

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF)
AVANGRID, INC., AVANGRID NETWORKS, INC., NM)
GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY)
OF NEW MEXICO AND PNM RESOURCES, INC. FOR)
APPROVAL OF THE MERGER OF NM GREEN)
HOLDINGS, INC. WITH PNM RESOURCES, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND APPROVALS)
REQUIRED TO CONSUMMATE AND IMPLEMENT THIS)
TRANSACTION)**

Case No. 20-00222-UT

**REPLY OF NEW ENERGY ECONOMY TO JOINT APPLICANTS' RESPONSE TO
ORDER REGARDING AVANGRID SERVICE QUALITY ISSUES AND
MANAGEMENT AUDITS**

New Energy Economy (“NEE”), in accordance with the Hearing Examiner’s *Order Regarding Avangrid Service Quality Issues and Management Audits and Suspension of the Filing Date for Statements in Opposition to the May 7, 2021 Stipulation*, May 11, 2021, replies to the filing made by Joint Applicants on May 18, 2021.

Joint Applicants have requested to merge. Six factors should be considered in determining whether to approve a merger:

1. Whether the Proposed Transaction Provides Benefits to Utility Customers;
2. Whether Quality of Service Will be Diminished;
3. Whether the Transaction Will Result in the Improper Subsidization of Non-Utility Activities;
4. Whether There Are Adequate Protections Against Harm to Customers;
5. Qualifications and Financial Health of the Acquiring Entity; and

6. Whether Approval of the Proposed Transaction Would Preserve the Commission's Jurisdiction.¹

As the stipulation and other evidence before this Commission currently demonstrates the merger should be denied; Joint Applicants have failed to meet their burden of proof and the merger is not just, fair, reasonable or in the public interest.

Avangrid's and PNM's response to the Hearing Examiner's Order can be quickly summarized: It is their position that no one asked about the matters raised by the Hearing Examiner so Joint Applicants had no reason or duty to volunteer the information and, even if there was a reason or duty to do so, none of the events, penalties, audits, etc. is significant to the proposed transaction in light of, if we understand them correctly, to insist upon the "robust" regulation that is required back East. Besides, other monopoly utilities fail their customers and why in heavens should Avangrid be singled out for wrongdoing and be required to fess up to violations, penalties, enforcement actions, and audits?²

What did Joint Applicants drop on May 18th only as a result of this Commission's diligence and regulatory oversight?

First, what is painfully apparent is not just the stunning arrogance of Joint Applicants' responses, but their lack of remorse, regret or even superficial self-criticism. What emerges from their response, although unstated, is Avangrid's and PNM's unconcern regarding the human

¹ NM PRC Case No. 19-00234-UT, *Amended Certification of Stipulation*, February 12, 2020.

² *Joint Applicants' Response to Order Regarding Avangrid Service Quality issues and Management Audits (hereinafter "JA Response")*, 5/18/2021, Part 1: "Penalties related to storm restoration in New York are not unusual." At p. 2 of 26 "Again, penalties for compliance items are not unusual in New York." *Id.* "Management audits are a common tool used by regulators in the Northeast to review utility operations and management structure." *Id.*, p. 5 of 26 "PURA assessed penalties to Eversource at a level five times those assessed to UI (2.5% distribution revenue reduction for CL&P compared with 0.5% for UI, and 90 basis point ROE incentive reduction for CL&P compared with 15 basis point ROE incentive reduction for UI). *Id.*, p. 23 of 26.

costs of Avangrid’s performance in the North East, ranging from panicked customers who received electric bills for thousands of dollars of electricity they hadn’t used but who couldn’t reach a company representative even to discuss the matter³ to families foregoing a Christmas celebration because CMP sent them a disconnection notice and a demand for payment (even though the Maine Public Utilities Commission prohibited winter disconnections);⁴ or 183,000 low-income, mostly BIPOC ratepayers who were located in the NYSEG service territory,⁵ and the performance of the Company and other utilities fell short of what is required by law, regulation, rule, and/or Commission Order.⁶ In that case, Iberdrola/Avangrid/NYSEG paid a 1.5M fine (from shareholder funds) and admitted to three violations, that included failing to provide adequate service to those persons dependent on life support equipment; threatening their survival.⁷

Joint Applicants’ Response, reads as an antiseptic and cold-hearted document; if one didn’t know better, one might think that Avangrid was being penalized for failure to accurately

³ <https://www.pressherald.com/2019/06/23/cmp-misled-the-public-mismanaged-rollout-of-new-billing-system/> (“Faced with unusually high bills, some frustrated CMP customers took drastic action, such as moving all their cooking outside, even in winter, or spending their summers living in a small camper, or not putting up lights on their Christmas tree, or showering with a garden hose.”)

⁴ <https://mainebeacon.com/struggling-mainers-call-cmps-false-winter-disconnection-notices-a-fear-tactic/>

⁵ *Order Adopting Terms of Joint Proposal*, Case No. 20-E-0586 (1/21/2021) (Assessed \$1.5M in Penalties Against NYSEG for Violations Related to its Response to Tropical Storm Isaias in August 2020)

<http://documents.dps.ny.gov/search/Home/ViewDoc/Find?id=%7BC7ABD22B-56C3-4225-B3BE-67E9C2C93B2B%7D&ext=pdf>

NYSEG stated that it failed to contact 80% of its Life Support Equipment (LSE) dependent customers within 12 hours, only reaching 59%; they failed to contact 100% of LSE customers within 24 hours, reaching 99%; and they failed to respond to 80% of all in-coming customer calls with 90 seconds on August 4, 2020, only achieving a 71.3% response rate. It should be noted that the LSE violations are repeat ERP violations. (citations omitted.)

⁶ *Id.*, p.3.

