

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

**NEW ENERGY ECONOMY’S RESPONSE TO PNM’S REQUEST FOR VARIANCE
AND NEW ENERGY ECONOMY’S REQUEST FOR DISCOVERY REGARDING
EVIDENCE OF DUE DILIGENCE AND WHETHER PNM HAS PROCEEDED
PRUDENTLY AND COMPETENTLY TO ACQUIRE SJGS REPLACEMENT POWER
TO PROVIDE ADEQUATE CUSTOMER SERVICE IN TERMS OF COST AND IN
LIGHT OF THE STATE’S DECARBONIZATION GOALS**

I. Introduction

Five years ago, in February 2017, PNM’s senior management and Board of Directors decided to close San Juan Generating Station (“SJGS”) in 2022. PNM was in control of the process of abandoning its flagship plant. Since then it has manipulated the regulatory and legislative processes for its financial benefit, to the detriment of PNM’s ratepayers in particular and of New Mexicans and our climate in general. Perhaps the most egregious maneuver that resulted in significant delay was when PNM sat on qualified bids for 18 months and, then, despite authoring the Energy Transition Act (“ETA”), proposed an application for SJGS replacement resources in July 2019 that was inconsistent with the decarbonization purpose of the ETA.

At the behest of PNM, legislators sued the New Mexico Public Regulation Commission (“PRC” or “Commission”) to force the PRC to implement the ETA.¹ Yet, PNM now blames the

¹ *State ex rel. Egolf v. New Mexico Public Regulation Commission*, 2020-NMSC-018, 476 P.3d 896.

PRC for denying PNM's SJGS fossil fuel replacement plan which was denied because it was inconsistent with the ETA. PNM wanted the \$357M bailout that the ETA guaranteed through a "non-bypassable charge" to its retail service customers but has undermined the ETA's RPS requirement for renewable energy replacement power. PNM wasted another year applying for a plan that the ETA's guidelines prohibited.

While there was no way to anticipate COVID-19 and the supply chain issues it has created, other utilities have been able to effectively manage their portfolio transitions and reserve margins. Our neighbor, Xcel in Colorado, isn't failing to meet their renewable energy goals, which are impressive, 86% below 2005 levels by 2030. No claims of unreliability, no supply chain issues, no threats of brownouts and blackouts. Why is PNM disproportionately impacted? Or are they? Apparently, as PNM's CEO has admitted: "we do have the resources covered for the summer time ... [and despite the] global [supply chain] problem, [] we are fortunate that we're going to be able to cover [replacement power.]"² Doesn't this contradict PNM's monstrous public relations campaign cultivating fears of brownouts and blackouts? What was PNM's purpose if there is no real threat? It seems that PNM's power outage emphasis and rally against the PRC³ may have been about getting their way in the Legislature (amending SB 14, the Clean Fuels Act, to not only include the extension of the San Juan Generating Station, but the acquisition of any "new resources on a temporary basis for up to one year") but luckily for ratepayers and New Mexicans the hastily passed amendment incorporated in SB 14 ultimately

² Investor Presentation given by PNM CEO Pat Vincent Collawn on 2/3/2022, attached as Exhibit A, incorporated herein, pp. 8-9.

³ Discovery will reveal if there really is/was a brown-and-blackout scare; if not, who concocted it, who was press push targeted to impress (press, legislators, etc.), when the push to create a black-eye and focus disdain against the PRC to shift the blame and avoid PNM responsibility was devised, and what tools would be employed to effectuate their disinformation campaign.

failed. It would have resulted in more carbon emissions and higher rates without *any* PRC regulatory oversight.

Now PNM’s (and the New Mexico Attorney General’s) consolidated “Emergency” effort is aimed at suspending the Commission’s regulatory and New Mexico Supreme Court requirements. PNM has “boxed in” the PRC (and the public), once again,⁴ by requesting “the Commission accept this Notice or issue any appropriate variance or modification *on or before March 25, 2022*, in order to preserve the option of the temporary use of SJGS Unit 4 to meet the 2022 summer peak.”⁵

By this filing, PNM seeks to be cleansed of all regulatory interruptions, like discovery to determine the pragmatism of costs⁶ and carbon emissions of its plan; it is bent on overriding due process protections that are in the public interest for its monopoly financial exploits in the name of “capacity shortfalls that *could occur* during the 2022 summer peak.”⁷ (Emphasis supplied.)

⁴ 19-00018-UT, *Order Initiating Proceeding On PNM’s December 31, 2018 Verified Compliance Filing Concerning Continue Use of And Abandonment of San Juan Generating Station*, 1/30/2019, p. 12.

⁵ NM PRC Case No. 19-00018-UT, Notice of Public Service Company of New Mexico and Request for Any Necessary Modification to or Variance From Abandonment Date of San Juan Generating Station Unit 4, 2/17/2022, p. 2.

⁶ PNM cites no authority for its novel *sub silentio* argument that NMSA § 62-8-1 (providing that “[e]very rate made, demanded or received by any public utility shall be just and reasonable”) be suspended.

⁷ NM PRC Case No. 19-00018-UT, Notice of Public Service Company of New Mexico and Request for Any Necessary Modification to or Variance From Abandonment Date of San Juan Generating Station Unit 4, 2/17/2022, p. 4.

It has created the looming crisis of brownouts and blackouts and now, and as referenced in the 19-00018-UT request for variance filing,⁸ asks to be free of *misguided* regulatory interference.⁹

PNM asks that the PRC accept a regulatory oxymoron: That the PRC grant PNM's request immediately, on an emergency basis, without inquiry into whether PNM actually needs the relief it's seeking, what it will cost, whether there are feasible alternatives to continuing to run SJGS through the summer, and without any discovery. In other words, PNM failed to get the legislature to go along with deregulating this process so now it is before this regulatory agency – which is charged by constitution and statute with regulating utilities for the protection of the public – to request that it be permitted to proceed to do what it wishes without regulatory oversight. We must forego regulatory inquiry and take PNM's word that its plan is all for the best and that no oversight is necessary.

PNM managed to stampede the press, the Attorney General and many legislators with the threat of brown-outs and now is trying the same tactic with the PRC, whose constitutional charge is that it not take utilities' words for anything. PNM's customers are entitled to the protection that the law requires. PNM is requesting that the PRC dispense with it.

But cooler minds must prevail. There must be discovery,¹⁰ there must be answers to basic questions: how much will PNM's plan cost and how does an extension of the coal contract figure

⁸ NM PRC Case No. 19-00018-UT, Notice of Public Service Company of New Mexico and Request for Any Necessary Modification to or Variance From Abandonment Date of San Juan Generating Station Unit 4, 2/17/2022.

⁹ PNM's "Fallgren said Fischmann was off base."

https://www.santafenewmexican.com/news/local_news/pnm-seeks-to-extend-life-of-coal-plant-for-summer-demand/article_2e6dc256-8e6f-11ec-a408-2707fc9e6999.html

¹⁰ Immediately following PNM's Request for Variance, the PRC required responses to some questions immediately asked on February 18, 2022, NM PRC Case No. 19-00018-UT, Order Requiring Responses from Public Service Company of New Mexico.

into that equation – what will the bill impact be?;¹¹ what other alternative solutions did PNM evaluate?; if this plan seeks to address summer peak how does SJGS baseload generation address that particular customer need?; how does PNM’s request interface with ETA securitized bonding?; how do the relative cost and carbon emissions compare with, say, increasing current gas plant usage and implementing demand response incentives?; when did PNM actually begin evaluating these different options?;¹² and should there be financial penalties, like holding ratepayers harmless, for PNM’s mismanagement and incompetence?

II. Background: PNM was in control of the timing of SJGS replacement power and manipulated the process to its financial benefit at the expense of ratepayers.

A. The facts:

1. October 2015 PNM testifies that SJGS is cost effective for 20 years:

10/2015: Significantly, during the 2015 hearing, PNM testified that it intended to “*continue indefinitely* with this 132 megawatts [at SJGS]” that its replacement power portfolio would be “the most cost-effective portfolio”, even as other co-owners were selling their shares in the coal plant. 13-00390-UT, TR., PNM Vice President of Regulatory Affairs Ortiz, 10/13/15 pp. 4059-4060.) (Emphasis supplied.)

2. December 2015 PRC approves PNM plan for SJGS: close 2 units; 50/50 split for undepreciated assets; invest in Palo Verde unit 3 nuclear; purchase co-owner shares at SJGS; 2018 hearing to determine SJGS feasibility going forward:

¹¹ There is NO mention of customer bill impact; an oversight? There is NO mention of carbon impacts compared to alternatives; an oversight?

