative utilities and municipal utilities include all cost-effective energy efficiency and load management programs in their energy resource portfolios, *that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed in a manner that balances the public interest, consumers' interests and investors' interests* and that the commission provide public utilities an opportunity to earn a profit on

cost-effective energy efficiency and load management resources that, with satisfactory program performance, is financially more attractive to the utility than supply-side resources. (Emphasis supplied).

41. NMSA §§ 62-17-5(F)(1) and (2) (2019) provide:

> The Commission shall:
>
> (1) upon petition by a public utility, remove *regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures in a manner that balances the public interest, consumers' interests and investors' interests*.
>
> (2) upon petition by a public utility, remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the *revenue per customer approved by the commission in a general rate case proceeding* is recovered by the public utility without regard to the quantity of electricity or natural gas sold by the public utility *subsequent to the date the rate took effect*. Regulatory disincentives removed through a rate adjustment mechanism shall be separately calculated for the rate class or classes to which the mechanism applies and collected or refunded by the utility through a separately identified tariff rider that shall not be used to collect commission-approved energy *efficiency and load management costs and incentives*. (Emphasis supplied).

42. The plain language in NMSA §§ 62-17-3 and 62-17-5(F)(1) requiring that the Commission balance the public interest, consumers' interests and investors' interests when identifying and removing disincentives or barriers to public utility expenditures and load management measures does not state or suggest that a public utility need not comply with applicable Commission rules implemented to allow the Commission to engage in that balancing of interests; nor does the plain language in NMSA § 62-17-5(F)(2) (2019) require that the Commission consider or approve the sort of "full decoupling" rate adjustment mechanism proposed by PNM in its Petition in a stand-alone proceeding outside a public utility's GRC

where the Commission's total cost of service and other minimum data filing requirements applicable to investor-owned electric utilities apply.

43. To the contrary, consistent with Commission Rule 530 and the Commission's policy of not engaging in "piecemeal" ratemaking, the plain language in NMSA § 62-17-5(F)(2) requires that a public utility petition for a rate adjustment mechanism to remove regulatory disincentives for its expenditures on energy efficiency and load management measures pursuant to that 2019 amendment to the EUEA address "the revenue per customer approved by the commission *in a general rate case proceeding*." (Emphasis supplied).

44. Prior to the effective date of NMSA § 62-17-5(F)(2) as amended in 2019, the Commission implemented net metering rules for public utility customers installing DG (referred to therein as "qualifying facilities"), including customer-sited qualifying facilities with a design capacity up to 10 kW, in order to, among other objectives, "encourage the use of small-scale, customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico." Rule 550, 17.9.570.6.B, 17.9.570.10 and 17.9.570.14 NMAC.

45. Prior to the effective date of NMSA § 62-17-5(F)(2) as amended in 2019, PNM filed with the Commission, in accordance with the Commission's 2016 *Final Order* and applicable law, and made effective its existing 22^{d} Revised Rate Nos. 1.A and 1.B (applicable to its residential customers), its 23rd Revised Rate Nos. 2.A and 2.B (applicable to its small power customers) and its 47th revised Rate No. 12 (addressing cogeneration and small power production

facilities), which tariffs incorporate by reference and implement the Commission's net metering rules in Commission Rule 570 and have the force of law.

46. Prior to the effective date of NMSA § 62-17-5(F)(2) as amended in 2019, the New Mexico Legislature enacted NMSA § 62-13-13.2 providing:

> A. Upon request of an investor-owned utility in any general rate case, the commission shall approve interconnected customer rate riders to recover the costs of ancillary and standby services pursuant to this section only for new interconnected customers, except that a utility may seek approval of interconnected customer rate riders in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case. In establishing interconnected customer rate riders, the commission shall assure that costs to be recovered through the rate riders are not duplicative of costs to be recovered in underlying rates *and shall give due consideration to the reasonably determinable embedded and incremental costs of the utility to serve new interconnected customers and the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect. The benefits to the utility system, as applicable, include avoided renewable energy certificate procurement costs, reduced capital investment costs resulting from the avoidance or deferral of capital expenditures, reduced energy and capacity costs and line loss reductions.*
>
> B. In a filing made pursuant to Subsection G of Section 62-8-7 NMSA 1978, a rural electric cooperative may implement rates or rate riders by customer class, giving due consideration to reasonably determinable costs and benefits of interconnected systems, that are specifically designed to recover from interconnected customers the fixed costs of providing electric services to those customers.
>
> C. Nothing in this section shall be interpreted as preventing the utility from charging rates designed to recover all of its reasonable costs of providing service to customers.
>
> D. As used in this section:
>
> (1) "ancillary and standby services" means services that are essential to maintain electric system reliability and are required by or are a consequence of interconnecting distributed generation facilities to a utility's system and may include, among other services, regulation and frequency response, regulation and voltage support, spinning reserves and supplemental reserves;

(2) "interconnected customer" means a utility customer that is also interconnected to non-utility distributed generation facilities; and

(3) "new interconnected customer" means a customer that became an interconnected customer after December 31, 2010 or a customer whose renewable energy certificate purchase agreement entered into prior to January 1, 2011 is no longer in effect. (Emphasis supplied).

47. Under established rules of statutory construction, the Legislature is presumed to have been aware of pre-existing laws, including the foregoing Commission rules and regulations and statutory provisions and PNM tariffs, when it enacted NMSA § 62-17-5(F)(2).

48. PNM's proposed Revenue Decoupling Rider would conflict with NMSA § 62-13-13.2.A and the Commission's net metering objective and rules in Rule 550 (17.9.570.6.B, 17.9.570.10 and 17.9.570.14 NMAC) as implemented by PNM's existing Rate Nos. 1.A, 1.B, 2.A, 2.B and 12 because that rate adjustment mechanism would (i) guarantee PNM recovery of its customer-related and demand-related "fixed cost" revenues authorized by the Commission in PNM's 2015 GRC without giving "due consideration" to the "reasonably determinable benefits to the utility system provided by new interconnected customers," as provided in NMSA § 62-13-13.2.A, and (ii) discourage the development of small-scale, customer-owned renewable resources on PNM's system and the resulting benefits of those resources.

49. Given its plain meaning and interpreted harmoniously with the Commission's net metering rules in Commission Rule 570 and NMSA § 62-13-13.2.A as required by established rules of statutory construction, the plain language in NMSA §§ 62-17-5(F)(1) and (2) indicate that the "regulatory disincentives" referred to in both of those sections of the EUEA refer and are limited to regulatory disincentives for "public utility expenditures on energy efficiency and load

management measures," and were *not* intended to refer to and include the other, much broader alleged "regulatory disincentives" (installation of DG, customer energy conservation actions independent of PNM EE and load management programs, fluctuations of weather, uncertain economic conditions, or *any* other reasons for any decline in per customer energy usage) that PNM's proposed Rider would address.

50. Neither PNM's Petition nor its Direct Testimony cite any statute or prior Commission order expressly authorizing PNM to file, or requiring the Commission to consider or approve, the "full decoupling" rate adjustment mechanism proposed by PNM in its Revenue Decoupling Rider in a stand-alone Commission proceeding such as this, outside a PNM GRC, without satisfying the "minimum data requirements" for changes in a public utility's rate schedules set forth in Commission Rule 530 (17.9.530 NMAC).

51. Neither PNM's Petition nor its Direct Testimony addresses PNM's actual ROE[10] under its existing rates or asserts that, absent Commission approval of is proposed Revenue Decoupling Rider, PNM will not be earning sufficient revenues under its existing rates to provide its customers with adequate service prior to Commission resolution of its next GRC, expected in 2021.

52. PNM's most recent sworn "Earnings Report" in its April 17, 2020 compliance filing in Case No. 12-00007-UT stated that PNM's *actual* ROE for 2019 was 9.622%--even *higher* than the 9.575% ROE authorized by the Commission for PNM in both its 2015 and 2016 GRCs, Case

[10] Exhibit A, attached and incorporated herein, is a portion of PNM's April 17, 2020 filing. (Emphasis supplied on TSB-1.)

Nos. 15-00261-UT and 16-00276-UT, prior to enactment of the Energy Transition Act ("ETA"), NMSA §§ 62-18-1 to 62-18-23 (2019) in 2019.[11]

53. PNM's sworn and reported actual ROE of 9.622% in 2019 under its existing rates is relevant to the balancing of ratepayer and investor interests required by the PUA and the EUEA and to PNM's assertion that an exception to NMSA § 62-8-7.A-C, Commission Rule 530 and the Commission's long-standing policy against "single issue" or "piecemeal' ratemaking is justified by the "exceptional circumstances" alleged by PNM witness Azar in her Direct Testimony (at pp. 22-23) considering the fact that, since the Commission's issuance of its Final Orders in PNM's 2015 and 2016 GRCs where the Commission authorized a 9.575% ROE for PNM, the risks to PNM investors have been *substantially reduced* due to provisions in the ETA enacted in 2019, NMSA §§ 62-18-4 to 62-18-22, and § 62-16-6.C (2019), and the Commission's subsequent issuance of its April 1, 2020 *Final Order on Request for Financing Order* in Case No. 19-00018-UT.[12]

54. For the foregoing reasons, as a matter of law, none of the "exceptional circumstances" relied on by PNM to support an exception to NMSA § 62-8-7.A-C, Commission Rule 530, the Commission's balancing of interests requirement in the PUA and the EUEA and the Commission's long-standing policy against "single issue" or "piecemeal" ratemaking for PNM's Petition and proposed "full decoupling" Rider in this docket.

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[11] *Id*.

[12] *See, e.g.*, Case No. 19-00018-UT, 10/18/19 Direct Testimony at 24-27 of Andrea Crane on behalf of the Attorney General (explaining how the full cost recovery provisions and lower risks of PNM investments in alternatives to the San Juan Generating Station will result in "an enormous reduction in risk" to PNM's shareholders); Case No. 19-00018-UT, 4/1/20 *Final Order on Request for Issuance of a Financing Order*.

55. PNM cites no authority for its novel argument that NMSA § 62-8-1 (providing that "[e]very rate made, demanded or received by any public utility shall be just and reasonable") authorizes the Commission to engage in the "single issue" and "piecemeal" ratemaking requested by PNM's Petition or provides a lawful basis for an exception to NMSA § 62-8-7.A-C, Commission Rule 530, the Commission's balancing of interests requirement in the PUA and the EUEA and the Commission's long-standing policy against such ratemaking.

56. PNM's assertion that approval of its proposed Revenue Decoupling Rider *in this stand-alone docket outside of a PNM GRC*, "would reduce the regulatory burden on the Commission not only this year, but into the future" also cannot lawfully justify the exception to NMSA § 62-8-7.A-C, Commission Rule 530, the Commission's balancing of interests requirement in the PUA and the EUEA, and the Commission's long-standing policy against "single issue" and "piecemeal" ratemaking because it is inconsistent with those applicable laws and that Commission policy and is pure speculation, unsupported by any facts.

57. For the foregoing reasons, accepting all facts plead by PNM in its Petition as true, PNM's Petition and proposed Revenue Decoupling Rider are patently contrary to applicable law and defective in form and therefore should be summarily rejected and dismissed, with prejudice, pursuant to Commission Rule. 1.2.2.12.B NMAC and the Commission's standards for dismissal.

58. New Energy Economy has contacted the other parties in this case and are authorized to state: Albuquerque Bernalillo County Water Utility Authority, Bernalillo County and the City of Albuquerque support NEE's brief for the reasons articulated in their consolidated motion and brief; Merrie Lee Soules supports this Motion and will file a response by August 7, 2020; WRA

intends to respond pursuant to Commission rules, as modified by ordering paragraph C of the June 29, 2020 Procedural Order; PNM and CCAE oppose this Motion; NMAG and Staff take no position. No other party responded.

WHEREFORE, New Energy Economy respectfully request that the Commission dismiss PNM's Petition in this case with prejudice.[13]

[13] If the Commission dismisses PNM's Petition as requested in this Motion, New Energy Economy presumes the Commission also will vacate the existing procedural schedule in this case.