⁷ *Id.*, p. 5.

account for products on a shelf not human lives left without access to what is now considered a basic human right: electricity to keep one's dialysis machine operating⁸ or death due to electricity disconnection,⁹ or because RG&E failed to abide by the Commission's Order regarding pole attachments which violated requirements to ensure worker safety and structures during installation, operation, and maintenance, for communication lines attaching to utility poles,¹⁰ and or that electricity took far too long to restore due to inadequate manpower (resulting in certain instances to no access to warm food or heat, disruptions in communications, or caused food spoilage and water contamination).¹¹

Regulators in New York, according to Joint Applicants, are serious, perhaps testy, and sensitive about tropical storms, their respective consequences, utility responsiveness, utility customer service, storm restoration and consequential human impacts. Should New Mexico regulators concern themselves with the "robust" regulation happening in other states?!¹²

Are Joint Applicants intimating that NM's regulatory oversight is not (as) robust therefore the need for transparency about these violations are not as important, should not be scrutinized and

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4386259/>

⁹ See Exhibit A, Avangrid Exhibit 4-55(d) page 7 of 10 (reads "CONFIDENTIAL", but after negotiation on 5/21/2021, Avangrid agreed to remove the confidential designation): Iberdrola USA, Inc. subsidiary RG&E paid \$350,000 to settle two fatalities that occurred after the customers were disconnected for non-payment of service.

¹⁰ [file:///Users/marielnanasi/Downloads/%7B63B86AD0-A418-4959-B347-729B53108BA3%7D%20\(1\).pdf](file:///Users/marielnanasi/Downloads/%7B63B86AD0-A418-4959-B347-729B53108BA3%7D%20(1).pdf)

¹¹ https://www.uinet.com/wps/portal/uinet/networksfooter/support/contactus/submit-claim!/ut/p/z0/fY69DoIwFEafxYHR3IpoWAKx8a8YozGIC6kEsAptaW-Njy8s6uT4nZycfMCBAVfiKRuBUivRDjvny2I-o6t1lJIs3kQLcjycaLbbn0NyIbAF_I8YCqGIKW2AG4G3qVS1BIZqhaJE74A5f-0kTstWyG605b3veQJ8VKoXAvNSVSGaW3yfBaTWGisbEOeN0RYD8imO7KdoHjyPXTJ5A6QyKyE!/

"In general, we are not responsible for damages that are caused by your use of electricity on your premises, or that are the result of forces beyond our control, such as unplanned service interruptions."

¹² JA Response, p.7, "[T]he New York State Public Service Commission (NYPSC) stated that it "operates a robust management and operations[.]"

because tropical storm(s) don't happen here they can be ignored? While New Mexicans don't experience tropic storms, an electricity outage can have far-reaching impacts. Imagine a similar situation in NM – wells don't work without electricity, heat waves air conditioning, heat mobile homes.

Significantly, the Hearing Examiner raised two areas of concern in his *Order Regarding Avangrid Service Quality Issues and Management Audits and Suspension of the Filing Date for Statements in Opposition to the May 7, 2021 Stipulation*: 1) the tens of millions of dollars in penalties and violations resulting from inadequate customer service issues; and 2) the failure to disclose these deficiencies (especially relative to the fact that these issues were included in the company's U.S. Securities and Exchange Commission ("SEC") filings), the obfuscation by the companies, and the consequential effect on witnesses' credibility. Unfortunately, these areas of concern remain outstanding and here's why:

A. International Misconduct and Failure to Apprise the PRC. "Avangrid is providing a list of *all* actions and measures that relate to state and federal energy regulatory compliance issues."¹³ (emphasis supplied.) While, Avangrid touts the value of transparency¹⁴ they omitted "ALL" International problems:

The PURA raised concerns regarding Iberdrola's corporate culture in light of information about behavior in business conducted in other countries. Specifically, within the past ten years, Iberdrola subsidiaries have been penalized or reached settlements in at least two instances of fraud and corruption. In addition, there were three market manipulation cases in Spain: one was annulled by the court of competent jurisdiction; another was closed without the imposition of any fine; and one case was pending as of the close of the proceeding. In one of these instances, Iberdrola entered into a negotiated settlement agreement with the World Bank acknowledging misconduct involving two power projects in Albania. Consequently, Iberdrola Ingenieria y Construccion, a subsidiary of Iberdrola, is currently included on the World Bank's list of debarred firms. Response to

¹³ JA Response, p. 2 of 26.

¹⁴ "Transparency is a cornerstone of Avangrid's governance and sustainability system, which is available in the Corporate Governance section of Avangrid's website (www.avangrid.com)." JA Response, p. 15 of 26.

Interrogatory RA-11. These past fraud and corruption instances do not support Iberdrola's managerial suitability and responsibility. ...

The breadth and depth of Iberdrola's business interests pose a significant risk to the citizens of Connecticut. Iberdrola's strategic ambitions are much greater than just being a regulated utility service provider in Connecticut....

Consequently, additional reporting requirements other than those initially proposed in the Settlement Agreement are necessary and will be ordered below. These additional reporting requirements, along with the commitments contained within the Settlement Agreement, are necessary in order for the Authority to find the scale tips, in favor of finding that Iberdrola and its affiliates possess the requisite managerial suitability and responsibility to grant regulatory approval of the Proposed Transaction.

Docket No. 15-07-38, State of Connecticut, Joint Application of Iberdrola, S.A., Iberdrola USA, Inc. Iberdrola USA Networks, Inc. Green Merger Sub, Inc. and UIL Holdings Corporation for Approval of a Change of Control, December 9, 2015, pp. 15-16, attached and incorporated herein, as Exhibit **A**.

Joint Applicants responded to New Energy Economy's 12th ...

Iberdrola's strategic ambitions here in New Mexico reach much farther than the rather low financial sights of PNM (and its relatively picayune customer base "expansion"); repeatedly,¹⁵ Iberdrola/Avangrid tout the economic advantage of the PNMR/PNM acquisition as a means to create long-term growth, that will produce value for investors, and promise expanded financial opportunities to the south in Mexico and to the west in Arizona and California. NEE has probed this through discovery, repeatedly, but Iberdrola/Avangrid decline to answer or produce documents relative to substantiating this promise.¹⁶

Yet, this was exactly the motivation and pursuit in Maine. Very similarly, Iberdrola/Avangrid's acquisition of Central Maine Power, wasn't and couldn't be the reason for this energy giant's interest. And very quickly after the merger there, Iberdrola/Avangrid enacted

¹⁵ including in CONFIDENTIAL PNM Exhibit NEE 4-11

¹⁶ See, ?

its strategic purpose: transmission from Quebec to the load center in Massachusetts, through Maine. See Exhibit ??