¹² Evaluation of different alternatives and pursuit of resource adequacy is far different than PNM’s lame excuses: PNM gave “notice” to the PRC in May 2021, July 2021 (and November 2021, etc.) explaining the delay in certain projects. PNM’s Request for Variance, p. 4. But what did it do to secure resource adequacy compliance? Discovery must include did PNM require “necessary right-of-way agreement and required transmission interconnection agreements” as a prerequisite to the 2020 contract? (Fallgren Affidavit, p. 2.) Did PNM demand that a security bond be posted in 2020 and why wasn’t it posted? Did PNM come before the Commission and move to terminate this agreement in 2020 because of the failure to perform? Id. Discussion of the “resulting capacity shortfalls that could occur during the 2022 summer peak,” is not consistent with creating a back up plan in the COVID 2020 reality. Was notification enough? Was planning inadequate? Did PNM secure necessary requirements? When requirements were unmet what actions did PNM undertake to ensure contract compliance?

12/16/2015: “The Modified Stipulation at ¶19 requires PNM to make the first filing in the 2018 Review, a recommendation as to whether all of SJGS, not merely SJ4, should continue serving its customers after June 30, 2022. PNM to initiate filing in a 2018 review hearing – with known coal contract pricing and responses to request for proposals.

3. February 24, 2017, PNM Board of Directors determine SJGS 2022 shutdown is financially advantageous:

On February 24, 2017, PNM’s Board of Directors determined that a “shutdown scenario provides for transitioning of PNM Generation portfolio to fewer baseload resources and more opportunities in renewable, gas, and newer generation technology” and predicted that “higher rate base earnings result from significant capital investment - SJGS replacement power, renewables and other resource additions.”¹³

4. March 16, 2017: PNM News release re: SJGS 2022 shutdown

SJGS 2022 shutdown will most effectively balance reliability, affordability, and environmental responsibility: <https://www.pnm.com/031617-irp>

5. PNM’s Filings April/July 2017: Retire SJGS in 2022 is consistent with public interest

In both PNM’s preliminary Integrated Resource Plan (“IRP”) filings on April 18, 2017 and filed July 3, 2017, PNM’s IRP *key finding* is that coal is no longer economically competitive: “The most significant finding of the IRP is that retiring PNM’s...share of SJGS in 2022 would provide long-term cost savings for PNM’s customers [.]”¹⁴

6. October 2017 PNM issues RFP for SJGS Replacement Power due 1/31/2018:

PNM issued a Request for Proposals (RFP) for SJGS replacement power on October 31, 2017, due January 31, 2018.¹⁵ On 12/31/2018, Mr. Falgren testified that **“PNM received 345 proposed projects from thirty-seven bidders and is in the final stages of**

¹³ 19-00018-UT, 12/10/2019, TR., (PNM Senior Vice President Ronald N. Darnell, pp. 72-73; (16-00276-UT, NEE Exhibit #16, (PNM’s response to NEE Discovery 7-1)).19-00018-UT, 12/17/2019 TR. 46 (New Mexico Attorney General Witness Andrea Crane) pp. 45- (stating that she doesn’t think PNM is retiring San Juan because it will save customers money “I honestly don’t,” “I don’t think PNM is sitting there making its decision because you ultimately think it’s in the best interest of ratepayers;” “If you look at your investment presentations” they all talk about “how you’re gonna grow earnings ... by increasing ratebase” “you’re telling your shareholders that you’re going to grow rate base and that is going to result in an increase in earnings per share” “in my view that is the driver behind most of PNM’s actions.”)

¹⁴ PNM’s IRP Results, Case No. 17-00174;

19-00018-UT, TR., (PNM Senior Vice President Ronald N. Darnell), 12/10/2019, p.73

¹⁵ *Public Service Company of New Mexico’s Verified Compliance Filing Pursuant to Paragraph 19 of the Modified Stipulation*, (“PNM’s Compliance Filing”), 12/31/2018, Exhibit TGF-2.

completing the RFP evaluation process.” 13-00390-UT, *Public Service Company of New Mexico’s Verified Compliance Filing Pursuant to Paragraph 19 of the Modified Stipulation*, (“PNM’s Compliance Filing”), 12/31/2018, P. 7.

7. January 18, 2018: Precursor to ETA fails:

PNM sought to pass SB 47, the “Energy Redevelopment Bond Act,” in the New Mexico’s 53rd Legislature (2018). Essentially, SB 47 sought to recover from PNM ratepayers 100% of its “undepreciated investments” to shutter SJGS, PNM ownership of all replacement power, and severely limited PRC’s authority going forward.¹⁶

8. May–July 2018 SJGS co-owners announce SJGS defection:

Between May – July 2018 all owners (PNM, TEP, UAMPS, and Los Alamos County, except Farmington) gave notice to each other that they 1) didn’t want to extend the coal supply agreement and 2) decided not to continue the SJGS partnership agreement (aka “Exit Date Agreement”).¹⁷ PNM did not notify the Commission regarding it’s or any of the other co-owners position on SJGS abandonment.

9. June 1, 2018 PNM invests heavily in political candidates:

“PNM spends \$440,000 in race for its regulator,” Santa Fe New Mexican, 6/1/2018. PNM’s preferred PRC Commission candidates Sandy Jones & Lynda Lovejoy lose the primary, despite infusion of \$440,000 by PNMResources into the political action committee to support them. See, also: <https://www.abqjournal.com/1193698/committee-tied-to-pnm-spends-heavily-in-primary.html> (“Committee tied to PNM spends heavily in primary,” Albuquerque Journal, 7/6/2018.)

10. 12/31/2018 PNM filing SJGS would close in June 2022:

“PNM does not propose to continue operating SJGS and has no actual negotiated coal supply or other plant operating agreements that extend beyond 2022 [.]” 13-00390-UT, *Public Service Company of New Mexico’s Verified Compliance Filing Pursuant to Paragraph 19 of the Modified Stipulation*, (“PNM’s Compliance Filing”), 12/31/2018, p. 6.

“Because the majority of SJGS owners have given notice not to continue SJGS operations and there are no agreements that would allow it to operate beyond 2022, SJGS will not be available to serve PNM customers after 2022. As a result, PNM is not seeking

¹⁶ 19-00018-UT, 12/10/19 TR. p. 74 (Senior Vice President of PNM Ronald N. Darnell) (stating support for ETA; “I certainly recall 100% recovery of the asset”).

¹⁷ 13-00390-UT, *Public Service Company of New Mexico’s Verified Compliance Filing Pursuant to Paragraph 19 of the Modified Stipulation*, 12/31/2018, Exhibits TGF-4 - TGF-7, attached by Affiant, PNM’s Vice President of Generation, Thomas G. Fallgren.

any approvals in its Compliance Filing that would allow PNM to continue to use SJGS after June 2022 to serve retail customers and the issue presented under Paragraph 19 of the Modified Stipulation [in Case 13-00390-UT] is essentially moot.” *Affidavit of Thomas G. Fallgren in Support of Public Service Company of New Mexico's Verified Compliance Filing Pursuant to Paragraph 19 of Modified Stipulation*, (attached to PNM’s Compliance Filing), p. 2.

“Under the terms of the Exit Date Agreement, because a majority of the Participants have decided not to continue SJGS operations beyond June 2022, and there has been no sale or transfer of the SJGS ownership interests to Farmington or any third parties, the Participants are contractually required to proceed with planning for an orderly shutdown of SJGS in 2022.” *Id.*, p. 5.

“[T]here are no ‘practical assumptions’ relating to SJGS operations after 2022. Specifically, there is no negotiated coal supply or other agreements relative to the operation of SJGS post-2022 [.] Further, the Exit Date Agreement and CSA terminate in 2022. Any Strategist® analyses that assume the continued operation of SJGS would necessarily be speculative and nothing more than a theoretical exercise.” ... “Under these circumstances, the Participants are contractually required to take steps toward the orderly shutdown of SJGS operations in 2022.” *Id.*, p. 8.

11. 12/31/2018 Federal Register: SJGS would close in June 2022:

In the Federal Register it states that PNM has already made the irrevocable decision: “On December 31, 2018, Public Service Company of New Mexico (PNM) filed for abandonment of their share of the San Juan Generating Station with the State of New Mexico.”