ARGUMENT

PNM's Petition in this stand-alone docket, outside of a PNM GRC, requests Commission approval by December 31, 2020 of its proposed permanent "full decoupling" Rate Rider applicable only to its Residential and Small Power Rate Class customers, effective January 1, 2021. PNM's proposed permanent "full decoupling" Rider would begin determining, as of January 1, 2021 and prior to Commission resolution of PNM's next GRC, asserted under-collections or over-collections of the "fixed cost" revenues PNM was authorized by the Commission to recover from those rate classes through rates and a rate design approved by the Commission in its September 28, 2016 *Final Order* in NM PRC Case No. 15-00261-UT. Under PNM's proposed Rider, PNM would begin charging (or crediting) its residential and small power customers for such under- (or over-) collections of revenues through a fixed monthly "Shared Cost of Service Charge," applicable to all customers in those rate classes, beginning in January 2022. As explained by PNM, the "key components" of its proposed Rider (an "Authorized Fixed Cost per Customer (FCC)" and an "Authorized Fixed Cost per kWh (FCE)") for each of those customer classes would be "reset" in PNM's next GRC, which PNM states it plans to file in "mid-2021," and in subsequent PNM GRCs.[14]

PNM's proposed "full decoupling" Rider would modify, outside a PNM GRC, PNM's existing rate design and existing rates for its residential and small power customers agreed to by PNM and other signatories to the Revised Stipulation adopted by the Commission in its January 10, 2018 *Revised Order Partially Adopting Certification of Stipulation* in PNM's most recent GRC,

[14] Petition; Chan Direct at 2-12 and 17 and PNM Ex. SC-2; Fenton Direct at p.3, 10-12.

filed in 2016, Case No. 16-00276-UT. PNM describes its proposed Rider as a "full decoupling" mechanism that is broader in scope than its prior "Lost Contribution to Fixed Cost (LCFC)" and "Lost Revenue Adjustment Mechanism (LRAM)" revenue decoupling proposals filed with but not approved by the Commission because it would allow PNM to recover from all of its residential and small power class customers (as of January 1, 2021 and from January 2022 until the Commission re-sets its proposed decoupling mechanism in PNM's *next* GRC) *all* of the "fixed cost" revenues PNM was authorized by the Commission to recover *in PNM's 2015 GRC*, Case No. 15-00261-UT, but which PNM does not recover from those customers, *for any reason,* through its existing base rates.[15] As explained by PNM, "[f]ixed costs in the context of PNM's decoupling proposal are the approved revenue requirements associated with customer-related and demand-related functions, which do not vary as a result of volumetric energy sales (kWh)," and include the 9.575% ROE for PNM authorized by the Commission in PNM's *2015* GRC.[16]

PNM witness Chan identifies the requirement in the EUEA that PNM implement Commission-approved EE programs for its customers as one of the "regulatory disincentives" PNM's proposed Rider is intended to address and remove.[17] PNM's Petition, proposed Rider and Direct Testimony, however, make it clear that PNM's proposed Rider is intended to address, and would address and remove, other alleged "regulatory disincentives" beyond the scope of the EUEA, including incentives for its residential and small power customers to invest in and install DG, to reduce their energy usage (and electric bills) by undertaking energy conservation actions

[15] Petition; Chan Direct.
[16] Chan Direct at 7; *see also* Case No. 15-00261-UT, 9/28/16 2016 *Final Order Adopting Corrected Recommended Decision*, ¶¶ 39-45.

independent of any Commission-approved EE (or load management) programs (*e.g.*, by simply turning thermostats down in the winter or up in the summer), and incentives to reduce their energy due to changes in weather, economic conditions, or for any other reasons.[18]

Properly understood as described by PNM witness Chan, the "regulatory disincentive" PNM's proposed Rider would address and remove is PNM's *existing* rate design for its residential and small power customer classes, proposed and agreed to by PNM and other signatories to the Revised Stipulation adopted by the Commission in PNM's most recent (2016) GRC, Case No. 16-00276-UT, which as a matter of law, provided PNM with a reasonable or fair opportunity to recover the majority of its "fixed costs" of service to those customers through its variable energy (kWh) rates. PNM asserts that these features of its existing rate design expose it to the risk that it will not recover those costs due to reduced energy usage by customers in those rate classes *for any reason.* [19]

As explained by PNM witness Chan, "PNM's proposed rider establishes procedures that will permit PNM to recover (in the event of an under-collection) or credit (in the event of an over-collection) the difference between the authorized fixed costs per customer approved for recovery by the Commission in PNM's last litigated rate case, Case No. 15-00261-UT and the actual fixed costs recovered through base rates."[20] Under PNM's proposed Rider, "monthly fixed

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[17] Chan Direct at 20-21.
[18] Chan Direct at 21-23.
[19] Petition, ¶¶ 10, 12; Fenton Direct at 13; Chan Direct at 2-11, 17-19 and PNM Ex. SC-3, p. 1 of 6. PNM witness Chan asserts that "[t]he primary drivers of the historical decline in average UPC [usage per customer] are energy efficiency improvements and the increased penetration of distributed generation" and that "[f]or the residential class, energy efficiency and load management improvements are in large part attributable to PNM-sponsored programs." Chan Direct at 19.
[20] Chan Direct at 2.

cost reconciliations are accumulated for twelve consecutive months in the Shared Cost of Service Deferral Account" and "[b]ased on this annual difference, PNM will have either over-recovered its fixed costs and will credit the overage to customers in the following year, or conversely, PNM will have under-recovered its fixed costs and will credit an amount that reflects this under-charge for each of the customer classes subject to the decoupling mechanism over the course of a *subsequent* twelve-month period."[21]

PNM's proposed Rider would allow PNM to charge all of its residential and small business customers (respectively), in addition to its existing base rates applicable to those customers, a fixed monthly "Shared Cost of Service Charge" amount to recover any under-collection of its fixed costs per customer approved for recovery in its 2015 GRC regardless of any individual customer's actual energy/kWh usage or change in usage or whether a customer has participated in a Commission-approved PNM EE or load management program or has installed DG.[22] Under PNM's proposed Rider, if that decoupling mechanism results in a rate increase that is more than 3% of its residential or small power class' *2015* GRC forecasted revenues, before taxes and fees, the revenue amount above that 3% would be treated as a "deferral amount" and "will be carried over in the mechanism's Shared Cost of Service Deferral Account for recovery in a future year," to which a carrying charge at PNM's Customer Deposit Interest Rate (currently 1.67%) would be applied.[23] That feature of PNM's proposed Rider would guarantee PNM full recovery of its claimed "fixed cost" revenues

[21] Chan Direct at 2 (Emphasis supplied) and at 15 ("customers would not actually see a change to their bill until January 2022.").
[22] Chan Direct at 6-7 and PNM Exs. SC-2, p. 1 and SC-3, pp. 1-2.
[23] Chan Direct at 5, 15.

from customers in those rate classes over time regardless of changes in the makeup of those rate classes over time.

PNM's Petition also requests Commission approval of PNM's creation of a "regulatory asset" and recovery from its residential and small business customers through its proposed Rider of an estimated $350,000 for its "notices, regulatory, legal, consulting and related expenses associated with PNM's decoupling petition." That feature of its proposed Rider would apply regardless of whether the Rider results in an under-collection or over-collection of PNM's alleged "fixed cost" revenues from those rate classes. PNM asserts this cost would have been part of its claimed rate case expenses if PNM had filed its decoupling proposal in the second quarter of this year, as it previously had planned.[24]

Based on the foregoing facts, it is indisputable that PNM's Petition and proposed Rider request changes to PNM's existing rates applicable to its residential and small power customers outside a PNM GRC. Moreover, although PNM correctly describes its proposed Rider as "full decoupling" for *those* customers, its proposed Rider is not truly a "full" revenue decoupling proposal for its customers because PNM's Petition and proposed Rider do not apply to any of PNM's other customer classes.

PNM's Petition and Direct Testimony do not provide the Commission with any factual information addressing whether PNM's existing rates applicable to its other customer classes have resulted, or are expected by PNM to result, in any under-collection or over-collection of the "fixed cost" revenues authorized by the Commission in PNM's 2015 GRC associated with its

service to *those* rate classes during periods when it proposed Rider would be in effect. Nor does PNM's Petition or Direct Testimony show or assert that, due to any alleged past or projected under-collection of the "fixed cost" revenues authorized by the Commission in PNM's *2015* GRC associated with its service to its residential or small power rate classes, PNM has been unable, or will be unable, to achieve the 9.575% ROE authorized by the Commission in PNM's most recent GRC, No. 16-00276-UT, prior to enactment of the ETA in 2019 and the Commission's issuance of its April 1, 2020 *Final Order on Request for Financing Order* in Case No. 19-00018-UT. As discussed below, these are just some of the patently unlawful and "piecemeal" ratemaking aspects and legal deficiencies with PNM's Petition and proposed Revenue Decoupling Rider.

NEE requests that the Commission dismiss PNM's Petition with prejudice and reject its proposed Revenue Decoupling Rider as a matter of law pursuant to Commission Rules 1.2.2.12.A and B NMAC and established Commission standards for such dismissals. For the reasons set forth herein and as a matter of law, accepting all facts plead by PNM in its Petition as true, PNM filings request that the Commission engage in unlawful retroactive ratemaking beyond the Commission's authority. PNM's Petition and proposed Rider also fail to comply with applicable Commission rules regarding changes in rates by a public utility, thereby making it impossible as a matter of law for PNM to satisfy its burden of proof regarding its proposed rate changes, and are otherwise contrary to applicable law. For these reasons, PNM's Petition and proposed Rider are "patently deficient in form" and a "substantive nullity."

[24] Fenton Direct at 17-18; Chan Direct at 12.

Commission Rule 1.2.2.12.A NMAC provides that motions may be made at any time during the course of a proceeding and that "[t]he commission discourages any delay in the filing of a motion once grounds for the motion are known to the movant." Commission Rule 1.2.2.12.B NMAC provides:

> **Motions to dismiss:** Staff or a party to a proceeding may at any time move to dismiss a portion or all of a proceeding for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown. The presiding officer may recommend dismissal or the commission may dismiss a proceeding on their own motion.

The New Mexico Supreme Court has held that the Commission may reject and dismiss any filing that "'patently is either deficient in form or a substantive nullity,'" for example, because it fails "to set forth all data relevant to the necessity and reasonableness of the relief requested.'" *In the Matter of the Rates and Charges of U.S. West Communications, Inc. v. New Mexico State Corp. Comm'n*, 1993-NMSC-074, 865 P.2d 1192, 1194 ("*U.S. West*"), *quoting Municipal Light Bds. v. Federal Power Comm'n*, 450 F.2d 1341, 1345 (D.C. Cir. 1971), *cert. denied* 405 U.S. 989 (1972) and *Intermountain Gas Co. v. Idaho Pub. Util. Comm'n*, 98 Idaho 718, 722, 571 P.2d 1119, 1123 (1977). *See, e.g.*, Case No. 14-00332-UT, *Final Order Adopting Initial Recommended Decision Completeness of PNM's Filed Application,* May 13, 2015, (dismissing PNM's 2014 GRC Application for its failure to comply with the Future Test Period Filing Requirements in 17.1.3 NMAC); *see generally* Case No. 16-00105-UT, 8/25/16 *Order Denying Motion to Dismiss* (addressing Commission's standards for dismissal under 1.2.2.12.B NMAC.)

NEE requests that the Commission dismiss PNM's Petition with prejudice and reject its proposed Rider as a matter of law without requiring NEEs and other parties (including the

Commission's Utility Division Staff) to file prepared testimony addressing the merits of PNM's Petition and proposed Rider and conducting an evidentiary hearing on such testimony and further briefing because, based on the legal authorities addressed herein and accepting all facts plead by PNM in its Petition as true, requiring parties to engage in those Commission procedures would needlessly waste the Commission's and the parties' resources. Contrary to the speculative assertion by PNM witness Fenton,[25] requiring the parties and the Commission to address the merits of PNM's proposed Rider *in this stand-alone docket outside of a PNM GRC* would not only be inconsistent with NMSA § 62-8-7.A-C and § 62-17-5.F(2), Commission Rule 530 and the Commission's long-standing policy against "single issue" and "piecemeal" ratemaking. Doing so also would unjustifiably increase, rather than reduce, the regulatory burden on the Commission, its Staff and other parties at this time and would impermissibly interfere with the Commission's ability and responsibility to adequately balance the interests of PNM's customers and investors when PNM files its *next* GRC.