Add here

B. Obfuscation, Downplaying Harm, and Concerning Extra-Legal Business Practices

(1) Obfuscation: Incomplete Answers to Discovery Propounded by NEE and NMAG. The Commission’s discovery policy favors prompt and complete disclosure and exchange of information that promotes broad disclosure of information.¹⁷ Evidence is relevant if it has “*any tendency* to make a fact more or less probable, and that fact is of consequence in determining the action.”¹⁸ Yet, this is what Avangrid answered to NEE’s discovery *before* the Hearing Examiner’s May 11th Order:

NEE INTERROGATORY 9-14: ROBERT D. KUMP

IS IT TRUE THAT IN DECEMBER 2019 THAT AVANGRID AGREED TO PAY \$450,000 IN PENALTIES TO THE FEDERAL ENERGY REGULATORY COMMISSION AFTER ADMITTING TO SIX VIOLATIONS FOR TRANSMISSION OPERATIONS RELIABILITY STANDARDS AT THREE OF ITS SUBSIDIARIES: CENTRAL MAINE POWER, NEW YORK STATE ELECTRIC AND GAS, AND ROCHESTER GAS AND ELECTRIC? PLEASE PROVIDE INFORMATION ABOUT THE SIX VIOLATIONS, INCLUDING SPECIFICS ABOUT MANAGEMENT OVERSIGHT AND SUFFICIENT TRAINING, WHAT ACTIONS AVANGRID IMPLEMENTED, IF ANY, TO PREVENT THESE RISKS GOING FORWARD AND IF THE REMEDIATION WAS SUCCESSFUL.

RESPONSE:

¹⁷ Rule 1.2.2.25(A) NMAC; *Pincheira v. Allstate Ins. Co.*, 2008-NMSC-049, 190 P.3d 322, 328 (the purpose of our discovery rules is to allow liberal pretrial discovery, such that the trial itself is “a fair contest with the basic issues and facts disclosed to the fullest practicable extent”).

¹⁸ Rule 11-401 NMRA (emphasis added).

No. To the extent this question requests information about a North American Electric Reliability Corporation (“NERC”) violation and Northeast Power Coordination Council (NPCC) settlement, descriptions are provided below:

NYSEG and RG&E use the same Energy Management System (EMS) that contains a Transmission Network Analysis (TNA) tool that the registered entities used to perform operator- initiated studies and perform the Real-time Contingency Analysis. On November 27, 2017, a server failed which affected the TNA, and a failover to a backup server was unsuccessful. As a result, neither registered entity was aware that it was unable to perform a Real-time Assessment using TNA because there were no alarms that alerted the System Operator of the loss of the TNA. The System Operator eventually discovered the loss of Realtime Assessment capabilities. By the time NYSEG and RG&E notified NYISO (New York Independent System Operator, the Reliability Coordinator (RC)), the TNA capabilities had returned.

As a result of these events, on October 10, 2018, and on November 14, 2018, NYSEG and RGE each submitted to NERC a self-report of violation of TOP-001-3, R9, and a self-report of violation TOP-001-3, R13.

CMP encountered similar violations as NYSEG and RG&E in an incident that occurred on January 11, 2019. A data entry error interrupted connectivity and resulted in the failure of CMP’s EMS monitoring and assessment capabilities. The System Operator immediately noticed the failure and communicated it to both a supervisor and the EMS technicians but did not notify the RC as required by the Reliability Standard. By the time CMP notified its RC, ISO New England, the monitoring and assessment capabilities had returned. As a result, on January 24, 2019, CMP submitted a self-report of violation of TOP-001-4 R9, and a self-report of violation of TOP-001- 4 R13.

These 6 violations (2 violations each for NYSEG and RGE for one event and two for CMP) were included in a Settlement Agreement entered into in June 2019 with the NPCC under which the companies agreed to pay \$450,000. A Notice of Penalty, along with the Settlement Agreement and the Self-reports was filed by NERC with FERC on November 26, 2019. According to the Settlement Agreement, in calculating the amount of the penalty, NPCC considered the following factors:

1. NPCC aggravated the penalty for the CMP violations because of the prior violations by NYSEG and RG&E that are resolved in the Settlement Agreement;
2. Avangrid had a documented Internal Compliance Program;
3. Avangrid was cooperative throughout the compliance enforcement process;
4. Avangrid accepted responsibility and admitted to these violations;
5. Avangrid agreed to settle these violations and penalty;
6. The violations posed a moderate risk to the reliability of the BPS;
7. There were no other mitigating or aggravating factors or extenuating circumstances that would affect the assessed penalty.

Below are additional details of the violations.

NYSEG/RGE

TOP-001-3 R9

NPCC determined that, during the event on November 27, 2019, NYSEG and RG&E did not notify NYISO of the unplanned outage of 30 minutes or more of monitoring and assessment capabilities. From the time the System operators of both NYSEG and RG&E were aware of the outage, it took 14 hours and 27 minutes to notify NYISO. By the time NYSEG and RG&E notified NYISO, the monitoring and assessment capabilities had returned. JA Exhibit NEE -14 include additional facts regarding the violation. The cause of this violation was lack of detective controls to identify a failure of the monitoring and assessment capabilities to operate, and a lack of effective management oversight including training.

TOP-001-3 R13

NPCC determined that, during the event on November 27, 2019, NYSEG and RG&E did not ensure that a Real-time Assessment was performed at least once every 30 minutes. Real-time Assessments were not performed for a total of 9 hours and 20 minutes. The cause of this violation was lack of detective controls to identify a failure of the monitoring and assessment capabilities to operate, and a lack of effective management oversight including training.