12. 1/30/2019 PRC Order Requiring Abandonment Filing Because PNM already set abandonment in motion:

19-00018-UT, *Order Initiating Proceeding On PNM’s December 31, 2018 Verified Compliance Filing Concerning Continue Use of And Abandonment of San Juan Generating Station*, 1/30/2019, pp. 11-12, ¶18. (At p. 12: “Again, it is highly troubling that PNM waited for over 6 months to make its required filing under Paragraph 19 when it was able to do so before the end of June 2018, and certainly no later than the end of July 2018. That PNM now vehemently argues the Commission should continue to delay initiating a proceeding for an additional six months – up to the end of June 2019 – when testimony in support of Paragraph 19 had stressed the need for having concluded a proceeding on this issue by that time, makes PNM’s current position highly suspect. This potentially legitimizes the concerns raised by NEE that PNM may be seeking to gain an advantage and box in parties that oppose PNM’s choices with a time limit.”)

The Commission stated that PNM had already taken steps to abandon the plant by giving notice to other SJGS co-owners and the San Juan Coal Company that it would not extend its participation in SJGS or renew the coal supply contract. Moreover, as noted in the Commission's 1/30/2019 Order, p.6, PNM reported that the 12/31/18 filing became a "triggering event" that required PNM to record a pre-tax impairment of its investment in SJGS and required that PNM re-measure its liability for coal mine reclamation (and was documented in PNM's January 2, 2019 8-K filing with the SEC). The Commission found that "PNM already initiated abandonment six months ago." At p. 6. With this information, the Commission decided to docket an abandonment case, which will begin discovery and investigation process into PNM's actions, and the Commission ordered PNM to file its initial application for abandonment by March 1, 2019, which included **"the status of PNM's acquisition of generating resources to replace the resources being abandoned."** *Id.*, p. 15, ¶11. (Emphasis supplied.)

13. 2/27/2019 PNM files "Emergency" petition to block PRC Order to advise public about SJGS abandonment & replacement power options

On February 27, 2019, rather than complying with that Order, PNM first filed a motion for reconsideration and then filed its "emergency" petition to the NM Supreme Court to block that PRC Order.

14. 3/1/2019: the NM Supreme Court granted an emergency stay of the PRC Order.

15. 3/22/2019: The Governor signs SB 489, the ETA.

16. 4/2019: PNM issues an RFP for PNM-owned battery storage. Results included in its application for replacement power, filed 7/1/2019.

17. 6/14/2019: The ETA becomes law.

18. 6/25/2019: NEE files *Motion to Supplement the Record* in the New Mexico Supreme Court Case, S-1-SC-37552

NEE files a Motion to supplement filing in Docket No. S-1-SC-37552 stating that PNM had already decided to abandon SJGS and it is documented in the Federal Register and that PNM announced its plan to file its abandonment application at the PRC.

19. 6/26/2019: Order denying PNM Emergency Writ, Docket No. S-1-SC-37552

NM Supreme Court lifts the stay and denies PNM's Petition for writ of mandamus

20. 7/1/2019: PNM files its Consolidated Application in a new NM PRC docket, NM PRC Case No. 19-00195-UT, *not* the docket previously established by the PRC, Case 19-00018-UT.

Despite the fact that PNM was the main author of the ETA, and the ETA calls for no fossil production post 2045 (and an average gas plant has a 40-year life), PNM's preferred SJGS replacement plant portfolio calls for many more PNM-owned gas units, renewables and storage. There was vociferous opposition to PNM's gas request.

21. July 29, 2020: PRC ruled against PNM, consistent with the ETA and its explicit Legislative requirements to reject PNM's gas request. New Mexico Attorney General Hector Balderas supports the Hearing Examiners' decision.

B. The Hearing Examiners made the following findings in the San Juan Replacement Power Case, 19-00195-UT:

“PNM's timing of the abandonment and replacement resource proceedings succeeded with the acquiescence and implicit assistance of the New Mexico Supreme Court and the Legislature. PNM's plans were sufficiently advanced by December 31, 2018 to have filed an application with the Commission to abandon San Juan Units 1 and 4. PNM had the motive to do so – the prospect of the passage of legislation in the upcoming 2019 legislative session that would ensure PNM's full recovery of the unrecovered costs of the San Juan units and the potential that the Legislature would approve a requirement that the replacement resources be utility-owned (as had been proposed in S.B. 47 of 2018).” 19-00195-UT, *Recommended Decision on Replacement Resources, Part II*, June 24, 2020, P. 147.

“It is less clear that PNM was fully prepared in December 2018 to file an application for approval of replacement resources, but it is clear that PNM's review of the replacement resource proposals received in January 2018 had not been conducted on an expedited basis. PNM's review was extremely methodical, but, by December 31, 2018, PNM and its consultants had been reviewing responses for 11 months, and they did not complete their review until June 2019 – 17 months after they received the proposals, three months after the ETA was passed, and two weeks after the ETA became effective.” *Id.*, pp. 147-148.

“PNM was successful in putting the Commission in the “box” that NEE, CFRE and others refer to. The Commission suspected the manipulation of the timing of PNM’s abandonment application after receiving PNM’s December 31, 2018 filing in Case No. 13-00390-UT. The Commission found on January 10, 2019 that PNM’s December 31, 2018 filing confirmed that PNM had committed to abandon the San Juan station over the six months prior and was taking the necessary steps under its agreement with its co-owners to proceed with an orderly closure. And it issued an order on January 30, 2019 requiring PNM to file an application to abandon the units by March 1, 2019.” *Id.*, p. 148. (citations omitted.)

“The Hearing Examiners, however, do not base their decision to omit the PNM-owned resources on PNM’s manipulation of the timing of the RFP process. They recommend a portfolio of resources that best achieves the purposes of the ETA – a portfolio that includes the solar/battery hybrid resources located in and near the CCSD.” *Id.*, p. 149.

“The Hearing Examiners acknowledge that these and other problems with PNM’s RFP process may have affected the nature of the proposals that were submitted.” *Id.*, p. 153.

The Commission, pursuant to the ETA, adopted the findings of the Hearing Examiners on 7/29/2020. *Order on Recommended Decision Replacement Resources, Part II.*

III. PNM has made a very BIG deal¹⁸ that brownouts and blackouts will occur in Summer 2022, inciting Trumpian fear; even if PNM’s reserve margins *might be* lower than usual, does this justify ignoring standard legal requirements for discovery and alternative analyses? In other words, has PNM whipped up images of rotting food in warm refrigerators due to blackouts to incite “shock doctrine” policy responses and/or hastily-made PRC approvals of insufficiently-vetted PNM proposals?

¹⁸ “Threat of summer power outages raises concerns,” *Santa Fe New Mexican*, Feb. 9, 2022; “PNM: Summertime could include rotating outages,” *Santa Fe New Mexican*, Jan. 28, 2022. Additionally, the outages scare was repeated numerous times in numerous committees by legislators, HB 220, SB 16, SB 194, etc.

Does this latest PNM “Emergency” justify discarding methodical evaluation? Apparently, that was at least one of the aims of PNM’s propaganda spin.

A. PNM told its investors that they needn’t worry about SJGS summer replacement resources – that there were “several options” under consideration and that they are fortunate because they have it covered

While PNM told New Mexicans that we might be facing power shortages this summer, PNM’s CEO told its investors *three weeks ago* that “I can assure you that we do have the resources covered for the summer time.” *See*, Exhibit A. Why is PNM telling the PRC, Legislators, and the public that PNM has a short fall because of ill-conceived decisions made by the PRC when the CEO is telling her investors that there won’t be any problem? PNM can mislead us, but it can’t mislead its investors without facing criminal penalties.

Q: “The, your resource planning through the course of the summer and onwards against the planned retirement?”

A: Pat Vincent-Collawn, PNM CEO: “[There are] several options we could keep the plant open a few months longer. We are looking at market purchases. I have [an] 11 by 17 sheet of [paper] every option that we are going over and we are close to finalizing that, and we’ll make an announcement on what we’re going to do in the next couple of weeks. But I can assure you we do have the Resources covered for the summer time, but you got it right. It is the west wide problem and actually if you look at what’s going on. Globally, it’s a global problem, But we are fortunate that we’re going to be able to cover.”

See, Exhibit A, pp. 8-9.

Discovery will include the production of Ms. Vincent-Collawn’s 11X17 sheet of paper containing the several SJGS replacement power options.