Twisting the meaning and substance of applicable law requiring that the Commission adequately balance the interests of public utility ratepayers and investors in the ratemaking process in an unprecedented and novel manner, PNM asserts that, considering its decision to forego requesting a greater revenue increase by filing a GRC at this time, its "decoupling proposal represents the best compromise we can offer to meet the balance required by public utility law between customers and investors."[26] As explained here, PNM's Petition and proposed Rider is no lawful balancing of interests "compromise." On the contrary, PNM's request for Commission

[25] Fenton Direct at 7.

approval of its proposed "full decoupling" Rider in a stand-alone proceeding outside a PNM GRC is patently unlawful and unbalanced. There are little to no benefits to ratepayers demonstrated in the Petition or PNM testimony,[27] or utility required conditions[28] or consumer protections (save a 3% annual cap which will be rolled over to the next year for utility recovery), while the utility and its shareholders are made whole for *any* decline in electricity usage based on stale data goal posts from *2015*.

PNM's filing of its patently unlawful and defective Petition and unbalanced proposed "full decoupling" Rider outside a PNM GRC during the current pandemic rather than waiting to file a proper decoupling proposal compliant with the 2019 amendments to the EUEA and complying with the Commission's "minimum data" filing requirements in Rule 530 as part of a complete GRC filing where the impacts of that proposal together with the impacts of other PNM ratemaking requests can be assessed by the Commission, unjustifiably and unreasonably strains the resources of the Commission and representatives of affected PNM customers (including DG

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[26] Fenton Direct at 11.

[27] A London School of Economics November 2019 analysis, *"Revenue Decoupling for Electric Utilities: Impacts on Prices and Welfare,"* found that decoupling tends to increase the electricity rates rather substantially over months upon implementation, i.e., about 9% on average and about 19% after two years. Towards the end of 2012, average monthly electricity rates from decoupled utilities increased to $0.19/kWh, which is significantly higher than the average for non-decoupled utilities (about $0.12/kWh). This translates to about a $70 increase in monthly electric bill for an average electric customer, more than 30-fold adjustments compared to the previous estimate of $2.30 per month. Given inelastic demand for electricity, low-income and credit-constrained households are adversely affected by the increase in price due to revenue decoupling. http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2018/11/working-paper-309-Brucal-Tarui-Nov-2019.pdf

[28] For example, energy efficiency performance target reductions; required third-party audits of the decoupling mechanism after the first 2-4 years that include an assessment of impacts on low-income customers, utility cost control, etc.; and more.

customers) and other stakeholders at this challenging time. PNM's Petition improperly over-reaches the law by asking the Commission to implement ratemaking for PNM contrary to applicable law. PNM's Petition is particularly inappropriate, egregious and tone deaf to PNM's residential and small business customers and the public interest at this challenging time.

For all of the reasons set forth in this Motion, PNM's Petition therefore should be summarily dismissed with prejudice under 1.2.2.12.B NMAC.

I. PNM's Petition and Proposed Revenue Decoupling Rider Request Requires that the Commission Engage in Prohibited Retroactive Ratemaking Beyond its Authority.

PNM's existing rates, including its existing rate design for its residential, small power and other customers, were established by the Commission's January 10, 2018 *Revised Order Partially Adopting Certification of Stipulation* in PNM's most recent GRC, Case No. 16-00276-UT. As a matter of law, that Commission Order provided PNM with a reasonable or fair "opportunity"—*not a guarantee*—to be able to recover its "fixed" and other costs and associated revenues (revenue requirements) authorized by the Commission in that case from customers in its residential, small power and other rate classes. *See, e.g., In re Petition of PNM Gas Services*, 2000-NMSC-012, ¶ 8, 1 P.3d 383, 391 ("A reasonable rate of return is one that provides a fair opportunity for the utility to receive just compensation for its investments."); Case No. 15-00261-UT, *Final Order Partially Adopting Corrected Recommended Decision*, pp. 82-83 (¶ 240); R. Swartwout, *Current Utility Regulatory Practice from a Historical Perspective*, 32 Nat. Resources Journal 289, 310, *citing* F.

Welch, *Cases and Text on Public Utility Regulation* 395 (1968) (addressing "the fallacy of the guaranteed rate of return notion" regarding utility ratemaking).[29]

The "fixed" costs and associated revenue requirements PNM was authorized to recover from its residential, small power (and other) customers in Case No. 16-00276-UT were based on PNM's *2018* (Future Test Year) level of investments and cost of service for the "calendar year 2018" Test Period relied on by PNM in that case.[30] Those "fixed" costs and associated revenue requirements included a stipulated and authorized 9.575% ROE applicable to those PNM investments.[31]

The fact that the Commission's *Revised Final Order* in Case No. 16-00276-UT approved what is termed a "black box" settlement by parties in that case does not alter or negate the fact that the "fixed" costs and associated revenue requirements authorized by that Order were based on PNM's projected *2018* (Future Test Year) level of investments and claimed cost of service for calendar year 2018. As the Commission explained in that *Order* (¶ 9), "[t]he Revised Stipulation constitutes what is termed a 'black box' settlement because the stipulating parties have agreed only on *a result and not on specific adjustments to individual cost of service items* that ultimately

[29] "In other words, the utility's return allowance might be compared with a fishing or hunting license with a limit on the catch. Such a license does not guarantee that the holder will catch anything at all; it simply makes the catch legal (up to a specified limit) provided the holder is successful in his own efforts." *Id*. As noted above and addressed further below, PNM recently reported in Case No. 12-00007-UT that its actual ROE in 2019 exceeded the 9.575% ROE authorized by the Commission in PNM's 2016 GRC and its 2015 GRC. Exhibit A.
[30] Case No. 16-00276-UT, *e.g.*, Petition at 2; 12/7/16 Chan Direct at 2, n. 2, 3 and 11.
[31] Case No. 16-00276-UT, 1/10/18 *Revised Order Partially Adopting Certification of Stipulation*, ¶ 10 (Emphasis supplied).

produce the [authorized revenue requirements] result beyond the following…"[32] PNM's Petition and Direct Testimony in this case do not assert otherwise. These facts are indisputable.

PNM's Petition and proposed Revenue Decoupling Rider request that the Commission engage unlawfully in "retroactive" ratemaking beyond its authority in two respects. First, PNM's Petition and Direct Testimony make it clear that the Commission-authorized "fixed" cost revenues PNM seeks to recover from residential and small power customers through its proposed Rider are its *2015* Future Test Year Period fixed cost revenues based on its "2015 investment level" and cost of service authorized by the Commission's *Final Order* in PNM's 2015 GRC, Case No. 15-00261-UT. PNM's proposed Rider is *not* designed or intended to recover PNM's forecasted 2018 Test Year Period fixed cost revenues authorized by the Commission in PNM's most recent (2016) GRC, No. 16-00276-UT that PNM is authorized to recover through its *existing* rates.[33] Authorizing PNM at this time to recover from residential and small power customers (beginning in 2021) its *2015* investment level of "fixed" costs and associated revenues authorized in Case No. 15-00261-UT, which costs and revenues were superseded and replaced by the revenue responsibility of those rate classes subsequently authorized by the Commission in PNM's 2016 GRC, would be "retroactive" ratemaking.

[32] *Id*., ¶ 9. Paragraphs 10-13 of that *Revised Order* state four specific reductions to the 2018 Test Year revenue requirements requested by PNM in its Application agreed to in the Revised Stipulation approved by the Commission.
[33] Petition at 2 and ¶¶ 10, 12; Fenton Direct at 12; Chan Direct at 2, 8-9 and PNM Ex. SC-3, p. 1 of 6, line 12; *see also* Case No. 15-00261-UT, 8/27/15 Chan Direct at 7, n. 2 (describing the October 1, 2015 through September 30, 2016 Future Test Year Period relied on by PNM in that 2015 GRC).

PNM's Petition and Direct Testimony also make it clear that PNM's proposed Revenue Decoupling Rider rate adjustment mechanism would be based, in part, on the billing determinants (forecasted kWh sales) for its residential and small power customer classes PNM relied on in its *2015* GRC, No. 15-00261-UT—*not* on the billing determinants for those rate classes PNM (and the other stipulating parties) relied on for the rate design in the Revised Stipulation submitted in PNM's subsequent 2016 GRC, No. 16-002706-UT, that the Commission also relied on when it adopted that Stipulation and approved that rate design for PNM's existing rates in that case.[34] A proposed rate adjustment mechanism that is based in part on such stale and superseded class billing determinants relied on by PNM and the Commission also is retroactive in that respect.

The New Mexico Supreme Court long ago explained that, because "rate-making is legislative in its nature," it can only operate "prospectively, not retroactively." *Mountain States Tel. v. New Mexico State Corp. Comm'n*, 90 N.M. 325, 341, 563 P.2d 588 (1977). The Court explained there that "[r]etroactive remedies, which are in the nature of reparations rather than rate-making, are peculiarly judicial in character, and as such are beyond the authority of the Commission to grant." *Id*. The Court explained further:

> [t]here is no better established rule with regard to the prescription of rates for a public utility than the one that holds that rate fixing may not be accomplished retroactively, unless some specific statutory authority permits. *Past deficits may not be made up by excessive charges in the future nor may past profits be reduced by disallowances to future operating expense*. (Emphasis supplied.)

[34] *Id*.; *see also* Case No. 16-0276-UT, 1/10/18 *Revised Order*, ¶¶ 27-34, 68-77 (approving, upon reconsideration, the rate design agreed to in the Revised Stipulation).

Id., *quoting Pacific Teleph. & Teleg. Co.*, 80 P.U.R. (N.S.) 355, 269 (Calif. Pub. U. Com'n 1949) and *citing Public Utilities Comm'n v. Gas Co*., 317 U.S. 456. 63 Sup. Ct. 369 (1943) and other cases. *Accord, In re Petition of PNM Gas Services*, 2000-NMSC-012, ¶ 6, 1 P.3d 383, 390.

As explained above, PNM's proposed Revenue Decoupling Rider is retroactive in nature because it would it would allow PNM to recover *2015* level "fixed cost" revenues authorized by the Commission prior to PNM's most recent GRC measured by its forecasted energy usage (billing determinants) for its residential and small power customers in that case that were subsequently superseded and replaced by the Future Test Year Period class usage forecasts relied on by the Commission in PNM's 2016 GRC. Accepting the facts stated by PNM as true, PNM's Petition and Direct Testimony demonstrate the retroactive nature of PNM's proposed Rider.

To justify its proposed "full decoupling" Rider, PNM witness Chan presents a graph (PNM Figure SC-2) showing *PNM's calculation* of its "residential usage per customer" ("UPC") from 2011 through 2019.[35] PNM Figure SC-2 indicates that, since 2015, the lowest "actual" residential UPC calculated by PNM was in 2017, followed by an *increase* in its calculated "actual" residential UPC from 2017 to 2018, which occurred *after* the Commission approved a rate increase for PNM on September 28, 2016 in Case No. 15-00261-UT, followed by a *smaller* decrease in its calculated residential UPC from 2018 to 2019, which occurred *after* PNM was authorized to increase its rates again and its *existing* rates and revenues were authorized on January 10, 2018 in Case No. 16-00276-UT. That PNM graph makes it clear that the UPC calculated by PNM for its residential customer class, PNM's largest rate class in terms of both

[35] Chan Direct at 18 and PNM Figure SC-2.

number of customers and revenues, based on PNM's sales to those customers under the rates approved by the Commission in PNM's 2015 GRC, Case No. 15-00261-UT, was *lower* than PNM's calculated residential UPC based on its sales to those customers under its *existing* rates authorized in its most recent 2016 GRC, No. 16-00276-UT.