To mitigate this violation, NYSEG and RG&E

1. Issued interim email directives, temporary operating directives, and held meetings with all System Operators on specific actions required to be taken during the loss of monitoring and assessment capabilities and the loss of the ability to perform a Real-time Assessment (i.e. related to R9 and R13) before the official cycle training could be accomplished.
2. Installed a TNA Health Check Monitor on the New York EMS, which enhanced awareness of EMS health and RTA capability.
3. Added EMS alarms to prompt the System Operator to perform the RTA and notify NYISO when the SE/CA are inoperable.
4. Enhanced the notifications of EMS health check alarms to the EMS support group.
5. Amended the New York system operation written procedures to provide specific actions required to be taken during the loss of monitoring and assessment capabilities and the loss

of the ability to perform a Real-time Assessment (i.e. related to R9 and R13).

6. Amended the 2019 cycle training to train all System Operators on the enhanced procedures, enhanced alarms, and management expectations around actions required to be taken during the loss of monitoring and assessment capabilities and the loss of the ability to perform a

Real-time Assessment (i.e. related to R9 and R13).

7. Analyzed the methodology for staffing and assignment of responsibilities at the New York

Control Center. The analysis was performed to ensure that the responsibilities assigned to the System Operators allow them to remain focused on the transmission system during times of tool outages or loss of monitoring.

8. Developed staffing plan to hire six (6) new System Operators at the New York Control Center. The new hires will be added to ensure that there is one System Operator in the ECC focusing on the operation and security tasks of the bulk power system at all times while the other can attend to other tasks.

CMP

TOP-001-4 R9

NPCC determined that, during the event on January 11, 2019, CMP did not notify ISO New England of an unplanned outage of 30 minutes or more of its monitoring and assessment capabilities. By the time CMP notified ISO New England, the monitoring and assessment capabilities had returned after a loss of one hour and 17 minutes. The cause of this violation was lack of effective management oversight, including insufficient training.

TOP-001-4 R13

NPCC determined that, during the event on January 11, 2019, Avangrid did not ensure a Real-time Assessment was performed at least once every 30 minutes. During the event, a Real-time Assessment was not performed for a total of one hour and 17 minutes. The cause of this violation was lack of effective management oversight, including insufficient training.

To mitigate this violation, CMP

1. Issued interim email directives, temporary operating directives, and held meetings with all System Operators on specific actions required to be taken during the loss of monitoring

and assessment capabilities and the loss of the ability to perform a Real-time Assessment (i.e. related to R9 and R13) before the official cycle training could be accomplished.

2. Added an alarm on the GE XA-21 EMS to prompt the System Operator to notify ISONE that the SE/CA are inoperable.
3. Amended the Maine system operation written procedures to provide specific actions

required to be taken during the loss of monitoring and assessment capabilities and the loss

of the ability to perform a Real-time Assessment (i.e. related to R9 and R13).

4. Amended the 2019 cycle training to train all Maine System Operators on the enhanced procedures, enhanced alarms, and management expectations around actions required to be taken during the loss of monitoring and assessment capabilities and the loss of the ability

to perform a Real-time Assessment (i.e. related to R9 and R13).

5. Analyzed the methodology for staffing and assignment of responsibilities at the Maine

Control Center. The analysis was performed to ensure that the responsibilities assigned to the System Operators allow them to remain focused on the transmission system during times of tool outages or loss of monitoring.

6. Developed staffing plan to hire five (5) new System Operators at the Maine Control Center. The new hires were added to ensure that there is one System Operator in the ECC focusing on the operation and security tasks of the bulk power system at all times while the other can attend to other tasks.

And in response to this discovery Avangrid responded as follows:

NEE INTERROGATORY 4-55:
ROBERT D. KUMP

IDENTIFY ALL CURRENT OR PENDING INSTANCES OF NON-COMPLIANCE WITH ANY STATE, FEDERAL LAW OR COMMISSION RULE OR ORDER BY IBERDROLA, AVANGRID, OR ANY OF ITS AFFILIATES FOR WHICH THE COMPANY MAY BE LIABLE AND SUBJECT TO CIVIL OR CRIMINAL PENALTIES FOR THE LAST TEN YEARS.

RESPONSE:

Please see Avangrid Exhibit NEE 4-55.

On January 21, 2021, when Avangrid first answered, there was no NEE 4-55.

On January 28, 2021, Avangrid supplemented their answers, and is condensed for efficiency as follows:

CONFIDENTIAL NEE 4-55(a) Sup. (2014):

1. CMP “minor violations”
2. NYSEG “minor potential violation”
3. CMP sued for fire damages
4. MPUC docket No. 2011-262 re: smart meters, on 12/19/14 MPUC determined no credible threat
5. Misc. Litigation matters

CONFIDENTIAL NEE 4-55(b) Sup. (2016):

1. NYSEG - \$1,800
2. Avangrid - \$25,000 to Fish and Wildlife for wind farms “takes of Golden Eagles”
3. Maine - \$3,000 failure to adhere to state and federal rules
4. Misc. Litigation matters
5. Complaints with Maine Human Rights Commission

CONFIDENTIAL NEE 4-55(c) Sup. (2018)¹⁹:

¹⁹ Number of legal proceedings initiated AGAINST the Company during the financial year, whether or not resulted in a sanction, not related to the environment:

UI

Quiles v. UI - claims UI at fault in MV accident causing property damage

CNG

Merrimack Ins. V. CNG - claim for property damage as a result of frozen pipes and CNG's negligence

Nationwide Ins. v. CNG - alleges property damage as a result of frozen pipes caused by CNG negligence

Taylor v. CNG - alleges property damage as a result of frozen pipes caused by CNG negligence