B. First, PNM, went to the Legislature seeking *carte blanche* approval: No competitive procurement; No need for pesky cost, bid or alternative energy resource analyses

PNM went to the legislature, which apparently took PNM’s claims about its resources being inadequate to cover the demand this summer at face value, including PNM’s unwarranted

placing of blame on the PRC for its supposed power shortage, and successfully inserted amendments into a bill, SB 14, that it claimed was necessary to cover customer demand and provide resource adequacy.¹⁹ The amendments would have allowed the life of the San Juan Generating Station (“SJGS”) to be extended for 4-months. Additionally, the amendment would have allowed PNM to *acquire any new resource* that it would have used on a temporary basis until 3/10/2023, without regulatory approval of cost, contracts, without bids and without a comparison of alternatives.²⁰ In other words, on the basis of PNM’s apparently invented claim that there will be a power shortfall and its completely spurious attack on the PRC, the legislature included relieving PNM of any regulation of its acquisition of the very resources that the PRC, after a lengthy hearing (NM PRC Case No. 19-00195-UT), rejected on the merits. But SB 14, which included the legislative last day PNM friendly amendment, failed on a 33-33 House of Representatives vote at 3am, on 2/17/2022.²¹ The “regulated” electric monopoly utility would have incurred enormous costs and passed them along to ratepayers at a profit without the slightest regulatory oversight. All because PNM whipped up the press (and the New Mexico Attorney General²²) without justification, and contrary to its statements to its investors, that there may be “brownouts” this summer.

¹⁹ Attached as Exhibit B.

²⁰ No doubt, PNM would have acquired PNM-owned LM 6000 gas units (probably cited at its La Luz gas facility) without any vetting, cost information and via no bid contracts, that would have also probably been depreciated by 2045, resulting in high costs.

²¹ This would have caused legislative interference, in violation of New Mexico Constitution Art. IV §34, because at least two pending cases were initiated by the NM PRC addressing the alleged inability of PNM to meet customer load: NM PRC Case No. 20-00182-UT and 21-00159-UT.

²² 21-00159-UT, *OAG’s Notice of Filing of Letter to New Mexico Public Regulation Commission*, 2/15/2022.

This wasn't mere New Energy Economy conjecture, this is what PNM told the PRC, in its 2/16/2022 filing after 4pm in Case Nos. 19-00195-UT and 20-00182-UT (and attached as Exhibit C), PNM's "**Supplemental Response (February 16, 2022)**":

An amendment to Senate Bill 14 has been introduced and adopted during the February 16, 2022 House Government, Elections and Indian Affairs Committee meeting which **would allow utilities to temporarily acquire** or operate **new resources** or utilize abandoned plant **to meet resource inadequacy** circumstances through a notification process made to the Commission **on or before March 10, 2023**.

C. Now PNM seeks to rush SJGS extension, promising cost savings without any data, avoidance of *potential* reliability issues, and is mum on carbon emissions

Without feasible alternatives²³ to PNM's preferred decision to provide available resources to meet customer needs for the 2022 summer peak PNM will fail to comport with law, and risk a prudent determination, hence, cost recovery in PNM's next rate case:²⁴ "PNM's [] decision with respect to [replacement] capacity will be subject to intense scrutiny and must be fully supported by an adequate analysis of alternatives and cost-effectiveness. ... 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. The Commission specifically

²³ PNM asserted in its 11/23/2021 filing: "PNM previously issued an RFP for available generation resources in the summer of 2022, however received no viable projects as part of that RFP process due to the short timeline to make delivery." See Public Service Company of New Mexico's November 23, 2021 Compliance Notice on Status of Purchase Power Agreements, 1, Case No. 20-00182-UT (Nov. 23, 2021). This claim, amongst others, requires probing. (What projects were deserving of no consideration and *why were they not viable*? Why were the RFP responses inadequate? How were there market purchases compared to PPAs? How were the various bidder responses compared on a consistent and comparable basis – cost, flexibility, reliability, etc.? And more.)

²⁴ Ratepayers must be held harmless from any amount imprudently invested and a disallowance should equal the amount of unreasonable investment. *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n*, 2019-NMSC-012, ¶¶ 32, 39, 41-42, 46-47, 52, 444 P.3d 460 (N.M. 2019) (the central issue facing the Commission—how to protect ratepayers from PNM's failure to consider alternatives.)

places PNM on notice that the Commission is not bound by the remedies it [has] employed [beforehand] and reserves the right to identify and impose any appropriate remedies for any additional imprudent actions by PNM, up to and including total disallowance.” 19-00102-UT, *Order on Petition for Investigation*, 1/8/2020.

NEE urges the PRC to recognize that this is not the first time that PNM has been challenged for imprudent investments made without proper analyses and then been forced to fabricate a questionable rationale. Nor is this first time the PRC has found PNM imprudent in its investment decisions.²⁵

Despite an urgent filing there are NO rate increase/decrease numbers! Plenty of other (oft repeated) information, but the obvious is missing: what are the cost impacts to ratepayers? What are the environmental impacts of PNM’s plan? Renewables are not to blame.²⁶

What were the PNM planning and capital budgeting decisions regarding SJGS replacement power, and how, and in what manner, do these processes and decisions affect PNM and its customers? Are PNM decisions regarding SJGS replacement power geared toward attaining earnings growth and related commitments made to the financial investment community or customer operating performance?

NEE recognizes that appropriate levels of spending and investment are necessary to deliver safe, adequate and reliable service at just and reasonable rates. However, PNM has

²⁵ The Hearing Examiner and the Commission found PNM to be imprudent in its purchase and lease extension of nuclear assets in 15-00261-UT, which was affirmed in *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm’n*, 2019-NMSC-012, ¶¶ 32, 39, 41-42, 46-47, 444 P.3d 460. The Hearing Examiner and the Commission found PNM imprudent in its investment in balanced draft costs. *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm’n*, 2019-NMSC-012, *supra* at ¶88.

²⁶ <https://www.washingtonpost.com/weather/2022/02/20/texas-energy-winter-renewable-jacobson-dessler-rogan/>

utterly failed to provide the *basic* information to make an educated determination if their request falls in the zone of reasonableness. **Understanding the drivers of these decisions and the regulatory mechanisms that influence them is key to ensuring quality and affordable service for PNM customers.**

PNM incompetence and mismanagement seem to be the culprit for PNM’s inability to ensure service quality metrics, i.e., electric service reliability without brownouts and blackouts. If so, rate recovery should be assessed and potentially withheld. Rate approval must be linked to performance – this is what New Mexicans deserve! PNM knew that the ETA preferred renewable replacement power and when that was ordered, did PNM execute management due diligence to ensure electric service reliability?²⁷

The New Mexico Attorney General, by the way, supported the renewable portfolio approved by the PRC in its filings,²⁸ consistent with the Energy Transition Act, passed by the Legislature, and required to be implemented by the NM Supreme Court (*Egolf v. PRC*²⁹).

D. What are the most significant takeaways from this situation?

- PNM caused the delay in SJGS replacement power capacity. As soon as February 2017 PNM knew that SJGS would close and that PNM would be responsible for replacement resources and capacity adequacy to meet customer demand. On 1/31/2018 PNM received 345 proposed projects from thirty-seven bidders. On 12/31/2018 PNM said it was in the final stages of determining preferred portfolio. PNM didn’t even file for replacement resources until 7/1/2019. Contrast this with the battery storage RFP PNM issued on 4/2019, and PNM included the preferred results in its replacement resource package by

²⁷ What actions did PNM take when “necessary right-of-way agreement and required transmission interconnection agreements” were not executed? Did PNM demand that a security bond be posted in 2020 and why wasn’t it posted? What actions did PNM take when they realized that they had not checked all the boxes and the contracts were in jeopardy? (Fallgren Affidavit, p. 2.)

²⁸ See, NMAG filings in 19-00195-UT.

²⁹ *State ex rel. Egolf v. New Mexico Public Regulation Commission*, 2020-NMSC-018, 476 P.3d 896

7/1/2019. Other than notifying the Commission of “potential shortfalls” what actions did PNM undertake to ensure customer reliability? Instead of blaming others for its management failures, what evidence is there that PNM instituted “forward-looking” measures to service and performance-related adequacy?