By using its forecasted energy (kWh) sales for its residential customer class relied on for its rate design in PNM's 2015 GRC as one component of the benchmark in the rate adjustment mechanism in its proposed Rider (*i.e.*, as the basis for determining whether PNM's post-2020 sales to those customers result in an under-collection or over-collection of its "fixed" cost revenues authorized in its 2015 GRC), that rate adjustment mechanism not only relies *retroactively* on PNM's 2015 level of investments ("fixed" costs) to serve those customers. It also relies on those past (2015) and now stale residential sales forecasts (billing determinants), which were superseded and replaced by the PNM sales forecasts (billing determinants) relied on by the signatories to the Revised Stipulation and by the Commission in Case No. 16-00276-UT to determine PNM's existing rates.[36]

Moreover, the plain language in the 2019 amendments to the EUEA relied on by PNM in NMSA § 62-17-5.F(2) (2019) cannot be reasonably interpreted to authorize this or any other type of retroactive ratemaking. That section provides, in pertinent part, that the Commission shall, "upon petition by a public utility, remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the *revenue per customer approved by the commission*

[36] As discussed below, a decline in actual revenues from PNM's residential (or small power) classes or a decline in average UPC in those rate classes does not necessarily result in a decline

in a general rate case proceeding is recovered by the public utility without regard to the quantity of electricity or natural gas sold by the public utility *subsequent to the date the rate took effect*." (Emphasis supplied).

Neither PNM's Petition nor its Direct Testimony cites any finding or statement in the Commission's *Final Order Partially Adopting Corrected Recommended Decision* or the *Recommended Decision* thereby adopted in Case No. 15-00261-UT approving a specific amount of "revenue per customer" PNM was authorized to recover from its residential or small power customers. To the contrary, historically, the Commission's approval of a specific level of revenue requirements for an electric (or other) public utility in a general rate case has approved rates designed to recover those "authorized" revenues on a *rate class* basis—*not* on a "revenue per customer" basis. PNM's Petition and Direct Testimony do not —and cannot— assert otherwise.

Under established rules of statutory construction, the language in NMSA § 62-17-5.F(2) must be given its plain meaning and may not be interpreted in a manner that would have an unreasonable or absurd result. *See, e.g.*, *Las Cruces v. Garcia*, 102 N.M. 25, 26-27, 690 P.2d 1019 (1984). PNM's apparent interpretation of "subsequent to the date the rate took effect" in NMSA § 62-17-5.F(2) (2019) is contrary to the plain meaning of that language and would have an unreasonable and absurd result in two respects.

First, that PNM interpretation asks the Commission to conclude that the Legislature intended that NMSA § 62-17-5.F(2) authorizes a public utility to request and requires the

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in PNM's actual *overall* revenues from all of its customers or in an actual ROE that is lower than

Commission to approve, a rate adjustment mechanism to remove a "regulatory disincentive" that would ensure a utility's recovery of its calculated average "revenue per customer approved by the commission" in *any prior* "general rate case" even if that GRC is not the utility's *most recent* GRC where its class revenues were authorized by the Commission and a utility's calculated "revenue per customer" is different than the average "revenue per customer" that could be derived from the class revenues authorized by the Commission in the utility's *most recent* GRC. That PNM interpretation is inconsistent with the plain meaning of "subsequent," which means "following in time," "following in order of place," or "succeeding."[37] Moreover, as explained earlier, that PNM interpretation of NMSA § 62-17-5.F(2) (2019) would have the retroactive, unreasonable and absurd result of requiring that the Commission approve such a lost "revenue per customer" rate adjustment mechanism and a surcharge to a public utility's customers based on the difference between *the utility's* calculated "revenue per customer" actually recovered through its electricity sales under its most recently authorized rates and *its* calculated "revenue per customer" based on its forecasted sales prior to the date when its existing rates became effective.

Within PNM's headquarters, this sort of twisting of the plain meaning of the language in NMSA § 62-17-5.F(2) (2019) may pass as a clever way for PNM to guarantee its recovery of revenues from its residential and small power customers and thereby protect or increase its *overall* earnings outside a PNM GRC. Due to the patently retroactive nature of PNM's proposed

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the ROE most recently authorized for PNM by the Commission.

[37] *See, e.g.*, BLACK'S LAW DICTIONARY at 1596, "Subsequent" (Rev. 4th ed. 1968); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 2278 (1966).

Revenue Decoupling Rider, however, that rate adjustment mechanism cannot pass the legal standards for ratemaking and dismissal by the Commission even accepting all of the factual allegations in PNM's Petition and Direct Testimony as true.

II. PNM's Petition and Proposed Revenue Decoupling Rider Also Request that the Commission Engage in "Single Issue" and "Piecemeal" Ratemaking that is Patently Contrary to Applicable Law and Long-Standing Commission Policy Without Any Lawful Justification.

On their face, PNM's Petition and proposed Revenue Decoupling Rider also ask the Commission to engage in "single issue" and "piecemeal" ratemaking outside a PNM GRC where the Commission is able to examine all of the other elements of its overall cost of service (costs and revenues) for a specific "test year" period, contrary to applicable law and the Commission's long-standing policy against engaging in such ratemaking. PNM acknowledges that its Petition requests that the Commission approve a single issue—"full decoupling" of its residential and small power customer class revenues as described in its Rider--outside a PNM GRC, but asserts that, "[b]ecause PNM's decoupling proposal uses the same revenue requirement and COSS [Cost of Service Study] as the 2015 case, it is unclear if it qualifies as piecemeal ratemaking."[38]

Accepting all facts plead by PNM in its Petition as true for the purposes of this Motion, there is nothing "unclear" in that regard. It is indisputable that PNM's Petition asks the Commission to engage in "piecemeal" as well as "single issue" ratemaking.

PNM and its witness Ms. Azar contradict themselves about this matter and know better. Ms. Azar acknowledges that piecemeal ratemaking involves "changing rates for one item and ignoring

[38] Azar Direct at 4, 21-22.

all of the other cost of service elements."[39] PNM's Petition and proposed Revenue Decoupling Rider indisputably request that the Commission change PNM's existing rates for its residential and small power customers outside a PNM GRC where the Commission is able to examine all other elements of its overall cost of service (costs and revenues) for a specific test year period. As discussed earlier, the fact that PNM's "decoupling proposal uses the same revenue requirement and COSS" that PNM relied on its 2015 GRC shows a different patent defect with PNM's Petition: its patently unlawful *retroactive* ratemaking aspects.

PNM acknowledges that "like most utility law," both the PUA and the EUEA require that the Commission balance the interests of public utility ratepayers and investors in the ratemaking process to "arrive at the public interest."[40] That Commission balancing of interests requirement is included in the stated policy of the EUEA in NMSA § 62-17-3 as follows:

> It is the policy of the Efficient Use of Energy Act that public utilities, distribution cooperative utilities and municipal utilities include all cost-effective energy efficiency and load management programs in their energy resource portfolios, *that regulatory disincentives to public utility development of cost-effective energy efficiency and load management be removed in a manner that balances the public interest, consumers' interests and investors' interests* and that the commission provide public utilities an opportunity to earn a profit on cost-effective energy efficiency and load management resources that, with satisfactory program performance, is financially more attractive to the utility than supply-side resources. (Emphasis supplied).

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[39] Azar Direct at 22.

[40] Fenton Direct at 6; Azar Direct at 19. *See generally Attorney General v. N.M. Public Regulation Commission*, 2011-NMSC-034, ¶¶, 13, 18, 150 N.M. 174, 258 P.3d 453 ("*AG v. PRC 2011*") (holding Commission could not adequately balance investors' interests against ratepayers' interests as required by the PUA and the EUEA without inquiring into a utility's revenue requirements or the "traditional elements of the ratemaking process"); *accord* **Error! Main Document Only.***N.M. Attorney Gen. & NMIEC v. N.M. Pub. Regulation Comm'n***,** 2013-NMSC-042, ¶ 16.

Section 5 of the EUEA, NMSA § 62-17-5, addresses "**Commission approval; energy efficiency and load management programs; disincentives**." The 2019 amendments to that section of the EUEA did not change the balancing of interests policy in NMSA § 62-17-3. Nor did they change the express requirement in Section 5.F(1) of the EUEA that the Commission balance the interests of public utility consumers and investors when removing regulatory disincentives for utility expenditures on EE and load management measures. NMSA § 62-17-5.F(1) (2019) provides that the Commission "shall…upon petition or its own motion, identify and remove regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures *in a manner that balances the public interest, consumers' interests and investors' interests*." (Emphasis supplied).

As noted earlier, PNM asserts that, due to its decision to forego requesting a greater revenue increase by filing a GRC at this time, its "decoupling proposal represents the best compromise we can offer to meet the balance required by public utility law between customers and investors."[41] That argument, however, ignores and distorts applicable law regarding that balancing of interests requirement in the PUA and the EUEA.

As explained by the Supreme Court, the statutory basis for the requirement in the PUA that the Commission adequately balance the interests of public utility ratepayers and investors in the ratemaking process is NMSA § 62-3-1(B).[42] One of the ways the PUA implements that

[41] Fenton Direct at 11.
[42] *In re Petition of PNM Gas Services, supra*, 2000-NMSC-012, ¶ 7; *AG v. PRC 2011*, 2011-NMSC-034, ¶ 13.

Commission balancing of interests requirement in the ratemaking process is set forth in NMSA § 62-8-7, addressing "Change in rates."

NMSA § 62-8-7.A provides: "At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility." NMSA § 62-8-7.B provides, in pertinent part: "Unless the commission orders otherwise, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect *and other information as the commission by rule requires*." (Emphasis supplied).

NMSA § 62-8-7.C provides, in pertinent part, that the Commission may conduct a hearing concerning the reasonableness of a rate proposed by a public utility "[w]henever there is filed with the commission by any public utility *a complete application as prescribed by commission rule* proposing new rates." (Emphasis supplied).[43]

In its October 5, 1987 *Final Order* in Case No. 2058, the Commission explained the statutory basis for its long-standing policy against engaging in "piecemeal ratemaking." That case addressed a PNM petition for approval of proposed new rates and rules regarding late payment charges for its customers in a stand-alone proceeding outside a PNM GRC.

Citing NMSA § 62-8-7 in the PUA (as it then existed) and former Commission General Order No. 40 (the predecessor of current Commission Rule 530) specifying the "minimum data

[43] NMSA § 62-8-7.E provides a statutory exception to the Commission rule compliance and "complete application" requirements in §§ 62-8-7.A and B for increases in public utility rates for

requirements to be filed in support for a tendered new rate schedule or rate schedule which will supersede, supplement or otherwise change the provision of a rate schedule required to be on file with this Commission," the Commission's *Final Order* in Case No. 2058 rejected those rates proposed by PNM, concluding that PNM could not satisfy its burden of proof under that statute because it had not provided that required "minimum data" and thus, its application requested "piecemeal ratemaking" by the Commission, contrary to that statute and its rules.[44] The Commission concluded there that "a utility should not be permitted to implement a revenue-enhancing rate or charge without demonstrating that its revenues need to be increased, i.e., that it is under-earning."[45]

Quoting from *Bluefield Water Works and Improvement Co. v. Public Service Comm'n*, 262 U.S. 679, 693 (1923) ("*Bluefield*"), the Commission's *Final Order* in Case No. 2058 noted that "'[a] rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.'"[46] Citing *Matter of Rates and Charges of Mountain State Telephone and Telegraph Co*., 99 N.M. 1, 7-8, 653 P.2d 501 (1982), the Commission also noted there that, under the PUA, "[o]n the other hand, the Commission must balance the interests of ratepayers and shareholders and consider the *overall end result* of its rate orders."[47] Addressing this balancing of interests requirement in the PUA, the Commission explained there that "[i]f a utility is allowed to increase a single rate without showing

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"taxes or cost of fuel, gas or purchased power" that is inapplicable to PNM's Petition and proposed Rider.

[44] Case No. 2058, *Final Order* at 3-7 (emphasis in original).

[45] *Id*., at 4.

[46] *Id*., at 5.

that it is under-earning and suffering a revenue shortfall, it can selectively bring forward issues that will enhance revenues and ignore areas where it is overcollecting."[48]

The Commission's *Final Order* in Case No. 2058 explained that such "[p]iecemeal ratemaking permits a utility to increase revenues without showing they are necessary to earn a reasonable return," and "[t]hus, a Commission rate decision must be based upon the total cost of providing service."[49] That *Final Order* explained that, for that reason, it was the "long-established policy" of the Commission "to consider a request that has the effect of increasing a single rate or group of selected rates only if supported by the minimum data requirements defined and specified in" its General Order No. 40 and its other General Orders (relating to rate changes by gas and water utilities), and therefore those General Orders expressly stated that "'the failure of the applicant to

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[47] *Id*.