NYSEG

Milford Academy v. NYSEG -- Prop damage when truck pulled line from school

Miller v. NYSEG -- tree trimming/removal complaint

Sears v. NYSEG -- claim for electrical surge causing fire

State Farm v. NYSEG -- motor vehicle accident

Wegman v. NYSEG -- property damage claim

NYCM Insurance v. NYSEG -- property damage claim from alleged power surge

Young v. NYSEG -- claim for breach of payment agreement

RG&E

Buechel v. RG&E - claim for slip and fall

Cernis v. RG&E - wrongful death from Motor Vehicle accident

Didas v. RG&E - construction worker fell on the job

Eaton v. RG&E - injury from tree limb falling on car

Palis v. RG&E - fire to building allegedly caused by contact with wire

1. CT – PURA - \$75,000 for failure to install split sleeves
2. CNG (\$10,575) for 5 call before you dig violations
3. SCG (\$14,700) for 9 call before you dig violations
4. CMP (\$75,000) for call before you dig violations
5. \$5,000 Community Dr. Augusta ME
6. \$1,500 Roundabout LN Cape Elizabeth ME
7. \$500 Center St Portland ME
8. \$1000 Crestview Dr Portland ME
9. \$5,000 Hunter Way Falmouth ME
10. \$1,000 Longmeadow Ln Cumberland ME
11. \$1,000 Main St Yarmouth ME
12. RGE has 20 active litigation matters pending at the end of 2018 1 complaint in 2018 (pending)
13. NYSEG has 19 active litigation matters pending at the end of 2018
14. CMP has 1 active litigation matter at the end of 2018
15. The UIL Companies have 11 active litigation matters pending at the end of 2018

CONFIDENTIAL NEE 4-55(d) Sup.(2013):

1. \$550 NYSEG cutting trees without permit
2. \$6,000 RGE fine imposed on contractor
3. “minor violations” with no monetary penalty
4. \$350,000 to settle “natural-cause fatalities occurred after the customers were disconnected for nonpayment of utility service”
5. MPUC docket No. 2011-262 re: smart meters
6. Misl. Litigation matters

CONFIDENTIAL NEE 4-55(e) Sup. (2015):

1. “minor violations” with no monetary penalty
2. Lawsuit against CMP sued for fire damages
3. MPUC docket No. 2011-262 re: smart meters

CONFIDENTIAL NEE 4-55(f) Sup. (2019):

1. \$9,750 UIL for violation of property transfer act
2. \$6,819 NYSEF OSHA violations
3. \$450,000 combined NYSEG/RGE and CMP for NERC Reporting Violations
4. \$30,000 RGE/NYSEG call before you dig violations
5. \$58,500 CMP call before you dig violations
6. \$149,500 SCG/CNG call before you dig violations
7. \$7,140 UIL re utility poles
8. \$25,00 BGC call before you dig violations
9. Misc. Litigation matters

CMP

Levesque v. CMP - Class action lawsuit regarding billing issues

10. RGE – discriminatory practices related to Ms. Brown, a customer who is \$37,000 in arrears

CONFIDENTIAL NEE 4-55(g) Sup. (2020):

1. \$33,500 ME call before you dig violations
2. \$32,400 CT call before you dig violations
3. \$60,000 MA call before you dig violations
4. \$10,000 NY call before you dig violations

CONFIDENTIAL NEE 4-55(h) Sup. (2020):

1. Litigation - PNE Energy Supply LLC v. Eversource Energy and Avangrid, Inc. – Class Action Regarding LDC Gas Transportation Service on Algonquin Gas Transmission (AGT) – no settlement listed

CONFIDENTIAL NEE 4-55(i) Sup. (2017):

1. NYSEG - \$1,800
2. Avangrid - \$25,000 to Fish and Wildlife for wind farms “takes of Golden Eagles”
3. \$57,000 UIL discharge permit violations
4. Maine (MNG) - \$3,000 failure to adhere to state and federal rules
5. \$125,000 CNG for 3 violations (1) failing to comply with gas deactivation procedures, (2) failure to comply with pipeline clearance requirements, (3) failure to qualify an employee for rectifier system
6. \$50,000 SCG failure to qualify third party contractor for inspection of joints in plastic pipes
7. \$7,500 RGE violation related to workplace injury
8. \$500 MNG damage prevention fine, failure to locate line
9. \$10,000 NYSEG call before you dig violations
10. \$45,000 CMP call before you dig violations
11. \$8,875 CNG call before you dig violations
12. \$6,735 SCG call before you dig violations
13. \$2,500 NYSEG call before you dig violations
14. \$55,000 CMP call before you dig violations
15. Misc. Litigation matters
16. Complaints with Maine Human Rights Commission
17. MNG: On June 2, 2017 the Trustee of the Parkview Liquidating Trust, filed a claim for \$30,908 for payments to MNG that occurred after Parkview Adventist Medical Center filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (Bankruptcy Code). MNG settled the case for \$8,000.
18. CMP: CMP paid \$240,000 in 2017 for the Shulam Salvage yard Consent and Administrative Settlement, New York Gas & Electric related to disposal in the 1970's at the Salvage yard, which is now an inactive hazardous waste disposal site. Future Remediation cost are estimated to be \$5 million.
19. UIL: Consent Order issued by CT DEEP to remediate the MGP property estimated at \$50 million over 10 yrs.

On May 21, 2021, Avangrid/Iberdrola agreed that NEE 4-55 (a-i) is no longer “confidential”.²⁰

While the above incidents are concerning, some of which have precipitated further inquiry, Joint Applicants tendered this one page in response to the Hearing Examiner’s Order:

JA Exhibit May 11 Order 1B
Page 1 of 3

| New York | | | |
|--------------------------------|---|--|---|
| Case and Utility | Topic | Type | Outcome |
| 2016; RG&E | RG&E Estimated Meter Reads | Negative Revenue Adjustment established in rate case | Missed Estimated Meter Reads metric - \$300,000 |
| 2017; RG&E | RG&E Estimated Meter Reads/Speed of Answer; RG&E Gas Safety/Records Metric | Negative Revenue Adjustment established in rate case | Missed Estimated Meter Reads/Speed of Answer metric - \$525,000 Missed Gas Safety Metric - \$544,000 |
| Case 17-E-0594; NYSEG and RG&E | 3/8/2017 Windstorm in Western NY | Order to Show Cause Proceeding - Settled | 11/16/2017 – Order Instituting Proceeding and to Show Cause; 4/18/19 Order adopts Settlement Amount: \$3.9M (\$2.8 RG&E) (\$1.1M NYSEG) (approx. \$325k per violation) |
| 2018; NYSEG and RG&E | NYSEG CAIDI; RG&E Gas Safety/Records Metric; NYSEG Gas Safety/Records Metric | Negative Revenue Adjustment established in rate case | Missed CAIDI metric (NYSEG) - \$3.5M Missed Gas Safety/Records Metric (RG&E) - \$136,000 Missed Gas Safety/Records Metric (NYSEG) - \$67,000 |
| 2019; NYSEG and RG&E | NYSEG SAIFI; RG&E Estimated Meter Reads Metric; NYSEG Gas Safety/Records Metric; RG&E Gas Safety/Records Metric | Negative Revenue Adjustment established in rate case | Missed SAIFI metric (NYSEG) - \$7.0 M Missed Estimated Meter Reads Metric (RG&E) - \$525,000 Missed Gas Safety/Records Metric (NYSEG) - \$750,000 Missed Gas Safety/Records Metric (RG&E) - \$1.8M |

This one page of more than 2500 pages equals fines exacted by different regulatory bodies against Avangrid/Iberdrola and its subsidiaries amounting to: \$20,147,000.