- Over the years PNM has consistently obstructed measures to address reduction of electricity usage, including, specifically, energy efficiency, rooftop solar, and community solar to reduce demand on PNM’s system. What evidence has PNM presented of its attempt to utilize demand-side reduction to manage 2022 summer peak load?
- Is this truly an “Emergency” situation? There are other answers besides brownouts/blackouts and the continuation of coal! Demand response. Incentivize rooftop solar and battery storage. Incentivize energy usage reduction. What is the evidence of the possibility of market purchases? A Protective Order should be issued, a Hearing Examiner appointed and discovery pursued.³⁰
- On January 31, 2022, Onward made a filing³¹ that indicated that it could provide (at least some of) the capacity needed: “Onward Has Historically Provided Emergency Resources To PNM and Is Interested In Supporting PNM’s Future Emergency Planning Needs.” P. 2. “Despite Onward’s previous successful provision of emergency resources to PNM in times of peak demand, to date PNM has not meaningfully engaged in discussions with Onward for the provision of emergency resources through use of the Valencia Facility to mitigate the anticipated disruptions to PNM’s distribution network in the upcoming months, as set forth in the PNM Compliance Filing. In fact, Onward only became more fully aware of the significant supply chain distributions through public monitoring of this docket.” P. 3. Was Onward’s offer include in the alternatives analysis? At what cost? How did it compare to other feasible alternatives?
- There are other Investor-Owned-Utilities that have met consumer needs and kept the company profitable with increasing renewables. Consumer needs have included affordable rates and investments in renewable resources and energy efficiency. This must be what the PRC must require of PNM (and other IOUs); if other states can require meaningful energy efficient and demand side carbon reductions so can this regulatory body. The utilities under its control must deliver in a transparent, professional, and responsible way actual electric load reductions at low cost or suffer the financial consequences.
- The IOU Xcel, in Colorado, is meeting and exceeding 85% renewables by 2030 and there are no reliability or supply chain issues! <https://investors.xcelenergy.com/news-market-information/press-releases/press-release/2021/Xcel-Energy-Announces-2030-Clean->

³⁰ NM PRC Case No. 20-00182-UT, *New Mexico Attorney General and New Mexico Affordable Reliable Energy Alliance’s Joint Response to PNM’s January 26, 2022 Compliance Filing*, 1/31/2022, p. 3.

³¹ NM PRC Case No. 20-00182-UT, *Onward Energy Holdings, LLC’s Response to PNM’s January 26, 2022 Compliance Filing*.

[Energy-Plan-to-Reduce-Carbon-Emissions-85/default.aspx](https://www.pnm.com/energy-plan-to-reduce-carbon-emissions-85/default.aspx) Xcel is in process of adding approximately 5,500 MW of new wind, solar generation and battery storage. Xcel is poised to reach an 86% reduction from 2005 levels by 2030 and there are NO associated unreliability scare tactics.

- What's the real reason behind the PR campaign against the PRC? To secure expensive coal without cost or carbon review and exact short-term financial and political gain? To advance and lock in desired PNM-owned uneconomic gas energy resources? To ensure that the Supreme Court hates the PRC while it reviews PNM appeals in the Avangrid/PNM merger and Four Corners Power Plant cases?

E. What Needs to be done

NEE was an active participant, along with others, importantly CCAE, in Case No. 19-00195-UT, PNM's application for Certificates of Public Convenience and Necessity ("CCN") for replacement power in the abandonment of San Juan Generating Station; the PRC assessed and denied PNM's CCN to acquire approval of a new gas-fired resources. The Hearing Examiners recommended denial of PNM's gas proposal with a useful life that would extend beyond the January 1, 2045 "zero carbon resources" requirement standard in NMSA § 62-16-4. A(6) (2019).

The Commission adopted the Hearing Examiners' Recommended Decision in its *Order on Recommended Decision on Replacement Resources - Part II*, 7/29/2020, stating at p. 13 ¶51: "As the RD notes, the use of natural gas turbines is also inconsistent with the ETA's policy of transitioning away from fossil fuel resources and reducing CO₂ emissions through graduated increases in non-carbon generation up to 2040 under the revised Renewable Portfolio Standard (RPS)."

According to PNM's spin there will be an energy supply shortfall between from at least June 2022, expected SJGS closure date, and maybe until October 2022 (as of now). How will PNM solve this problem? Should it solve this quandary in isolation or with the active participation of the Commission, PRC Staff and Intervenor input?

The Supreme Court held that: “The goal of the consideration of alternatives is, of course, to reasonably protect ratepayers from wasteful expenditure. The failure to reasonably consider alternatives was a fundamental flaw in PNM’s decision-making process.” *Pub. Serv. Co. of New Mexico v. New Mexico PRC*, 2019-NMSC-012, 2019-NMSC-012, ¶32, 444 P.3d 460 (N.M. 2019).

PRC precedent for reasonable evaluation of energy resource adequacy is instructive to help all of us determine the best path forward and consider short- and long-term needs including importantly: risk, efficiency of the resource, cost, environmental regulation, reliability, flexibility, etc.³²

When discovery will aid the Commission’s understanding it is the practice to allow parties access to discovery:

Commission policy: The commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties and staff for this exchange. It is further the commission’s policy to encourage the timely use of discovery as a means toward effective presentations at public hearing and avoidance of the use of cross-examination at public hearing for discovery purposes. 1.2.2.25 NMAC.

Just and reasonable rate determinations are “the heart” of the regulatory system. *State ex rel. Sandel v. New Mexico Public Utility Commission*, 1999–NMSC–019, ¶18, 127 N.M. 272, 980 P.2d 55.

The Commission may issue rules to implement the authority established in the Public Regulation Act, the Public Utility Act and other pertinent statutes. NMSA 1978, § 8-8-4.

The Commission has expansive power under the New Mexico Constitution and the Public Utility Act to supervise and regulate public utilities. The Commission has “general and

³² Commission Rule 17.7.3.9 NMAC

exclusive power and jurisdiction to regulate and supervise every public utility in respect to its rates and service regulations ... all in accordance with the provisions and subject to the reservations of the Public Utility Act . . . and to do all things necessary and convenient in the exercise of its power and jurisdiction.” NMSA 1978, § 62-6-4(A).

The Public Utility Act requires that public utility rates be just and reasonable. NMSA 1978, § 62-8-1.

In support of this request for expedited discovery, NEE states:

1. As the Chief Hearing Examiner in his *Certification of Stipulation*, 20-00222-UT, stated: “Utility requests for approvals are supposed to be accomplished within the confines of the Commission’s discovery and hearing processes based upon the Commission’s rules of procedure.”³³

2. Allowing intervenors to ask questions under oath about what alternatives PNM has considered and is considering, and if the Company has properly assessed cost, risk, efficiency of the resource, environmental regulation, reliability, flexibility, to adequately supply power during this summer 2022 period (or 3-6 months longer) is important for the Commission’s comprehensive understanding. Without appropriate information the Commission cannot adequately evaluate cost/reliability trade-offs and therefore is prevented from performing its important regulatory function to balance and determine policy. This is consistent with the filing of the NMAG and NM AREA in NM PRC Case No. 20-00182-UT.³⁴

³³ NM PRC Case No. 20-00222-UT, *Certification of Stipulation*, 11/1/2021, p. 147.

³⁴ NM PRC Case No. 20-00182-UT, *New Mexico Attorney General and New Mexico Affordable Reliable Energy Alliance’s Joint Response to PNM’s January 26, 2022 Compliance Filing*, 1/31/2022, p. 3.

CONCLUSION

There are many unanswered questions and the PRC must allow for expedited discovery and briefing in order to uphold consumer protections before approving this blanket request propped up by a whirlwind of false and alarming accusations. NEE cannot state whether it supports or opposes the relief sought by PNM. On February 17, 2022 when PNM sought the position of the parties NEE had a phone call conversation with PNM attorney, Ms. Goodwin, and immediately followed up with this email:

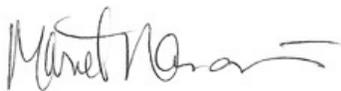
All, I just spoke with Stacey from PNM and I requested a stakeholder meeting to discuss what kind of alternative analysis PNM engaged in to determine that this SJGS 3-month extension was the best solution for ratepayers in terms of cost and carbon emissions. I'd like to see the 11X17 piece of paper that CEO Collawn referenced in the 2/3/2022 investor presentation regarding the different options reviewed by PNM and the numbers associated with the feasible options. I'd also like to know when PNM began pursuing different paths in earnest.

NEE understands that time is of the essence which is why we suggested a stakeholder meeting. Unfortunately, there has been no response from PNM. However, NEE is prepared to engage in expedited discovery and briefing.

WHEREFORE, NEE respectfully requests that the Commission promptly grant parties access to discovery pursuant to Commission practice and precedent, and applicable law as more fully stated above.