[48] *Id*.; Also see *Order Regarding Issues In Response to Joint Motion for Authorization for an Accounting Order to Allow Creation of a Regulatory Asset to Track Costs of Emergency Conditions*, 5/6/2020. Utilities requested to create a regulatory asset for its losses only due to COVID-19. After an onslaught of filings by various parties requesting true accounting and symmetry, to be assessed in PNM's next general rate case, the Commission required utilities to "identify, track and account for any potential offsetting savings resulting from the COVID-19 health emergency and Emergency Order, the application of potential federal or state subsidies or other relief, as well as possible shifts in usage between rate classes [.]" p.2.

[49] *Id*., at 6; *accord* Case No. 2361, 9-30-91 *Recommended Decision to Dismiss Proceeding* at 25, adopted by 2-6-92 *Final Order Approving Recommended Decision to Dismiss Proceeding* (rejecting gas utility's proposed rate and rule to recover costs incurred by its predecessor; stating: "Unless a complete [cost of service] picture is presented, the Commission cannot possibly fulfill its duty to determine just and reasonable rates," and that "[t]he Commission has applied its policy against piecemeal ratemaking to both increases and decreases in expenses and revenues."). The Commission also has enforced its policy against piecemeal ratemaking with respect to certain proposals in public utility general rate cases. *See, e.g.*, Utility Case No. 2262, 3-8-90 *Recommended Decision* at 149 (rejecting PNM's proposed rate increase for one rate class due to PNM's failure to "comply with the minimum data standard filing requirements of NMPSC Rule 530"); Case No. 10-000086-UT, 6-1-11 *Certification of Stipulation* at 37, 114-116

fulfill the minimum data requirements'" specified therein "'shall constitute sufficient cause for the Commission to reject the applicant's filing.'"[50]

The Commission's *Final Order* in Case No. 2058 stated that "a request for a [rate] change which is or can be made 'revenue neutral" may be given full consideration on its merits without submitting the minimum data required in" its General Orders applicable to rate changes by a public utility.[51] That exception to compliance with the Commission's "minimum data" filing requirements for public utility rate changes does not apply to PNM's Petition and proposed Rider here. PNM does not contend that its proposed Rider is "revenue neutral." To the contrary, as explained earlier, it is indisputable that PNM's proposed Rider will not be "revenue neutral."

The *Commission's Final Order Partially Adopting Corrected Recommended Decision* (pp. 77-84) in Case No. 15-00261-UT addressed a four-year "pilot" revenue decoupling proposal by PNM in its 2015 GRC applicable to PNM's residential and small power customers, termed a "Revenue Balancing Account" ("RBA"), somewhat similar to PNM's "full decoupling" proposal described in its Petition and proposed Rider in this case.[52] That Final Order adopted the findings

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(rejecting a PNM "Additions Rider" included in proposed Stipulation because its signatories had "not justified departing from the general policy against piecemeal ratemaking.").

[50] Case No. 2058, *Final Order* at 6-7 (citations omitted).

[51] *Id*., at 7.

[52] Aside from the fact that PNM made that "pilot" proposal in its 2015 GRC, another difference between PNM's RBA decoupling proposal there and its proposed Rider in this case is that, as described in the Commission's *Final Order* in Case No. 15-00261-UT (p. 78), PNM's decoupling proposal there would have allowed an "annual revenue per customer in each customer class" to be set based on the revenues *authorized by the Commission in that GRC*. In contrast, as discussed earlier, PNM's proposed Rider in this case would be *retroactively* based on *PNM's calculation* of "annual revenue per customer" in its residential and small power rate classes based on the total revenues from those classes authorized by the Commission in its *2015* GRC.

and recommendation in the Hearing Examiner's *Corrected Recommended Decision* (pp. 259-275) rejecting PNM's RBA proposal for a number of reasons.[53] Those reasons included the Commission's finding that, like the PNM decoupling proposal rejected by the Commission in Case No. 06-000210-UT, PNM's RBA decoupling proposal was overbroad because it "would insulate PNM from sales fluctuations from causes other than reduced energy use stemming from energy efficiency measures" and "protect PNM from sales declines unrelated to energy efficiency such as unrelated economic pressures, customer volume changes and weather impacts."[54] They also included the Commission's finding that, as described by Staff witness Dr. Pitts, a rate mechanism that would make a utility whole for any decline in revenues, such as PNM's RBA proposal, is inconsistent with the established ratemaking principle that, under the "implicit" regulatory "compact," utilities are not guaranteed "'the right of full cost recovery or the right to be made whole, especially in a time of declining load growth, because there is no way to isolate the impact of any one factor in a reduction in energy sales.'"[55] The Commission also found there, in accordance with the EUEA (as it then existed), that PNM's "pilot" RBA decoupling proposal failed to comply with the Commission's prior directives that utility decoupling proposals pursuant to that Act be

[53] The Corrected Recommended Decision in Case No. 15-00261-UT (pp. 259-267) provided a "History of Decoupling in New Mexico," including a discussion of the Commission's rejection of a decoupling proposal by PNM for its then natural gas utility in Case No. 06-00210-UT because as "overbroad" "because it insulated PNM from revenue losses resulting from causes other than PNM's energy efficiency programs."
[54] Case No. 15-00261-UT, *Final Order Partially Adopting Corrected Recommended Decision*, pp. 79 (¶¶ 227-228), 82 (¶ 239).
[55] *Id*., pp. 82-83 (¶ 240), quoting Staff witness Dr. Pitts Direct at 11.

"'narrowly focused' to address disincentives to investment by utilities in energy efficiency programs 'and not be aimed at making the utility whole for all load losses.'"[56]

Importantly for purposes of this case, the Commission's *Final Order* in Case No. 15-00261-UT adopted the following findings in the *Corrected Recommended Decision* (at 267):

> Importantly, for purposes of this case, the PRC said that "disincentive removal is best accomplished in a rate case," which provides the opportunity to examine the impact of energy efficiency programs on a utility's costs, revenues and earnings. [citing Case No. 11-00047-UT, 9-13-12 *Certification of Stipulation* at 22, adopted by 12-11-12 *Final Order.*] It further said, "The use of a future Test Period provides a vehicle for incorporating the impact of programs on the utility's costs." *Id*.

The Commission's *Final Order* in Case No. 2058 stated: "…as with any policy, exceptions can be made on a case-by-case basis."[57] Seizing on that statement, also quoted by the Hearing Examiner in her *Recommended Decision* (at 45) in Case No. 12-00007-UT,[58] PNM witness Azar offers her legal opinion that PNM's request for approval of its proposed "full decoupling" Rider outside a PNM GRC is not "prohibited" by the Commission's policy against "piecemeal ratemaking" based on the following "exceptional circumstances":

- A global pandemic that is prompting a partial shutdown of the economy;

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[56] *Id*., p. 83 (¶ 241).
[57] Case No. 2058, *Final Order*, p. 7.
[58] In her *Recommended Decision* in Case No. 12-00007-UT (at 46) addressing PNM's Application for approval of its Renewable Energy Rider No. 36, the Hearing Examiner found that the Commission's "concern behind the policy against piecemeal ratemaking" did not apply in that case "because §§ 62-16-6 and 62-16-2 of the REA [Renewable Energy Act] indicate that a public utility can recover costs incurred under the REA *regardless of its other costs and revenues*." (Emphasis supplied). That conclusion does not support Commission consideration of PNM's proposed Rider in this case because PNM cites no similar statute providing that the Commission must allow a public utility to recover its alleged lost "fixed cost" revenues from selected rate classes regardless of its other costs and revenues, and indeed, as discussed below, there is no such New Mexico statute.

• Changes in electricity usage and difficult to predict *post-pandemic* usage;

• PNM foregoing a full-blown rate case that would have proposed a large increase in revenue requirement;

• A new law that expressly demonstrates the Legislature's desire for "a rate adjustment mechanism that ensures that the revenue per customer…is recovered by the public utility without regard to the quantity of electricity actually sold by the public utility." NMSA 1978, § 62-17-5(F)(2); and

• *Most importantly*, the NMPRC adopted a Stipulation in which PNM agreed to submit a stand-alone mechanism to eliminate the regulatory disincentives to energy efficiency and load management.[59]

As discussed below, to the extent they assert *facts* that the Commission must accept as true for the purpose of resolving this Rule 12.B Motion, as a matter of law, none of the foregoing "exceptional circumstances" relied on by PNM justify Commission consideration of PNM's proposed Revenue Decoupling Rider *in this stand-alone proceeding, outside a PNM GRC* where PNM has not complied with the "minimum data" filing requirements in Commission Rule 530. Moreover, PNM's Petition and Direct Testimony conveniently fail to address two truly "exceptional circumstances" that have occurred since the Commission approved PNM's existing rates in its 2016 GRC: enactment of the ETA in 2019 and the Commission's issuance of its *Final Order on Request for Financing Order* in Case No. 19-00018-UT pursuant to the ETA on April 1, 2020. With respect to the requirement in the PUA and the EUEA that the Commission adequately balance the interests of public utility ratepayers and investors in the ratemaking process, the potential impacts of the enactment of that statute and the issuance of that

[59] Azar Direct at 22-23 (Emphasis supplied). In addition to the negligible evidentiary value the Commission should give to Ms. Azar's legal opinion in this regard, PNM Exhibit LA-1 to her Direct Testimony does not indicate she is licensed to practice law in New Mexico.

Commission Order on the risks to PNM's investors further demonstrate why the "single issue" and "piecemeal" ratemaking requested in PNM's Petition in this stand-alone docket is patently unlawful and defective in form.

The Pandemic and Partial Shut Down of New Mexico's Economy

The current COVID-19 pandemic and resulting partial shut-down of New Mexico's economy are certainly extraordinary or, as PNM prefers to describe them, "exceptional" circumstances. PNM acknowledges, however, that the extent to which those circumstances may affect PNM's ability to recover the revenues authorized by the Commission in PNM's *2015* GRC, on which PNM's proposed Rider relies, from its residential and small power customers, and from its other customers for that matter, or on its ability to earn the 9.575% ROE authorized by the Commission in PNM's 2015 GRC and in its most recent GRC, No. 16-00276-UT, one way or the other, is currently unknown and cannot be accurately predicted by PNM or the Commission in this stand-alone proceeding.

In this regard, PNM witness Chan testifies: "To be sure, it is difficult to predict what the resulting bill impacts of decoupling might be in 2022 considering the potential impact of COVID-19 on the economy and customer usage patterns in 2021," and that the "impacts from COVID-19 are hard to predict and are constantly changing."[60] As an example of its customers' energy usage since the inception of the pandemic, Ms. Chan testifies: "PNM estimated in April

[60] Chan Direct at 11-12.

2020 that potential impacts to load resulted in an *increase in residential load of approximately 5 percent* and a decline in *commercial load* of approximately 15 percent."[61]

PNM's residential class is PNM's largest rate class in terms of that class's associated "authorized" base revenues and asserted cost of service responsibility. For example, in its Rule 530 Schedule A-2 filed in its most recent GRC, No. 16-00276-UT, PNM reported that its non-fuel "base revenue" in 2018 from its Residential rate class under the then "existing" rates approved by the Commission in its 2015 GRC was $332,143,835, which represented 47.9% of its total non-fuel "base revenues" for that year ($692,387,504), and that adding its *claimed* non-fuel "base revenue" deficiency of $52,355,833 for that rate class, PNM's *claimed* revenue responsibility of its Residential class ($84,499,668) was approximately 48.5% of its *claimed* total non-fuel "base revenue" cost of service.[62]

It should not be surprising to PNM or the Commission that, as a result of the Governor's temporary social isolation and business closure directives in March 2020, PNM's residential customers were spending more time and using more electric energy from PNM in their homes than normal or historically, as estimated by PNM in April and reported by PNM. It also should not be surprising to PNM or the Commission that, as temperatures rise in PNM's service area after April, to the extent the pandemic and governmental directives result in PNM's residential customers spending more time than normal in their homes, their electric usage (by class and average usage per customer) and PNM's sales of energy to those customers will continue that

[61] *Id*., at 12 (Emphasis supplied). Ms. Chan does not define "commercial load" as used there or address what portion of that "commercial load" its small power class load represents.
[62] Case No. 16-00276-UT, PNM Rule 530 Schedule A-2, pp. 1 and 4.

increasing usage trend. To the extent it suggests anything about PNM's current and expected revenues and ability to achieve its currently authorized 9.575% ROE, PNM's estimate of its increased "residential load" in April 2020 suggests PNM may well over-collect its 2015 GRC level of "fixed cost" revenues from its largest rate class, residential customers, during the period when the COVID-19 pandemic results in "a partial shutdown of the economy."