THERE IS A MISMATCH BETWEEN WHAT AVANGRID PRODUCED IN NEE 4-55 AND 9-14 AND WHAT AVANGRID PRODUCED ON MAY 18, 2021 PURSUANT TO YOUR HONOR’S ORDER.²¹

Verified answers when Avangrid witnesses swore to them were obviously materially incomplete when they answered the discovery of NEE as testified to above.²² Aren’t intervening parties entitled to rely on the answers of Petitioners when provided?

²⁰ Email from Brian J. Haverly to Mariel Nanasi, May 21, 2021, 5:04pm.

²¹ See, Exhibit ?? a comparison of disclosures, prepared by Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”).

²²

While verified answers to the Hearing Examiner’s Order were more fulsome²³ than to the NEE and NMAG²⁴ who knows if they are complete? Shouldn’t Avangrid be required to verify that the response filed on 5/18/2021 is complete or make supplemental filings and then state as much? Without a “complete” list how can we know that Avangrid has complied with the Hearing Examiner’s Order?

(2) Downplaying Harm: “CMP’s *alleged* imprudence in its implementation of its new billing system and credit and collection practices.”²⁵ “All of the Central Maine Power items on the chart are ‘Investigations.’ And, four of the five items on the list involved *allegations* about metering, billing, and/or customer service processes.”²⁶ Avangrid is still downplaying the harm faced by Mainers, this doesn’t engender confidence in their performance, acknowledgement of harm caused, or that the Maine Public Utilities Commission issued the largest fine in Maine history, \$10 million, not for *alleged* deficiencies but for actual findings of imprudence and ineffective and unacceptable customer service for nearly 100,000 people over a period of years.²⁷

These are just some of the very real problems Mainers faced:

(i) A review of the call data showed that 63,970 out of 273,685 calls—one out of every four calls—received the courtesy message instead of reaching a live person. While the October 2017 storm exacerbated this problem, the call statistics for the month before the storm showed that thousands of customers could not reach CMP to discuss their credit and collection problem and instead received the courtesy message. Thus, the

²³ There were 3 affirmations made in **Part6** but NEE can’t verify if they were comprehensive; meaning there was no apparent attestation for all documents and statements produced on 5/18/2021.

²⁴ See Exhibit **?**

²⁵ JA Exhibit May 11 Order 1A, Page 2 of 12.

²⁶ JA Response, p. 2 of 26.

²⁷

call-answering problem could not simply be blamed on the storm and was instead a result of CMP's management practices.²⁸

(ii) In addition to the problems relating to the customer call center, callers to CMP's "contractor line" were reporting the same types of problems.⁸⁹ Contractors reported that they were being placed on hold for long periods—sometimes hours—while waiting to speak to a live person at CMP. This was causing significant problems for contractors and customers who were trying to have their electricity connected before winter. Customers and contractors also began reporting that the Company was often not showing up for field appointments or was canceling long-scheduled field appointments for no apparent reason.²⁹

(iii) The Commission's Consumer Assistance and Safety Division ("CASD") began receiving a large number of complaints from customers relating to billing concerns in December 2017 and January 2018. These concerns included customers receiving higher-than-usual bills, customers not receiving proper credits on their bills, customers on payment arrangements having the arrangements changed without notice, and customers not receiving bills at all. The two most prevalent billing complaints the CASD received were about high usage or about not receiving bills (which CMP refers to as delayed bills).

...

On the high-usage complaints, due to the excessively large number of high use complaints being filed with the CASD, the CASD requested in early February 2018 that CMP establish a specialized group of individuals who were familiar with CMP's billing and metering processes to investigate and resolve customer complaints of high usage. (This process is described in greater detail in our forthcoming companion order in Docket No. 2019-00015.) ...

Regarding delayed bills, customers were contacting the CASD stating that they had not received a bill from CMP for a number of months. Customers were concerned that they would end up receiving a large make-up bill at some point in the future that they would be unable to pay.³⁰

(iv) Staff concluded in the Bench Analysis that these call-answer statistics indicated that CMP's problems at its call center were serious and long-lasting, and substantially predated the Company's implementation of SmartCare.³¹

²⁸ Order, Docket No. 2018-00194, February 19, 2020 (Reduced ROE By 100 Basis Points Until Service Satisfies Standards – Minimum \$10M Disallowance – and Ordered Management Audit, <https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/ViewDoc.aspx?DocRefId={7FE3C1AB-89E0-4ED1-889D-3575E3356CB0}&DocExt=pdf> , p. 98.

²⁹ p.98.

³⁰ p.99.

³¹ p.100.

(v) The Company experienced significant problems after the implementation of its SmartCare system with certain customers going extended periods of time without receiving a bill for service.³²

(vi) At a technical conference held December 3, 2018, Company witnesses testified that approximately 3,400 new customer accounts had not been established and consequently were not being billed for service. The Company attributed this problem to a significant number of staff retirements in the group responsible for establishing new accounts, as well as an increase in new customers. Unbilled revenue for the 3,400 accounts was approximately \$729,675.