Respectfully submitted February 21, 2022,

New Energy Economy,



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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE COMPANY)
OF NEW MEXICO'S ABANDONMENT OF) 19-00018-UT
SAN JUAN GENERATION STATION UNITS 1 & 4)**

CERTIFICATE OF SERVICE

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

NEW ENERGY ECONOMY'S RESPONSE TO PNM'S REQUEST FOR VARIANCE AND NEW ENERGY ECONOMY'S REQUEST FOR DISCOVERY REGARDING EVIDENCE OF DUE DILIGENCE AND WHETHER PNM HAS PROCEEDED PRUDENTLY AND COMPETENTLY TO ACQUIRE SJGS REPLACEMENT POWER TO PROVIDE ADEQUATE CUSTOMER SERVICE IN TERMS OF COST AND IN LIGHT OF THE STATE'S DECARBONIZATION GOALS

issued on February 21, 2022.

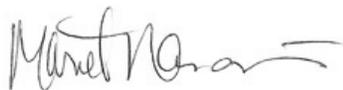
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DATED this 21st day of February, 2022.

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Financial Update with Earnings Guidance

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Company Participants

- Don Tarry, Senior Vice President and Chief Financial Officer
- Lisa Goodman, Director of Investor Relations
- Pat Vincent-Collawn, Chairman, President and Chief Executive Officer
- Unidentified Speaker

Other Participants

- Analyst
- Ashar Khan, Analyst
- Julien Dumoulin Smith, Analyst
- Paul Fremont, Analyst
- Unidentified Participant
- Vedula Murti, Analyst

Presentation

Operator

Good morning and welcome to the PNM Resources Financial Update Conference Call. All participants will be in listen-only mode. (Operator Instructions). I would now like to turn the conference over to Lisa Goodman, Director of Investor Relations. Please go ahead.

Lisa Goodman {BIO 20408633 <GO>}

Thank you, Kate. And thank you everyone for joining us this morning. For the PNM Resources financial update with preliminary 2021 earnings and guidance for 2022 and 2023 please note that the presentation for this conference call and other supporting documents are available on our website at pnmresources.com

Joining me today are PNM Resources' Chairman, President and CEO. Pat Vincent Collawn and Don Tarry, our Senior Vice President and Chief Financial Officer. Before I turn the call over to Pat. I need to remind you that some of the information provided this morning should be considered forward-looking statements pursuant to the Private Securities Litigation Reform Act of 1995

We caution you that all of the forward-looking statements are based upon current expectations and estimates and that PNM Resources assumes no obligation to update this information for a detailed discussion of factors affecting PNM Resources results, please

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refer to our current and future annual reports on Form 10-K, quarterly reports on Form 10-Q, as well as reports on Form 8-K filed with the SEC.

With that I will turn the call over to Pat.

Pat Vincent-Collawn {BIO 16031697 <GO>}

Thank you Lisa. Good morning and thank you all for joining us today. It's been some time since we've held an earnings call, but I can assure you it is all coming back to us now you probably knew that yesterday was Groundhog Day. But since the day after Groundhog day often gets overshadowed you may not know that today is both national optimist day and national carrot cake day

And when you start the day off eating carrot cake, it's easy to be an optimist of course it's also easy to be an optimist, when you have great team members like Lisa Goodman Lisa was recently named a 2022 women of influence by Albuquerque with this first Lisa deserve this Recognition and has been a great part of our PNM Resources family for more than 18 years. Congratulations, Lisa, and thank you for all that you do. I'm going to start on Slide 4 with our financial results and guidance. Preliminary ongoing earnings for 2021, a \$2.45 per share. Reflecting another strong year of delivering results growth in PNM FERC transmission business and recovery of TNMP's capital investments through rate riders provided year-over-year utility earnings growth We are also providing earnings guidance for 2022 at a range of \$2.50 to \$2.60 per share and for 2023 at a range of \$260 to \$275 we continue to be focused on running our business in New Mexico and Texas investing in the infrastructure needed to meet the growing demands of our customers and communities. And providing shareholders a return for their investment Tightened increased earnings expectation is a 6% increase to our common dividend keeping us in the middle of our targeted payout ratio for 2022 earnings Don will cover each of these items in more detail in the financial slides. As our merger process with AVANGRID continues and I'll get to that in a minute. Our teams continue to build on the successes of years fast and adapt and respond to changes in our business environment to move PNM and TNMP forward At PNM we are implementing plans to achieve our goal of providing 100% emissions free energy by 2040 in the fourth quarter of 2021, our annual renewable plan and our first transportation electrification program were both approved by the commission we are also continuing our efforts to exit from coal-fired generation early with our appeal to the New Mexico Supreme Court following the Commission's denial of our planned exit of the four quarters coal plan The early exit not only aligns with our carbon free goals but it brings customer savings including reduced fuel costs and provides the local communities financial support as they transition to a non-fossil fuel economy. TNMP just completed its most significant year of capital expenditures to support growth in its service territory and it isn't slowing down Last winter storm Yuri has increased interest in adding resource and storage capacity in ERCOT and we've seen more requests to interconnect to our system. The transmission and distribution capital rate riders and Texas ensure that our investments are recovered in a timely manner. We filed our first semi-annual transmission cost of service adjustment for 2022 last week with the requested increase in annual revenues of \$14.2 million based on our investments in the second half of 2021 let's turn to slide 5 and talk more about the merger we've extended the agreement with AVANGRID to April of 2023 with a three month extension option to preserve the progress we have made over the last year. We obtained approval from the

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five required federal agencies and a Public Utility Commission of Texas, leading only the New Mexico Public Regulation Commission in our New Mexico application we negotiated unprecedented customer and economic development benefits, which we conservatively estimate to be worth \$300 million that was all in a stipulation that has broad support with 23 out of the 24 intervening parties either supporting are not opposing it Our reasons for the merger have not changed as we look out into the future and see the capital needed to navigate the transition to clean energy and meet growing demand we knew that combination with a larger company would provide benefits of scale regulatory diversity and a stronger credit profile We also look for a partner who would align strategically with our goals AVANGRID and Iberdrola have an impressive ESG profile on the national and global level and are willing to make commitments on important items to stakeholders in New Mexico and Texas maintaining local control of the utilities following through on a clean energy commitments we've made in New Mexico supporting economic development efforts and continuing to be strong partners in our community. Our combination makes sense in December New Mexico PRC rejected the stipulated agreement with parties and at the beginning of January, we filed our notice of appeal with the New Mexico Supreme Court yesterday we jointly filed with AVANGRID and Iberdrola by statement of issues in the appeal And they can be summarized into three key issues first was the PRC decision in properly based on inadmissible hearsay evidence and information outside the evidentiary record second to the Commission determine the merger was contrary to the public interest by imposing arbitrary standards improperly weighing benefits and risks and ignoring the weight of the admissible evidence the benefits and protections we proposed were far beyond the Required in the approval of other mergers these added benefits of protections with then wait it gets perceived risks including a fear that PNM would be get ignoring its obligations to provide quality service to customers as the result of AVANGRID's ownership these were not real risks supported in the record and we're contrary to the stipulated commitment made by PNM and Avangrid The third issue is around the Commission further acting unreasonable and unlawfully and in violation of due process in their handling of matters concerning the discovery process we think the commission failed to follow its own rules and with own rule its approval the next step is for the Supreme Court to assign the case to its calendar which will trigger a 45-day deadline for PNM and Avangrid to file their detailed arguments in the appeal issues in the brief Followed by 45 days with the PRC to file and answer brief we will then have 20 days to file a response to the PRCs brief in the briefs we can request, oral argument, which will be at the court discretion we expect the appeal process to take 12 to 18 months. If the court agreed with our arguments the case will be remanded back to the PRC our appeal of the PRC rejection of the stipulation maintains the progress we have made and retains our negotiated agreements with parties, which was an important consideration in filing the appeal and extending the Merger Agreement The Merger would create a stronger financial profile, but it does not change our strategic direction. My leadership team and I remain in place and are focused on the tasks at hand. During the appeal process, we will continue to manage our business successfully. And deliver results Don will walk you through our financial plans. But I first want to touch base on some ESG highlights for 2021. On Slide 6 PNM's resource portfolio capacity move to more than 30% renewables and 40% carbon free in 2021 with the addition of new wind resources we are well on our way to achieving the renewable portfolio standards laid out in the Energy Transition Act we also join the Western Energy imbalance Market in April of 2021 regional coordination is designed to balance fluctuations in supply and demand by automatically finding lower cost resources to meet real time power needs. It maximizes the potential for renewable resources across the market by making excess renewable