As noted earlier, PNM's Petition and Direct Testimony do not address whether PNM has been over-collecting or under-collecting its *total* "fixed cost" revenues authorized in its 2015 GRC. Nor do they present any facts showing that any current or projected under-collections of that *2015* level of PNM's "fixed cost" revenues has prevented PNM, or will prevent PNM, from earning the 9.575% ROE authorized by the Commission for PNM in PNM's 2015 and 2016 GRCs prior to Commission resolution of PNM's next GRC. What PNM and the Commission do know as a fact, however, is that PNM's sworn reported *actual* ROE in 2019, the latest year for which PNM was required to report its actual ROE, was 9.622%-- even *higher* than the 9.575% ROE authorized for PNM in its most recent (2016) GRC. Exhibit A.

The foregoing facts do not show or even suggest that, due to a prior decline in average "usage per customer" by PNM's residential or small power customers, PNM will not be able to earn sufficient revenues or a sufficient ROE prior to the Commission's resolution of PNM's next GRC to ensure that it will be able to continue to provide its customers with adequate service. To the contrary, to the extent these facts show or suggest anything, they indicate that, considering the effects of the current pandemic on power usage by PNM's residential and small power customers as of April of this year, PNM's revenues from those two rate classes combined are

likely to be greater than normal (historic), and PNM may well continue to earn a ROE greater than the 9.575% ROE authorized by the Commission in PNM's 2016 GRC prior to resolution of PNM's next GRC.

The Commission will not know PNM's reported actual ROE for 2020 until about April of 2021 in accordance with the ROE reporting requirements in its *Final Order* in Case No. 12-00007-UT. If PNM's actual ROE for 2020 exceeds the 9.575% ROE authorized by the Commission in PNM's 2016 GRC, as it did in 2019, the Commission has no authority to reduce PNM's authorized revenues in PNM's next GRC based on that information because that would be a form of prohibited "retroactive" ratemaking. As noted earlier, the Commission has pointed out that its policy against "piecemeal" ratemaking is based on the requirement in the PUA that it adequately balance the interests of public utility ratepayers and investors after reviewing a utility's "complete cost of service," which means that, "just as it would be unfair to ratepayers to allow a utility to selectively pick a few expense items, which may have increased over what had previously been allowed in rates, to justify a rate increase…[l]ikewise, it would be unfair to the utility to use selective items, that may have decreased from what was previously allowed, to lower rates."[63]

"Changes in Electricity Usage and Difficult to Predict Post-Pandemic Usage"

PNM asserts that changes in electricity usage by a public utility's customers, or class of customers, after the Commission sets rates for a utility in a GRC are extraordinary, or as PNM prefers to call such changes, "exceptional." To the contrary, such changes are common because

they depend on numerous factors, including the level of customer participation in Commission-approved utility EE or load management programs, energy conservation actions undertaken by customers independently of such programs (e.g., in response to a utility's increased rates), customer investments in customer premise-sited DG, changes in weather and changes in economic conditions. Therefore, as PNM witness Chan acknowledges, their effects on PNM's overall revenues are "difficult to predict."[64]

Moreover, as the Commission previously pointed out, one of the regulatory mechanisms available to public utilities like PNM to help mitigate the effects of such changing circumstances between GRCs is their ability to request approval of rate increases based on a "Future Test Year" period and sales forecasts, rather than on an historic "Test Year" period, as provided in Commission Rule 17.1.3 NMAC.[65] In fact, as noted earlier, PNM relied on Future Test Year data pursuant to that Rule as the bases for its proposed rate increases in both its 2015 GRC (No. 15-00261-UT) and its most recent 2016 GRC, (No. 16-00276-UT).

None of PNM's witness explain why it is any more difficult or "exceptional" for it (or the Commission) to predict its residential and small power customers' or other customers' "post-pandemic usage" than their usage during the current pandemic or, for that matter, at any other time when there is no similar pandemic or other circumstances affecting those customers' power usage. Accepted as true for the purposes of this Motion, such predictive difficulty regarding changes in customers' electric power usage do not lawfully justify an exception from the legal

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[63] Case No. 2361, 9-30-91 *Recommended Decision to Dismiss Proceeding* at 24-25, adopted by 2-6-92 *Final Order Approving Recommended Decision to Dismiss Proceeding*.
[64] Chan Direct at 12.

requirements of NMSA § 62-8-7 and Commission Rule 530 and the Commission's long-standing policy against "single issue" and "piecemeal" ratemaking.

PNM's Decision to "Forego" (Delay) Filing a "Full-Blown Rate Case"

As noted earlier, PNM states that, due to current COVID-19 pandemic and its effects on its customers and the New Mexico economy, it decided to "forego" filing a "full-blown" general rate case at this time "that would have proposed a large increase in revenue requirement," and now plans to file its next GRC "in mid-2021," within six months of when its proposed Rider would become effective.[66] As also noted earlier, inventing a novel and unprecedented "balancing of ratepayer and investor interests" argument, PNM asserts that, in light of that decision, its "decoupling proposal represents the best compromise we can offer to meet the balance required by public utility law between customers and investors."[67]

Decisions by public utilities to delay filing general rate cases may be based on a variety of factors. For example, even if some of a utility's costs of service recovered through rates approved by the Commission in its last GRC have increased, other elements of its cost of service may have decreased, allowing the utility to continue earning sufficient revenues and a sufficient ROE to attract investors and provide adequate service to its customers without filing a new GRC. Another example, is that in PNM's next GRC cost disallowances for its alleged imprudence for the life extension of and further investment in Four Corners Power Plant (FCPP) will be

[65] *See, e.g.*, Case No. 15-00261-UT, Final Order, pp. 83-84 (¶ 242).
[66] Fenton Direct at 12.
[67] Fenton Direct at 11.

addressed, and PNM may wish to avoid *that* hornet's nest.[68] As noted by the Commission in its *Final Order* in Case No. 2058 (at 5) and the U.S. Supreme Court in *Bluefield*, discussed earlier, "[a] rate of return may be reasonable at one time, and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally."

Accepting PNM's assertion that its decision to not file a GRC at this time was based on the effects of the current pandemic and therefore constitutes an "exceptional circumstance," that assertion also cannot lawfully justify an exception from the burden of proof and "complete application" requirements in NMSA § 62-8-7.A-C, the "minimum data" filing requirements in Commission Rule 530, the Commission balancing of interests requirement in both the PUA and the EUEA, or the Commission's long-standing policy against piecemeal ratemaking because PNM's Petition is not supported by information necessary to comply with those laws and that Commission policy. Moreover, PNM's Petition and Direct Testimony do not address the potential effects of two other extraordinary or "exceptional" circumstances that have occurred since the Commission issued its final orders in PNM's 2015 and 2016 GRCs establishing new PNM rates and authorizing a 9.575% ROE for PNM: passage of the ETA in 2019 and the Commission's issuance of its *Final Order on Request for Financing Order* in Case No. 19-00018-UT pursuant to the ETA on April 1, 2020.

Sections 4 through 22 of the ETA (NMSA §§ 62-18-4 to 62-18-22 (2019)) authorized PNM to apply to the Commission for a "financing order" that would provide PNM and its investors with

[68] 16-00276-UT, *Revised Order Partially Adopting Certification of Stipulation,* January 10, 2018, p. 23, ¶65, ("a finding on the issue of PNM's prudence in its continued participation and investment in FCPP [is deferred] until PNM's next rate filing.").

guaranteed recovery of all of PNM's undepreciated investments in coal-fired plants that have become uneconomic (*i.e.*, the San Juan Generating Station, "SJGS") or may become uneconomic prior to the end of their booked lives (*i.e.*, Four Corners Power Plant, "FCPP"), as well as "up to $30 million" per facility for plant decommissioning and coal mine reclamation costs through a "non-bypassable charge" to PNM's retail service customers. The Commission's April 1, 2020 *Final Order on Request for Financing Order* in Case No. 19-00018-UT granted PNM a Financing Order pursuant to the ETA that, in fact, provided PNM and its investors with guaranteed recovery of all of PNM's undepreciated investments in the SJGS as of the June 30, 2022 date of PNM's planned abandonment of that coal-fired plant and its claimed plant decommissioning and coal mine reclamation costs up to $30 million through a "non-bypassable charge" to its retail service customers. The ETA and that Order thereby substantially reduced the investment risks of PNM's existing and future investors compared to the risks PNM investors were exposed to when the Commission authorized a 9.575% ROE for PNM in PNM's 2015 and 2016 GRCs.

Addressing the balancing of PNM ratepayers' and investors' interests and the assertion by PNM witness Darnell in Case No. 19-00018-UT that "securitization will require the Company to forgo its profit on its unrecovered investment in the SJGS," Andrea Crane, the Attorney General's witness, explained in her Direct Testimony in that case:

> Mr. Darnell's statement is incorrect. With securitization, shareholders will recover 100% of their investment in the SJGS at the time of abandonment and will benefit from a massive cash infusion to the utility when the Energy Transition Bonds are issued. This cash infusion will benefit shareholders in two ways. First, it is extremely likely that PNM will reinvest these cash proceeds in other utility plant. In fact, PNM has proposed a portfolio of replacement assets that will be addressed in NMPRC Case No. 19-00195-UT. Therefore,

> shareholders are not foregoing profit, they are simply transferring their investment from a coal generating facility to other generating facilities (and/or to other plant investments). Shareholders will continue to profit from the equity return on these alternative investments.
>
> Second, not only will shareholders continue to earn a return on this investment, but the alternative investment is likely to be of lower risk than SJGS. Currently, shareholders are recouping the undepreciated investment in the SJGS through 2053. However, the continued operation of the plant is uneconomic, as addressed in the testimony of Mr. Phillips at page 14 of his testimony where he states that "...new stricter emission restrictions that apply should the plant continue to operate past January 1, 2023" are likely to increase the cost of continued operations of the coal plant significantly, even "prohibitively." Given the uneconomic operation of SJGS, the market value of the facility is effectively zero. Therefore, the abandonment of the SJGS, with full recovery of its costs under the ETA, *is an enormous reduction in risk to shareholders*. *Not only does the ETA assure shareholders that they will recover 100% of their investment in the SJGS, but recovery of that investment is accelerated from 2053 to 2022, at which time the Company can reinvest those proceeds in lower risk facilities, on which shareholders will continue to have an opportunity to earn their full authorized return on equity*.[69]

PNM already has indicated publicly that it plans to abandon its investment in the FCPP by 2031 when the existing coal supply agreement for that plant expires, prior to the end of the existing book life of that coal-fired plant, because PNM has determined that resource will not be cost-effective (economic) for PNM's customers beyond that point in time.[70] Although PNM has not yet requested Commission authority to abandon service from the FCPP, as noted earlier, the ETA provides that, upon petition by PNM, the Commission is *required* to grant PNM *another* financing order that guarantees it and its investors recovery of all of its undepreciated investments in the FCPP as of the date of PNM's abandonment of that coal-fired plant and its claimed plant decommissioning and coal mine reclamation costs up to $30 million through another "non-

[69] Case No. 19-0018-UT, 10-18-19 Crane Direct at 26-27 (Emphasis supplied). *See also* Case No. 19-00195-UT, 7-1-19 Fallgren Direct at 68 (explaining that Commission approval of PNM's proposed Arroyo and Jicarilla Solar Purchased Power and Energy Storage Agreements as resources to replace the SJGS will have "no material adverse impact on PNM's financials.").

bypassable charge" to its retail service customers if PNM abandons that plant "prior to January 1, 2032."[71] That 2019 statutory change in the ETA further reduces risks to PNM investors compared to the risks they were exposed to when PNM's current 9.575% ROE was authorized by the Commission in PNM's 2015 and 2016 GRCs.