(vii) There were so many complaints that the regulatory agency had to hold three hearings to address public witness testimony. Many customers described their loss of trust in CMP and the frustration and difficulty they experienced with CMP's customer service. First, customers described needing to call CMP multiple times, needing to describe their issue to the customer-service representatives repeatedly without getting satisfying answers, not being confident in the information they were receiving from the customer-service representatives, or simply not getting responses from CMP. Second, some customers described waiting on hold for 45 minutes or even hours before speaking with a customer-service representative, or CMP's failing to show up for appointments. Third, customers described frustration about the level of transparency with their CMP bills. Fourth, customers with existing accounts described concerns about long-delayed bills, and customers with new accounts described concerns about the costs of those delayed bills when the Company both did not submit bills to new customers and simply forwent the cost of having served those new customers, in some cases for several months.³³

The Office of the Public Advocate ("OPA") concluded that: "CMP had failed to provide adequate and reliable customer service, and that these issues predated SmartCare and grew following the cutover."³⁴ There were "various errors of CMP's customer-service representatives in their dealings with customers, including providing customers with plainly incorrect information and poor call-answering performance."³⁵ [T]he issues not only continued but grew worse after the transition to SmartCare.³⁶ "The OPA argued that CMP failed to properly test

³² *Id.*
³³ *Id.*, p. 101. (citations omitted)

³⁴ pp. 101-107.

³⁵ p. 107

³⁶ *Id.*

Id.

SmartCare prior to go-live; did not have enough customer-service staff on hand to handle the problems that followed go-live, and in fact had only months earlier encouraged customer-service staff to depart with voluntary-separation packages; and inconvenienced thousands of customers who called the Company and experienced long wait times, the need to call repeatedly, or blocked calls.”³⁷

Joint Applicants didn’t answer when they

(3) Extra-Legal Business Practices: from Private Detectives following Citizen Petition Gatherers to Political Action Committees to Lobbying and Advertisement – the BIG Money will be Flowing:

Iberdrola and Avangrid

Scheduling Matters:

New Energy Economy is opposed to the truncated discovery, testimony and hearing dates

³⁷ *Id.*
13 *Id.*, pp. 107-108. (citations omitted)

proposed by Joint Applicants. Given the voluminous material, more than 2500 pages, that was provided on May 18th, parties need time to digest it follow up with discovery and sur rebuttal testimony (if the hearing is on the application) or testimony in opposition to the Stipulation. Mariel Nanasi, attorney for New Energy Economy, and active intervenor in this matter, made plans months ago which was revealed to the parties in March for a family vacation from June 22 – July 2nd; plans which took into consideration the schedule in place since December 18, 2020. The delay in the schedule results from actions and inactions taken by the Joint Applicants. Since that time, PNM, along with Avangrid, Inc. and their affiliates, have inundated the Commission and stakeholders with numerous filings that initiated concurrent proceedings involving overlapping issues that will have significant short- and long-term impacts on PNM’s rates and service to its customers and the public interest in New Mexico. Those filings include, but are not limited to: the pending Joint Application in Case No. 20-00222-UT for approval of the proposed PNM-Avangrid merger filed on November 23, 2020; PNM’s January 8, 2021 Application for approval of its proposed abandonment, sale to the Navajo Transitional Energy Co., and securitized ETA financing of its 200 MW ownership interest in the Four Corners Power Plant (“FCPP”), Case No. 21-00017-UT; PNM’s proposed 2020 IRP filed on January 29, 2021, Case No. 21-00033-UT; and PNM’s April 2, 2021 Application for approval of its proposed “abandonment” of its PVNGS Leased Interests and recovery of costs associated with those leases and new supply-side resources to meet its resource and reliability needs beginning in 2023, Case No. 21-00083-UT.³⁸ A hearing before November would prejudice the non-

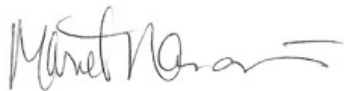
³⁸ The FCPP abandonment was a condition of the merger; and the return of the leases was forecasted by PNMR, see Definitive Proxy Statement: <https://sec.report/Document/0001140361-21-000193/> (“**Conditions to Obligations of Avangrid and Merger Sub...**each of the definitive agreements related to the divestiture of Four Corners having been duly executed and delivered by each of the

stipulating parties.

DATED this 25th day of May 2021.

Respectfully Submitted,

New Energy Economy



Mariel Nanasi, Esq.
600 Los Altos Norte St.
Santa Fe, NM 87501-1260
(505) 469-4060
mariel@seedsbeneaththesnow.com

parties thereto and remaining in full force and effect as of the effective time of the merger, and PNM having made all applicable regulatory filings to obtain required approvals from applicable governmental entities, including for abandonment authority and securitization from the NMPRC.”) At p.99 and (“***Assumptions Regarding PNMR Forecasts***

The forecasts set forth above assume:

- divestment of Four Corners as previously disclosed,
- return of Palo Verde leases unit 1 in 2023 and unit 2 in 2024 as previously disclose At p. 53.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF)
AVANGRID, INC., AVANGRID NETWORKS, INC., NM)
GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY)
OF NEW MEXICO AND PNM RESOURCES, INC. FOR)
APPROVAL OF THE MERGER OF NM GREEN)
HOLDINGS, INC. WITH PNM RESOURCES, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND APPROVALS)
REQUIRED TO CONSUMMATE AND IMPLEMENT THIS)
TRANSACTION)**

Case No. 20-00222-UT

CERTIFICATE OF SERVICE

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

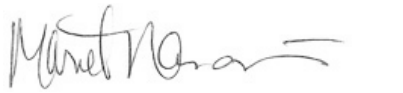
**NEW ENERGY ECONOMY'S STATEMENT OF OPPOSITION
TO INITIAL AND AMENDED STIPULATION**

