



AGR

PNM

Appeal

New Mexico

Utilities

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# PNM/Avangrid Appeal Carries Laundry List of Complaints

By: [Robert W. Welkos](#)

In an appeal filed with the New Mexico Supreme Court over their stalled plans to merge, Avangrid and PNM Resources lay out a broad list of complaints they have with state utility regulators who they argue used “unlawful and unreasonable” decision making in voting unanimously to deny the \$5.3 billion transaction.

The companies assert that the New Mexico Public Regulation Commission “failed to undertake a serious analysis of the totality of the unparalleled benefits for utility customers and the public,” noting that one commissioner even characterized the potential benefits of the merger as “Fool’s Gold.”

The justices “must consider the evidence of benefits the commission denigrated, to determine whether the rejection of the merger was reasonable,” attorneys for Albuquerque-based PNM, Connecticut-based Avangrid, Inc., and Avangrid’s corporate parent Iberdrola, S.A., of Spain, added in their appellate brief. “...The magnitude of the merger’s benefits underscores the unreasonableness of the commission’s decision that the risks of diminished service outweighed them.”

In the first 24 pages of their brief, attorneys for the three companies summarize many of the key issues that surfaced during commission’s lengthy merger review and then argue point-by-point where they believe the commission either erred legally or simply ignored counter-evidence.

While the state Supreme Court review process, which is expected to take at least 18 months, does not permit weighing the credibility of live witness testimony by the court, it does call for a “canvass...of all of the evidence bearing on a finding or decision, favorable or

unfavorable, in order to determine if there is substantial evidence to support the result,” attorneys pointed out.

Whether this is a winning legal strategy remains to be seen.

Mariel Nanasi, executive director of the Santa Fe-based anti-fossil fuels advocacy group and a chief critic of the merger, summed up the appeal brief in four words: “Ignore the evidence, Please!”

“This was a factual determination based on the evidence before them,” she told CTFN. “The Public Regulation Commission, whose job it is to protect the public—believed that Avangrid and Iberdrola would not provide reliable service, that the merger would not benefit PNM ratepayers economically or get us to 100 percent renewables faster, and that Avangrid and Iberdrola would ‘use’ PNM as a ‘beachhead’ to consolidate the market for its own financial ‘aggressive acquisition strategy.’”

Nanasi contends that the companies “could not overcome their own track record.” That track record, she recalled, included:

- Customer service problems at three of Connecticut-based Avangrid’s utilities in the northeastern US that resulted in \$65 million in fines and cost disallowances by utility regulators.
- Evidence that Avangrid’s bid for PNM could result in a loss of local control over PNM, an investor-owned utility that has been operating for more than a century.
- Avangrid’s failure to provide the commission with sufficient details about how it would run PNM if the deal were to be approved.
- An ongoing Spanish criminal investigation into bribery and corporate espionage involving Iberdrola.
- Concern expressed by commissioners over how to ensure that Avangrid’s renewable energy subsidiary would compete fairly with other companies to win contracts for future PNM green energy projects.

The companies argued in their appellate brief that the commission “unreasonably ignored the near-unanimous support” given a stipulated agreement that was signed by a majority

of the intervenors.

They noted that PNM customers stood to receive overall rate benefits of \$94 million consisting of \$67 million in rate credits over three years allocated on a per customer basis; \$10 million in residential customer arrearages forgiveness; \$2 million to provide electricity to new customers in remote areas; and \$15 million for low-income energy efficiency programs. PNM would also forego filing a new rate case before December 1, 2022.

The companies also took exception to the commission's analysis of recent utility mergers in New Mexico, which they say resulted in far less customer benefits than those offered by Avangrid.

The companies recalled that commission Hearing Examiner Ashley Schannauer, who oversaw the merger review and recommended that commissioners reject the deal on public interest grounds, described the anticipated benefits as "relatively small" and pointed out that three departing PNM executives would "receive approximately \$29 million in Golden Parachute compensation."

But in their appellate brief, attorneys for the companies pointed out that these payments to top PNM executives would be paid by shareholders, not customers.

Avangrid also took issue with the commission's stated concerns about the criminal investigation in Spain that involves Iberdrola's CEO.

"Under Spanish law, being an investigated party requires participation in an investigation, but does not mean the person is or is likely to be charged with a crime," the appellate brief pointed out. In any case, attorneys added, "none of Iberdrola's executives have been indicted, charged with, or convicted of a crime."

Another issue cited in the brief was the so-called "Liberty audit" conducted by a private consulting firm on behalf of utility regulators in the state of Maine that was highly critical of Avangrid's Central Maine Power subsidiary.

"The Liberty audit was hearsay..." the appellate brief argued, adding that no party had an opportunity to cross-examine its authors, no witnesses provided sworn statements vouching for the audit's veracity, and "no declarant risked perjury charges by testifying about it."

Another issue cited in the Supreme Court appeal revolves around an Albuquerque attorney named Marcus Rael, who was hired to lobby on behalf of Iberdrola.

NEE has alleged unethical conduct between Rael and New Mexico Attorney General Hector Balderas, whose office initially opposed the PNM merger but did an about-face after Rael's hiring. Rael and Balderas are former law school classmates.

Avangrid stressed that a state disciplinary board reviewed NEE's allegations and found no conflict existed.

Avangrid also contends that NEE sought to undermine a June 4 stipulated agreement by alleging a conflict between Rael and Balderas, even though Iberdrola, Bernalillo County and the AG's office attested that Rael's involvement in settlement negotiations did not pose a conflict of interest.

NEE has filed a complaint against Balderas in state court in Santa Fe for failing to provide all public records concerning communications between the AG's office and Rael.

The complaint stated that NEE learned through sworn written testimony by Pedro Azagra Blazquez, a member of Iberdrola's executive committee, that Iberdrola paid "up to \$350,000 for Mr. Rael's representation."

During merger proceedings, Hearing Examiner Schannauer ordered Rael to end his representation of Iberdrola and he did not testify during the proceedings.

Asked for comment on NEE's complaint, a spokesman for Balderas emailed CTFN, "We will seek sanctions for Ms. Nanasi's fabricated conspiracy theories that have been outright rejected by the New Mexico Supreme Court and the New Mexico State Ethics Commission."

Nanasi characterized the AG's statement as "irrelevant...in the extreme."

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