energy available Utilities at low cost rather than curtailing the resource to balance the grid in [ph] third quarter report of Western ERIM benefit the total avoided renewable curtailment volume for the second and third quarters was calculated at over 132,000 megawatt hours under the assumption that these avoided curtailment displace production from other resources the estimated result in carbon dioxide reduction is over 56,000 metric tons. And PNM's participation also provided \$12.5 million in customer savings over the first nine months and as I mentioned earlier, we continue to advance support for electric vehicles with the approval of our first transportation electrification program for PNM customers this comes on the heels of our announcement to shift more of our fleet to EVs and we've also joined a number of our EEI peers to partner with the National electric highway collision to bring more charging stations to our nation's roadways So that the public can drive with confidence across the country by the end of 2023 to continue our tradition of environmental stewardship. We have named our first Chief Environmental Officer at PNM Maureen Gannon has been with PNM for 25 years possesses incredible knowledge base of the environmental challenges achievement regulations impacting our industry and importantly the future opportunities being explored. She will continue to represent us at a state national and global level as we work to achieve our goal for emissions free energy by 2040 we will expand our ESG reporting Maureen, will also lead our work and adjust transition incorporating into our decision making the impacts of the clean energy transition on workers and communities. Particularly tribal communities New Mexico's Energy Transition Act and PNM's plans to exit coal are uniquely designed to consider these elements and we feel strongly that our core values of safety caring and integrity are embedded within our business plans for this critical transition our communities depend on this and we take this responsibility seriously Our community support extends throughout our business. Our teams and Texas demonstrated the support through several challenges in 2021 winter storm Yuri created a significant disruption in February, when the storm hit and in August Hurricane Ida hit Texas and TNMP crews assisted in the restoration efforts, only to return home in time for hurricane Nicholas to hit our own service territory in September. But our teams rose to meet these challenges EEI Recently recognized TNMP for their exceptional response to these events with both an Emergency Assistance Award and an emergency response award And in New Mexico, we have continued to provide financial assistance for customers impacted by COVID 19 and help them access partnership funding more than \$7 million in cumulative assistance has been provided through these efforts we care about our customers and our communities and we continuously walk the talk and demonstrate our core values in our business practices. So now let me turn it over to Don to walk through our financial update.

Don Tarry {BIO 18979505 <GO>}

Thank you Pat and good morning everyone. I'm going to pick up on Slide 8 and briefly touch on our earnings results for 2021 for those of you who are following us Q3, you'll remember that we were ahead of expectations through September. Based on our original guidance provided for the year of \$2.27 to \$2.37 we continue that trend and finished off the year strong in the fourth quarter and are reporting preliminary earnings of \$2.45 for 2021

Our increase in 2021 earnings was based on growth at the utilities at PNM FERC transmission margins increased due to the addition of new customers and higher

utilization of our transmission system by third parties earnings also increased due to interest savings and higher realized gains from our decommissioning and reclamation trust.

These increases were partially offset by planned increases in operational spending, higher depreciation and property tax expense resulting from additional capital investments and milder temperatures in the second half of the year compared to 2020 at TNMP T costs and D cost rate rider recovery was partially offset by higher depreciation and property tax expense from additional capital investments and planned increases in operational spending

At Corporate we had interest savings from the pay down of debt with the proceeds from the additional shares issued at the end of 2020 as well as lower interest rates in 2021, all of our detailed drivers are included in the appendix looking forward, I'll turn to slide 9. As Pat mentioned the merger process has not changed our strategic direction and today we are providing guidance for both 2022 and 2023 to provide to give more detail around our projections. While the merger is extended 2022 earnings guidance is a range of \$2.50 to \$2.60 with a midpoint of \$2.55 2023 earnings guidance is a range of \$2.60 to \$2.75 with a midpoint of \$2.68. Both of these range are consistent with our expectations. Prior to the merger announcement and reflect continued execution of our plans on a long-term basis, we are targeting 5% EPS growth. From 2020 to 2025 there is a growing need for T&D infrastructure to support safe and reliable growth on our systems and to integrate more renewables on PNM system as New Mexico transitions to clean energy. Most of this rate base growth is recovered through FERC transmission rates and TNMP rate riders our 5% target assumed additional equity in our plans to fund this infrastructure growth. While maintaining our investment grade credit metrics we also announced the dividend increase. Which maintains our 55% targeted payout ratio on higher level of earnings, resulting in a 6.1% increase Let's get into the detail, starting on slide 10 we continue to see strong economic development activities in New Mexico and 2022 and 2023 PNM see the impact of industrial customers expansion that we've shared in the past and Amazon distribution center and Kairos Power and engineering company focused on advanced reactor technology both came online in 2021 And will provide a full benefit in 2022 Intel and the Meta Facebook data center previously announced expansions that are playing into our low projections the offsetting fluctuation in PNM residential and commercial load due to COVID related business restrictions are expected to fully return back to pre-COVID levels in 2022 In Texas, we also saw COVID trends reverse in 2021 as volumetric load decreased and demand base load increased moving forward, we expect volumetric load from residential customers to increase 1% to 2% in 2022 and 2023 consistent with customer growth we continue to see good levels of new service requests and interconnections for new resources in Texas. And we expect demand base load to increase point 2.5% to 3.5% now turning to slide 11 for our capital investment plans. We continually evaluate our capital needs. To ensure safe and reliable service for our customers. We have increased our capital plan by \$500 million the \$3.5 billion with additional T&D investments required to serve economic growth we are seeing in both our PNM and TNMP service territories at PNM this incorporates the investments that are designed to deliver

Unidentified Speaker

Clean energy, enhanced customer satisfaction and increase grid resilience, far beyond replacing aging infrastructure will reconfigure substations in lines to accommodate growing amounts of intermittent and distributed generation and expand capacity in areas where there have been approaching maximum capacity.

These investments will directly serve customers with a focus on growth, reliability and outage restoration and we'll integrate evolving technology to provide long-term customer value. In Texas, the concepts are the same and we continue to see strong growth in our service territory, load growth and new Eric hot [ph] resources drives the need for investments to ensure safe and reliable service.

These investments include distribution feature extensions, transmission interconnections and future transmission expansion. TNMP is interconnected 13 battery storage facilities through 2021 where several more inquiring about interconnection service along with inquiries from large-scale solar developers.

On Slide 12, these investments resulted in a 7.7% growth in rate base from 2020 to 2025 at PNM retail growth in these new investments offset the reduction in rate base over the five years from our exit of coal generation, the transition to clean energy rules results in customer savings and help offset the impact of these new investments and keep customers rates affordable.

FERC rate base grows at a compound rate of 21% during this period with the recent addition of Western Spirit. TNMP grows at a rate of 16% more than doubling its 2020 rate base by 2025 and approaching the same level as PNM retail at 2.5 billion. As FERC continue to grow, we improve and diversify the regulatory risk across our business.

Turning to Slide 13, let's look at 2022 guidance at PNM the addition Western Spirit Transmission Line is a significant year-over-year earnings driver as we begin to recover on this investment through an incremental rate on day one. Growth from other transmission investments recovered through our FERC formula rate and load growth will also increase earnings over 2021 levels.

These will be offset by higher depreciation, property tax and interest supporting new capital investments. Our reclamation and decommissioning trust benefited in 2021 from strong market conditions and we have assumed those returned to prior levels in our 2022 guidance.

At TNMP, 2022 guidance increases primarily from rate relief with our two semi-annual transmission filings and our annual distribution filing to recover capital investments. The depreciation property tax [ph]

Operator

An interest expense from those investments. Partially offset those revenue increases Corporate's flat, as higher interest expense is offset by the benefit of a higher effective tax

rate and losses in this segment. These drivers resulted in an overall increase to our expected earnings in 2022 to a midpoint of \$2.35 compared to \$2.45 earned in 2021.

Don Tarry {BIO 18979505 <GO>}

Now let's turn to slide 14 for 2023 guidance considerations. As we invest in T&D infrastructure approximately 75% of growth in our rate base is recovered through our existing FERC formula rates are TNMP rate riders these rate regulatory mechanisms provide for increased earnings in 2023 at PNM retail. We will look to file a rate case before the end of the year to recover T&D investments and reflect our transition out of coal generation with the retirement of the San Juan coal plant

2022 and 2023 guidance includes our plan to issue up to \$200 million of equity financing over the two years, which we could do in different ways. We will look to implement in ATM program to have this option available and this helps preserve flexibility around timing and depending Merger while funding capital investments and maintaining our investment grade credit metrics

We will provide the segment breakdown of 2023 guidance and the detailed EPS drivers as we near the end of this year. On Slide 15. I'll wrap up with our dividend as you can see on this slide. We continue to grow the dividend to reflect growth in earnings and also move up into the midpoint of our 50% to 60% payout ratio.

Our Board increased the common dividend to a target of 55% payout ratio on our guidance midpoint for 2022 earnings that first quarterly dividend will pay out later this month and the Board will address the annual dividend again in December of 2022. With that, I'll turn it back over to Pat.