| | | | |
|----------------------|--|--------------------|--|
| Stacey Goodwin | Stacey.Goodwin@pnmresources.com ; | Kyle J. Tisdel | tisdell@westernlaw.org ; |
| Ryan Jerman | Ryan.Jerman@pnmresources.com ; | Ally Beasley | beasley@westernlaw.org ; |
| Richard Alvidrez | Ralvidrez@mstlaw.com ; | Ahtza Dawn Chavez | ahtza@navaeducationproject.org ; |
| Mark Fenton | Mark.Fenton@pnm.com ; | Joseph Hernandez | joseph@navaeducationproject.org ; |
| Carey Salaz | Carey.salaz@pnm.com ; | Nicole Horseherder | nhorseherder@gmail.com ; |
| Steven Schwebke | Steven.Schwebke@pnm.com ; | Jessica Keetso | jkeetso@yahoo.com ; |
| Patrick V. Apodaca | Patrick.Apodaca@pnmresources.com ; | Thomas Singer | Singer@westernlaw.org ; |
| Mariel Nanasi | Mariel@seedsbeneaththesnow.com ; | Mike Eisenfeld | mike@sanjuancitizens.org ; |
| Christopher Sandberg | cksandberg@me.com ; | Robyn Jackson | Robyn.jackson@dine-care.org ; |
| Joan Drake | jdrake@modrall.com ; | Jane L. Yee | jyee@cabq.gov ; |
| Lisa Tormoen Hickey | lisahickey@newLawgroup.com ; | Larry Blank, Ph.D. | lb@tahoeeconomics.com ; |
| Nann M. Winter | nwinter@stelznerlaw.com ; | Saif Ismail | sismail@cabq.gov ; |
| Keith Herrmann | kherrmann@stelznerlaw.com ; | Peter J. Gould | peter@thegouldlawfirm.com ; |
| Dahl Harris | dahlharris@hotmail.com ; | Kelly Gould | Kelly@thegouldlawfirm.com ; |
| Peter Auh | pauh@abcwua.org ; | Jim Dauphinais | jdauphinais@consultbai.com ; |
| Andrew Harriger | akharriger@sawvel.com ; | Michael Gorman | mgorman@consultbai.com ; |
| Jody Garcia | JGarcia@stelznerlaw.com ; | Justin Lesky | jlesky@leskylawoffice.com ; |

| | | | |
|---|--|---|--|
| <p>Steven S. Michel April Elliott Cydney Beadles Pat O’Connell Douglas J. Howe Cholla Khoury Gideon Elliot Robert F. Lundin Andrea Crane Doug Gegax Joseph Yar Jeffrey Spurgeon Bruce C. Throne Rob Witwer Jeffrey Albright Michael I. Garcia Amanda Edwards Matt Dunne Maureen Reno Richard L. C. Virtue Daniel A. Najjar Philo Shelton Kevin Powers Robert Cummins Steven Gross Martin R. Hopper Kurt J. Boehm Bill Templeman Justin Bieber Karl F. Kumli, III Mark Detsky K. C. Cunilio Julie A. Wolfe Andrew Wernsdorfer Joel Johnson</p> | <p>smichel@westernresources.org; April.elliott@westernresources.org; Cydney.Beadles@westernresources.org; pat.oconnell@westernresources.org; dhowe@highrocknm.com; ckhoury@nmag.gov; gelliot@nmag.gov; rlundin@nmag.gov; ctcolumbia@aol.com; dgegax@nmsu.edu; joseph@yarlawoffice.com; spurgeonJ@southwestgen.com; bthronatt@newmexico.com; witwerr@southwestgen.com; JA@Jalblaw.com; mikgarcia@bernco.gov; AE@Jalblaw.com; dunneconsultingllc@gmail.com; mreno@reno-energy.com; rvirtue@virtuelaw.com; dnajjar@virtuelaw.com; Philo.Shelton@lacnm.us; Kevin.Powers@lacnm.us; Robert.Cummins@lacnm.us; gross@portersimon.com; mhopper@msrpower.org; kboehm@bkllawfirm.com; WTempleman@cmtisantafe.com; jbieber@energystrat.com; karlk@dietzedavis.com; mdetsky@dietzedavis.com; kcunilio@dietzedavis.com; julie@dietzedavis.com; andy@berrendoenergy.com; Joel@berrendoenergy.com;</p> | <p>Stephanie Dzur Ramona Blaber Don Hancock April Elliott Brian J. Haverly Jason Marks Matthew Gerhart R. Scott Mahoney David L. Schwartz Katherine Coleman Thompson & Knight Randy S. Bartell Sharon T. Shaheen Jennifer Breakell Hank Adair Cindy A. Crane Peter Mandelstam Steve W. Chriss Barbara Fix Katherine Lagen Camilla Feibelman Michael C. Smith Bradford Borman Peggy Martinez-Rael Elizabeth Ramirez Gilbert Fuentes Jack Sidler John Bogatko Milo Chavez Marc Tupler Elisha Leyba-Tercero Gabriella Dasheno Dhiraj Solomon John Reynolds Ana Kippenbrock</p> | <p>Stephanie@Dzur-law.com; Ramona.blaber@sierraclub.org; srcidon@earthlink.net; ccae@elliottanalytics.com; bjh@keleher-law.com; lawoffice@jasonmarks.com; matt.gerhart@sierraclub.org; Scott.Mahoney@avangrid.com; david.schwartz@lw.com; Katie.coleman@tklaw.com; Tk.eservice@tklaw.com; rbartell@montand.com; sshaheen@montand.com; jbreakell@fmtn.org; hadair@fmtn.org; ccrane@enchantenergy.com; peterm@enchantenergy.com; Stephen.chriss@wal-mart.com; baafix@earthlink.net; Katherine.lagen@sierraclub.org; Camilla.Feibelman@sierraclub.org; Michaelc.smith@state.nm.us; Bradford.Borman@state.nm.us; Peggy.Martinez-Rael@state.nm.us; Elizabeth.Ramirez@state.nm.us; GilbertT.Fuentes@state.nm.us; Jack.sidler@state.nm.us; John.Bogatko@state.nm.us; Milo.Chavez@state.nm.us; Marc.Tupler@state.nm.us; Elisha.Leyba-Tercero@state.nm.us; Gabriella.Dasheno@state.nm.us; Dhiraj.Solomon@state.nm.us; John.Reynolds@state.nm.us; Ana.Kippenbrock@state.nm.us;</p> |
|---|--|---|--|

Respectfully submitted this 25th day of May, 2021.

New Energy Economy,



Mariel Nanasi, Esq.
600 Los Altos Norte St.
Santa Fe, NM 87501-1260
(505) 469-4060
mariel@seedsbeneaththesnow.com