In addition, Section 31 C of the ETA amended the Renewable Energy Act, § 62-16-6.C (2019), to provide:

> If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

Thus, for example, if in the future, the Commission requires that PNM abandon any of the utility-owned gas-fired or nuclear generation plants for which it was granted a CCN prior to 2015 in order to ensure that PNM meets the renewable portfolio standard requirements or "zero carbon" standard established in the ETA, *or for any other reason*, prior to the end of the book life of those resources, PNM and its investors are statutorily guaranteed a right to full recovery of "any undepreciated investments or decommissioning costs associated with" those plants. That additional 2019 change in law in the ETA *further* reduces risks to PNM investors compared to the risks they were exposed to when PNM's current 9.575% ROE was authorized by the Commission in PNM's 2015 and 2016 GRCs.

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[70] Case No. 17-00174-UT, PNM 2017 Integrated Resource Plan at 1.
[71] *See* ETA, NMSA §§ 62-18-2.S(4) (2019) (definition of "qualifying generating facility") and 62-18-4 and 5 (2019) (addressing financing orders).

PNM witness Azar acknowledges that PNM's proposed Rider would reduce the "financial risk" to PNM investors "[b]ecause decoupling removes the uncertainty surrounding the amount of revenue that will be received…."[72] Noting that NMSA § 62-17-5.F(4) (2019) provides that the Commission "shall…not reduce a utility's return on equity based on approval of a disincentive removal mechanism or profit incentives pursuant to the Efficient Use of Energy Act," Ms. Azar *speculates* that "[t]he fact that PNM will continue to hold risk could explain why the Legislature" enacted that provision because it "apparently understood that PNM's investors would continue to hold risk even after a decoupling mechanism was adopted and needed to be compensated for that risk."[73]

In addition to the purely speculative nature of that testimony by Ms. Azar, nothing in NMSA § 62-17-5.F(4) (2019) or any other provision in the EUEA *or in the ETA* provides that the Commission may not consider the risk reduction effects of the foregoing provisions *in the ETA* on a PNM's ROE when carrying out its balancing of interests responsibility regarding the removal of regulatory disincentives for public utility expenditures on energy efficiency and load management measures in accordance with NMSA §§ 62-17-3 and 62-17-5.F of the EUEA. It is indisputable that the Commission is unable to assess the extent to which the foregoing provisions in the ETA should affect its determination of PNM's authorized ROE *in a stand-alone proceeding such as this case, outside a PNM GRC*. This is another example of why the Commission lacks the full current cost of service information for PNM necessary for it to adequately balance the interests of PNM's ratepayers and investors regarding PNM's proposed Rider, as required by the EUEA.

[72] Azar Direct at 16.

For these reasons, the extent to which PNM's filing of a "full-blown rate case" at this time would have resulted in a rate increase for PNM's residential, small power and other customers is not supported by any evidence or knowable by the Commission in this stand-alone proceeding and is purely speculative. For the same reasons, PNM's decision to delay filing its next GRC cannot lawfully justify an exception to the rate change requirements in NMSA § 62-8-7, the Commission's "minimum data" filing requirements in Rule 530, the Commission's balancing of interests requirement in the PUA or the EUEA, or the Commission's long-standing policy against piecemeal ratemaking for PNM's Petition and proposed Rider.

"A New Law"; NMSA § 62-17-5.F(2) (2019)

Applying established rules of statutory construction, the plain meaning of the language in the 2019 amendments to the EUEA in NMSA § 62-17-5.F(2) (2019) also does not lawfully justify an exception to the rate change requirements in NMSA § 62-8-7, the Commission's "minimum data" filing requirements in Rule 530, the Commission's balancing of interests requirement in the PUA or the EUEA, or the Commission's long-standing policy against piecemeal ratemaking for PNM's Petition and proposed Rider. As noted earlier, both NMSA §§ 62-7-3 and 62-17-5.F(1) (2019) require that any rate mechanism the Commission approves to "identify and remove regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures" must be one that "balances the public interest, consumers' interest and investors' interests." As also noted earlier, PNM witness Fenton acknowledges that continuing Commission balancing of interests requirement in the EUEA, as well as in the PUA. As a matter of

[73] Azar Direct at 17.

law, the Commission cannot satisfy that balancing of interests requirement in a stand-alone proceeding such as this, outside a PNM GRC where PNM has complied with NMSA § 62-8-7 and the "minimum data" filing requirements in Commission Rule 530.

No language in NMSA § 62-17-5.F(2) (2019) provides otherwise, relieving the Commission of that balancing of interests requirement with respect to PNM's Proposed Rider. Moreover, applying established rules of statutory construction, PNM's reliance on NMSA § 62-17-5.F(2) (2019) as authority for the Commission to approve the broad "full decoupling" mechanism in its proposed Rider outside a PNM GRC is plainly misplaced.

As discussed earlier, PNM interprets § 62-17-5.F(2) (2019) to authorize it to seek and obtain Commission approval, *outside a PNM GRC,* of the "full decoupling" mechanism in its proposed Rider that would guarantee it recovery from its residential and small power customers of "revenue per customer approved by the commission in a general rate case proceeding" that PNM does not recover *for any reason* under its existing (and future) base rates, including revenues not recovered due to those customers' energy conservation decisions independent of any Commission-approved PNM EE or load management programs, their installation of DG, weather or economic conditions. Thus, the scope of PNM's proposed Revenue Decoupling Rider is not limited to and is *much broader* than removing "regulatory disincentives or barriers for public utility expenditures on energy and load management measures," as provided in NMSA § 62-17-5.F(1) and the second sentence of § 62-17-5.F(2) which provides: "Regulatory disincentives removed through a rate adjustment mechanism shall be separately calculated for the rate class or classes to which the mechanism applies and collected or refunded by the utility through a separately identified rider that

shall not be used to collect *commission-approved energy efficiency and load management program costs and incentives*." (Emphasis supplied). The other alleged "regulatory disincentives" that would be addressed and removed by PNM's proposed Rider have no relationship at all to such utility energy efficiency or load management measures or programs or to the stated policy of the EUEA in NMSA § 62-17-3, quoted earlier, expressly referencing "energy efficiency and load management resources."

Statutes are to be interpreted in order to facilitate their operation and the achievement of their goals. *See, e.g., Miller v. N.M. Dep't. of Transportation*, 106 N.M. 253. 255, 741 P.2d 1374 (1987); NMSA 1978, § 12-2A-18 ("A statute or rule is construed, if possible, to…give effect to its objective and purpose."). Each part of a statute should be construed in connection with every other part to produce a harmonious whole. *See, e.g., State v. Blackhurst*, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (1988). All of the provisions of a statute, together with other statutes in *pari materia*, must be read together to ascertain legislative intent. *See, e.g., Allen v. McClellan*, 1965-NMSC-094, 75 N.M. 400, 405 P.2d 405, 406-07, *overruled on other grounds, N.M. Livestock Bd. v. Dose*, 1980-NMSC-022, 94 N.M. 68, 607 P.2d 606 ("Particular words, phrases and provisions must be construed with reference to the leading idea or purpose derived from the whole statute."). It is presumed that the Legislature is informed as to existing law. *See, e.g., GTE Southwest v. Tax. & Rev. Dep't.*, 113, N.M. 610, 615, 830 P.2d 162, 167 (1992), *citing Quintana v. New Mexico Dep't. of Corrections*, 100 N.M. 224, 668 P.2d 1101 (1983). If any conflict between a general statute and a more specific statute exists, the more specific statute prevails unless it appears that the legislature intended to make the general statute controlling. *See, e.g., Pipkin v. Daniel,* 2009-NMCA-006, ¶ 5,

199 P.3d 301, 301; *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23. Moreover, statutory language should not be construed in a manner that could cause an unreasonable, absurd or unjust result. *See, e.g., Las Cruces v. Garcia*, *supra*, 102 N.M. 25, 26-27.

Applying the foregoing rules of statutory construction, the phrase "remove regulatory disincentives" in NMSA § 62-17-5.F(2) must be interpreted to refer and be limited to "regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management measures" as referred to in that subsection, in § 62-17-5.F(1), the header to § 62-17-5 and the "policy" of the EUEA stated in § 62-17-3, quoted earlier. Otherwise, that language in § 62-17-5.F(2) could be interpreted by PNM and other public utilities to require that the Commission approve any rate adjustment mechanism proposed by a public utility to ensure that the utility will recover all of the "revenue per customer approved by the commission in a general rate case," for any of the utility's rate classes, regardless of the reasons for any change in such "revenue per customer approved by the commission in a general rate case." Such a result of that interpretation of the first sentence in § 62-17-5.F(2) is unreasonable, absurd and unjust because it is contrary to the Commission balancing of interests requirement in the PUA and EUEA and the well-established ratemaking principle, discussed earlier, that public utility rates approved by a regulatory agency provide a utility with a fair opportunity, *but not a guarantee*, that it will be able to recover its authorized revenues.

In addition, PNM's assertion that § 62-17-5.F(2) authorizes it to propose, and requires the Commission to approve, a "full decoupling" rate adjustment mechanism that ensures it can recover from its residential and small power customers any "revenue per customer approved by the

commission in a general rate case" that it is unable to recover through its existing (and future) base rates due to those customers' installation of DG conflicts with NMSA § 62-13-13.2.A. That statute, enacted prior to the 2019 amendments to the EUEA, specifically addresses a public utility's right to request "interconnected customer rate riders" applicable to customers that install DG. As noted earlier, that statute provides:

> Upon request of an investor-owned utility in any general rate case, the commission shall approve interconnected customer rate riders to recover the costs of ancillary and standby services pursuant to this section only for new interconnected customers, except that a utility may seek approval of interconnected customer rate riders in the utility's renewable energy procurement plan filing before January 1, 2011, to be in effect until the conclusion of the utility's next general rate case. *In establishing interconnected customer rate riders, the commission shall assure that costs to be recovered through the rate riders are not duplicative of costs to be recovered in underlying rates and shall give due consideration to the reasonably determinable embedded and incremental costs of the utility to serve new interconnected customers and the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect. The benefits to the utility system, as applicable, include avoided renewable energy certificate procurement costs, reduced capital investment costs resulting from the avoidance or deferral of capital expenditures, reduced energy and capacity costs and line loss reductions*. (Emphasis supplied).

NMSA § 62-13-13.D provides"

As used in this section:

(1) "ancillary and standby services" means services that are essential to maintain electric system reliability and are required by or are a consequence of interconnecting distributed generation facilities to a utility's system and may include, among other services, regulation and frequency response, regulation and voltage support, spinning reserves and supplemental reserves;

(2) "interconnected customer" means a utility customer that is also interconnected to non-utility distributed generation facilities; and

(3) "new interconnected customer" means a customer that became an interconnected customer after December 31, 2010 or a customer whose renewable energy certificate purchase agreement entered into prior to January 1, 2011 is no longer in effect.

The foregoing statutory provisions address a specific public utility cost recovery subject that is *distinct* from the subject of a public utility's ability to implement a rate adjustment mechanism to remove regulatory disincentives or barriers for its expenditures on energy efficiency and load management measures: a utility's ability to seek and obtain a rate rider that allows it to recover its fixed costs for "ancillary and standby services" provided to customers that install DG after 2010 or whose renewable energy certificate ("REC") purchase agreement with a utility entered into prior to 2011 is no longer in effect. As explained by PNM and noted earlier, "f]ixed costs in the context of PNM's decoupling proposal are the approved revenue requirements associated with customer-related and demand-related functions, which do not vary as a result of volumetric energy sales (kWh)," and include the ROE authorized by the Commission in a PNM GRC.[74]

As provided in NMSA § 62-13-13.2.A and emphasized above, the Commission must "assure" that, when approving any such "interconnected customer" rate riders applicable to a public utility's DG customers, it gives "due consideration" not only to "the reasonably determinable embedded and incremental *costs* of the utility to serve new interconnected customers" but *also* to "*the reasonably determinable benefits to the utility system provided by new interconnected customers during each three-year period after which new interconnected customer rate riders go into effect*." (Emphasis supplied). Moreover, that statute makes clear that "the benefits to the utility system" provided by such DG customers that the Commission must give "due consideration" to "include avoided renewable energy certificate procurement costs, reduced capital investment

[74] Chan Direct at 7.

costs resulting from the avoidance or deferral of capital expenditures, reduced energy and capacity costs and line loss reductions."[75] PNM's Petition conflicts with those statutory provisions because Commission approval of the rate adjustment mechanism in PNM's proposed "full decoupling" Rider would allow PNM to recover additional revenues from its residential and small power customers with DG *without* giving "due consideration," or any consideration at all, to the "reasonably determinable benefits to the utility system" provided by those DG customers.

For this reason, PNM's attempt to circumvent the statutory requirements in NMSA § 62-13-13.2.A through its Petition and proposed "full decoupling" rate adjustment mechanism would be patently unlawful and deficient in form *even if proposed in a PNM GRC*. This attempt by PNM to circumvent those statutory requirements in this stand-alone proceeding, outside a PNM GRC, is even more patently unlawful and deficient in form due to its "piecemeal ratemaking" deficiencies.

PNM's assertion that NMSA § 62-8-1 of the PUA and the 2019 amendments to the EUEA require or authorize the Commission to approve a "full decoupling" rider that allows it to fully recover "fixed cost" revenues from its residential and small power DG customers also is inconsistent with one of the stated objectives of Commission Rule 570 and the Commission's net metering rules in that Rule for public utility customers installing DG (referred to therein as "qualifying facilities") with a design capacity up to 10 kW, implemented prior to the effective date of those EUEA amendments. 17.9.570.6.B, 17.9.570.10 and 17.9.570.14 NMAC.

[75] For example, as provided in the Renewable Energy Act, NMSA § 62-16-5.B(1), to the extent PNM customers with DG do not get paid for RECs associated with the production of energy from their DG systems under any PNM REC purchase programs, PNM obtains and owns those RECs at no cost, which it can use (retire) to satisfy its renewable portfolio standard requirements

17.9.570.6.B NMAC provides that the net metering provisions in 17.9.570.14 NMAC are "intended to simplify the metering procedures for qualifying facilities up to and including 10 kW and encourage the use of small-scale, customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico." PNM's proposed "full decoupling" Rider would discourage the installation of such small-scale DG by PNM's residential and small power customers and limit its benefits, contrary to Commission Rule 570 by effectively eliminating some of the net metering benefits provided by that Rule. PNM's proposed "full decoupling" Rider also would modify PNM's existing (22^{d} Revised) Rate Nos. 1.A and 1.B (applicable to residential customers) and its existing (23rd Revised) Rate Nos. 2.A and 2.B (applicable to small power customers) approved in PNM's most recent (2016) GRC, and PNM's existing (47th revised) Rate No. 12 (addressing cogeneration and small power production facilities), all of which tariffs incorporate by reference and implement the benefits of the net metering rules in Commission Rule 570.[76]

Commission's "Adoption" of the Revised Stipulation in Case No. 16-00276-UT

As noted earlier, the most important of the "exceptional circumstances" relied on PNM witness Azar is the Commission's adoption of the Revised Stipulation in PNM's most recent GRC, Case No. 16-00276-UT, "in which PNM agreed to submit a stand-alone mechanism to

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under that Act, thereby avoiding REC procurement costs to satisfy those requirements that otherwise would be borne by its customers generally.

[76] If the Commission approves PNM's proposed "full decoupling" Rider for installation of small-scale DG this could lead to an absurd result where PNM is double dipping and charging the same customer under Commission Rule 570 as well.

eliminate the regulatory disincentives to energy efficiency and load management."[77] A careful review of paragraph 26 of that Revised Stipulation, the Hearing Examiner's *Certification of Stipulation* and the Commission's *Revised Order Partially Adopting Certification of Stipulation* addressing that paragraph of that Revised Stipulation, however, demonstrates that, as a matter of law, the Commission's adoption of that Revised Stipulation cannot justify an exception from the legal (burden of proof, "complete application" and "minimum data" filing) requirements in NMSA § 62-8-7.A-C and Commission Rule 530, the balancing of interest requirements in the PUA and the EUEA and the Commission's long-standing policy against piecemeal ratemaking for PNM's Petition in this stand-alone proceeding.

First, quite clearly, paragraph 26 of that Revised Stipulation did not indicate any agreement by its signatories that PNM should be authorized by the Commission to *implement* any decoupling or other rate mechanism to remove disincentives for PNM to make expenditures on EE or load management programs *outside a PNM GRC*. Moreover, nothing in that paragraph indicated any agreement by its signatories that PNM should be authorized by the Commission to implement the sort of "full decoupling" mechanism proposed in PNM's Petition outside a PNM GRC, *or even in a subsequent PNM GRC*.

Paragraph 26 of that Revised Stipulation provided:

> PNM agrees to withdraw its proposed Original Rider No. 48, Lost Contribution to Fixed Cost Mechanism ("LCFC Mechanism") for the residential and small power rate schedules (Rate Nos. 1A and 1B, Rate Nos. 2.A and 2.B). The identification of regulatory disincentives and the appropriate means to remove regulatory disincentives pursuant to the Efficient Use of Energy Act ("EUEA") have remained in dispute among the parties in previous PNM cases, in Case Nos. 15-00261-UT and 10-00086-UT, and the Signatories are

[77] Azar Direct at 21, 23, relying on Fenton Direct at 5,10.

> not presently in agreement with regard to PNM's Original Rider No. 48, LCFC Mechanism. To that end, the Signatories agree that a new docket should be opened **for a hearing on EUEA disincentive identification and removal issues for PNM, the outcome of which would be implemented as part of PNM's next general rate case**. The Signatories agree that resolution of this issue within a new docket is timely and appropriate, **and that the deferred implementation of that resolution to PNM's next rate case** addresses the issues identified in the *Stipulation Order*. PNM shall file a petition to open this new docket within thirty (30) days after a Final Order in this case. (Emphasis in bold supplied).[78]

In their *Certification of Stipulation* (at 147) in Case No. 16-00276-UT, the Hearing Examiners cited testimony by a witness for signatories Western Resource Advocates ("WRA") and the Coalition for Clean Affordable Energy ("CCAE") confirming that the focus of paragraph 26 of the Revised Stipulation was limited to "addressing disincentives for energy efficiency." None of the testimony regarding paragraph 26 of the Revised Stipulation cited in that *Certification of Stipulation* addressed any agreement by its signatories to address the sort of "full decoupling" rate adjustment mechanism for *any* reason proposed by PNM in its Petition in this case.

To the contrary, that *Certification of Stipulation* (at 148) cited testimony by PNM witness Ortiz making it clear that the focus of paragraph 26 was on "ongoing disincentives associated with its EUEA-mandated energy efficiency programs" which, according to PNM witness Chan, "lowers PNM's energy sales forecast…more significantly than any other factor, including distributed generation." That *Certification of Stipulation* (at 149) also cited testimony by PNM witness Ortiz making it clear that the intent of the signatories regarding paragraph 26 of that Revised Stipulation was to attempt to "establish the mechanism to be used to address the disincentive *with implementation of that mechanism in PNM's next rate case*." (Emphasis supplied). Importantly,

[78] As stated on page 2 of that Revised Stipulation, the "Stipulation Order" referred to was the Hearing Examiner's May 12, 2017 *Order Rejecting Stipulation in Current Form* in Case No. 16-

that *Certification of Stipulation* (at 150) noted that signatories CCAE, WRA, the Renewable Energy Industry Association and the Sierra Club "acknowledge that the provision calling for the opening of a new disincentive docket does not commit the Commission to any particular treatment or action."

The Hearing Examiners wisely and presciently declined in their *Certification of Stipulation* (at 150) to recommend that the Commission "necessarily endorse at this time the process set forth in paragraph 26" of the Revised Stipulation, recommending that the Commission conclude: "Suffice it for now that the Commission acknowledges pursuant to paragraph 26, that parties with a particular interest in promoting energy efficiency have obtained PNM's commitment to address the matter [of] EUEA disincentives in a new docket."

As discussed in the Commission's January 10, 2018 *Revised Order Partially Adopting Certification of Stipulation* (at 30-31, ¶¶ 86-87) in Case No. 16-00276-UT, the Commission denied PNM's exception to the *Certification's* "rejection of the Stipulation's provision requiring a future proceeding to identify and remove regulatory disincentives in accordance with § 62-17-5(F)" of the EUEA, concluding, in pertinent part:

> …The Commission agrees with the Certification that there is no need for the Commission to endorse or require any particular process that the Signatories may determine to follow outside of that which the Commission has followed. Moreover, nothing about the denial of this exception in any way restricts the rights of the Signatories under the Revised Stipulation as the Certification makes no change to Paragraph 26.

Commission Rule 1.2.2.20.D NMAC addressing "Formal Stipulations" provides: "**Precedential effect:** Unless the commission explicitly provides otherwise in the order approving a stipulation, approval of a stipulation does not constitute commission approval of or precedent

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regarding any principle or issue in the proceeding." Consistent with that Rule, the Commission has a long-standing policy of not approving stipulations that are binding on future commissions. *See, e.g.,* Case No. 16-000276-UT, 5-12-17 *Order Rejecting Stipulation in Current Form* (at 7-8) and case cited there.

The foregoing record in Case No. 16-00276-UT and legal authorities make clear that PNM's Direct Testimony in support of its Petition mischaracterize both the substance and legal effect of the Commission's adoption of the Revised Stipulation (at ¶ 26) in that case and that, as a matter of law, such approval cannot justify an exception from the legal requirements in NMSA § 62-8-7.A-C and Commission Rule 530, the balancing of interest requirements in the PUA and the EUEA, and the Commission's long-standing policy against piecemeal ratemaking for PNM's Petition in this stand-alone proceeding.

PNM witness Fenton explains that, subsequent to the Commission's *Revised Order Partially Adopting Certification of Stipulation* in Case No. 16-00276-UT, PNM filed a petition in Case No. 18-00043-UT, prior to the effective dates of 2019 amendments to the EUEA, proposing "a LCFC mechanism, which was limited to recovery of fixed costs lost due to the implementation of Commission-approved energy efficiency and load management programs," and that after the Governor signed those amendments into law, the Commission granted a joint motion by PNM, CCAE and WRA to withdraw that petition based on their position that "the 2019 amendments to the Efficient Use of Energy Act superseded the LCFC mechanism and rendered it obsolete."[79]

[79] Fenton Direct at 13-14.

The record in Case No. 18-00043-UT reflects that PNM, CCAE and WRA asked the Commission to dismiss PNM's Petition in that case to conserve the Commission's resources and allow PNM to propose a new revenue decoupling that *complied* with the EUEA as amended in 2019.[80] As discussed earlier, however, nothing in the 2019 amendments to the EUEA require that the Commission consider the sort of "full decoupling" rate adjustment mechanism described in PNM's Petition and proposed Rider, or require that the Commission approve such a "full decoupling" rate adjustment mechanism in a stand-alone proceeding outside a PNM GRC.

CONCLUSION

For the foregoing reasons, accepting all facts plead in PNM's Petition and as a matter of law, PNM's Petition and proposed "full decoupling" Rider are patently unlawful and defective in form because they request that the Commission engage in (i) unlawful "retroactive" ratemaking beyond its authority; and (ii) "single issue" and "piecemeal" ratemaking outside a PNM general rate case, contrary to the burden of proof and rate change provisions in the PUA (NMSA §§ 62-8-7.A through C) and 62-17-5.F(2); and (iii) ignore the "minimum data" filing requirements in Commission Rule 530 (17.9.530 NMAC), and the Commission's balancing of interests requirement in the PUA and in the EUEA (NMSA §§ 62-17-3 and 62-17-5.F(1), and the Commission's long-standing policy against such ratemaking that is based on the foregoing statutes and regulation. For those reasons, as a matter of law and regardless of PNM's factual claims, the Commission may not grant PNM's Petition or approve its proposed Rider, and

[80] *See* Case No. 18-00043-UT, 5-7-19 Joint Motion to Dismiss and 6-7-19 *Order Recommending*

requiring parties to submit testimony and briefs addressing those claims would be an unjustified and enormous waste of their resources and the Commission's resources. New Energy Economy therefore respectfully requests that the Commission dismiss PNM's Petition with prejudice pursuant to 1.2.2.12.B NMAC and applicable law.

Respectfully submitted July 13, 2020.

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Dismissal of Proceeding, adopted by *Final Order*.