Pat Vincent-Collawn {BIO 16031697 <GO>}

Thank you, Don. I'll wrap things up. On Slide 16 before turning it over to questions. We remain in the Merger Agreement with AVANGRID and we'll continue to pursue this path. At the same time, our teams remain focused on carrying out our business plan and achieving our goals and financial targets as a standalone entity.

Our goal to achieve emissions free energy by 2040 continues to be one of the most progressive goals in the country and we are not taking our foot off the Electric Vehicle Panel, as we lead New Mexico in its clean energy transition

Critical infrastructure is required to support this transition reliably support growth and improve grid resilience. We will continue to focus on T&D investments in our business plan. While being mindful of customer affordability and we will continue

Unidentified Speaker

We focus on earning our authorized returns and financing these investments to maintain investment grade ratings and a strong corporate profile enabling us to carry out our

values as a trusted partner in our communities and continue to enhance customer satisfaction.

Thank you for being here with us this morning as we continue on yet another chapter of our journey and we hope you agree that it did all come back to us now with that Kate, let's open it up for questions.

Questions And Answers

Operator

We will now begin the question-and-answer session. (Operator Instructions) The first question is from Julien Dumoulin Smith of Bank of America. Please go ahead.

Q - Julien Dumoulin Smith {BIO 20008787 <GO>}

Hey team it's pleasure to make again, I hope you guys are doing well.

A - Unidentified Speaker

Absolutely, always a pleasure.

Q - Julien Dumoulin Smith {BIO 20008787 <GO>}

Listen, just on the financing plan as we think about the stand-alone business for the time being, are you guys thinking about the couple of hundred million here in terms of converts or block and then thinking about just timeline relative to the deal. It seems as if it's perhaps a bit of a step down in the earlier equity financing quantum you'd contemplated earlier if I'm reading the messaging correctly? But I was wondering to and sort of how this fits with the timeline for the deal, and to what extent that the deal would impact us?

A - Don Tarry {BIO 18979505 <GO>}

Hey, good morning, Julien, this is Don. Yeah, I mean we will look to issue up to \$200 million in 2022 or 2023, we'll continue to optimize that part of that could be an ATM program. We would also look at potential block selling common equity or for common equity to facilitate that. So, but the timing, I mean, obviously we'll look to optimize that between 22, 2023.

We built that into the ranges that we provided.

Q - Julien Dumoulin Smith {BIO 20008787 <GO>}

Got it. Okay, fair enough. And then just as we think about the near term here within one, can you comment on just the backdrop on resource adequacy. How do you think about the timeline for that plant closure against the wider history in the west and perhaps you can maybe recap, there's probably a better way to ask it. The, your resource planning through the course of the summer and onwards against the planned retirement?

A - Lisa Goodman {BIO 20408633 <GO>}

Yeah, absolutely. The plan with the San Juan plant with scheduled for retirement on June 30 of this year and replacement power that the Commission approved was all purchase power agreements, our developers actually last year started providing notice that they could not meet the deadline is you all know there supply chain issues, et cetera, et cetera. So we gave notice to the Commission that we're working to fill the resource gap

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

But several options we could keep the plant open a few months longer. We are looking at market purchases. I have. 11 by 17 sheet of every option that we are going over and we are close to finalizing that, and we'll make an announcement on what we're going to do in the next couple of weeks. But I can assure you we do have the Resources covered for the summer time, but you got it right. It is the west wide problem and actually if you look at what's going on. Globally, it's a global problem,

But we are fortunate that we're going to be able to cover

Q - Unidentified Participant

Great and then if I can I, it is. [ph] a trickier question just how do you think about next steps on four quarters here again, I get that, there is a lot of inter-lapping issues here, but how do you think about just maybe the timeline on that plant at this point, maybe, the best way to tackle that.

A - Unidentified Speaker

Yeah. Julien. So, I mean obviously the commission when it gets hearing examiners recommended decision to abandon that and on December 15 under the ETA. We had 10 days to file our notice of appeal, we filed that on December 22 we provided our statement of issues on January 21 and we're really waiting for the Supreme Court to kind of set the timetable and will follow the similar timetable that Pat laid out for the merger, which is the 45 days brief and Chief and then we'll kind of run through the process.

We would expect an appeal process to take 12 to 18 months to work its way through that process, I mean there are two issues in there, we feel strongly that the ETA supports those one of them is requiring specific replacement Resources. We address that clearly and the ETA allows the ability to be able to bring those in a little bit later and we provided a good plan in that.

The second element was a prudency review. And if you remember back we ended up as part of the hearing examiners order move the the filing from January 2021 to March to specifically address prudency in that arena. So that's the path that will go the intake agreement, which has got of the underlying agreement that you referring to will stay in place.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

And the seasonal operations agreement remain in effect during the appeal. Also, so it will, keep running so

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Q - Julien Dumoulin Smith {BIO 20008787 <GO>}

All right. Yeah, sort of, you've got a lot of balls near around this and hopefully get some resolution here. I mean, just if I can on this rate cases to make sure I understand, what, how that fits as well. You're saying that you're going to file potentially at the end of 22 here. How does that split again with this deal approval that I suppose will be coming. Subsequent to that, again, I get, it's sort of a tricky backed up to operate under, but what's the expectation here given the stipulation requires staying out till the beginning of December

A - Unidentified Speaker

You would be filing them.

Q - Unidentified Participant

Yeah, I think the concept Julien is we will look to file a rate case before the end of the year which is aligned with the stipulation that you're referring to, which added December 1 time table. But we will look to file that, if you remember, we haven't been. We haven't filed a rate case since 2016 and rates went into effect in 2018.

So there is a window. There we delayed it in 2020 due to COVID and also delayed it because of COVID. So we're at a point we need to move forward of the rate case.

A - Lisa Goodman {BIO 20408633 <GO>}

Julien where the full employment act for lawyers around here. So we're keeping everybody busy.

Q - Julien Dumoulin Smith {BIO 20008787 <GO>}

No kidding and it's appropriately long time to stay out of the cake, [ph] if I hear about that anyway. Best of luck, will see you soon.

A - Unidentified Speaker

Thanks Julien.

Operator

The next question is from Ryan was being[ph] of Citi. Please go ahead.

Q - Analyst

Good morning.

A - Lisa Goodman {BIO 20408633 <GO>}

Bloomberg Transcript

Morning, Brian.

A - Unidentified Speaker

Good morning, Ryan.

Q - Analyst

Given the pending Merger Agreement, what are the options for the Board to address the dividend in December 2022? And can you provide some color around how the pending Merger Agreement with factor into this decision making process?

A - Lisa Goodman {BIO 20408633 <GO>}

Yeah, actually the merger agreement, now allows us to issue to increase the dividend in December of 2022 if the Board Show at the board so chooses which you saw we just increased it for this year and the Board has an option for 2022 to increase it for 2023, Don talked about equity issuance and financing.

So we have all of the things that we need to run our business as a stand-alone. As I said, we still think the merger is absolutely the right thing strategically for the company and our customers and our employees and our communities. But we are able to run the business. And so if for heaven sake something happens and the merger would'nt go through, we'd be in a good shape as a stand-alone.

Q - Analyst

Great. And then on the merger itself is the Supreme Court required to hear the appeal and assign it to the general calendar and if so, is there any timeline around when a decision would be made to to decide when the process will start?

A - Lisa Goodman {BIO 20408633 <GO>}

You know, there is no requirement that any Supreme Court take a case. But I'm trying to remember. I can't remember a case that they haven't taken on the utility side, and this one is obviously one of the biggest decisions that the Commission has made and impacting the state. So I never want to front run a court, it seems likely that they will take it. There is no timeframe for them to stick it on there.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Calendar. But I would imagine it will go on pretty quickly. As they're pretty busy with cases El Paso Electric when SPS has one there. We've got a couple of there. So they've got a busy docket. But I think it's highly likely that they will hear this one

Q - Unidentified Participant

In the 12, 18 months guidance around that process that incorporate an estimate or when the process would really start or to the extent that this gets delayed given the demands on the calendar for the Supreme court kind of, how does that play into that

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Bloomberg Transcript

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Yeah that 12 to 18 months is based on historical timelines and how long it takes the Supreme Court to get two things. So that would that timeline does incorporate sort of a time estimate of how long it would take to get to the calendar. We don't break that out specifically because it can vary, but 12 to 18 months is the historical range, it would take for a case

Q - Unidentified Participant

Okay. And then on the capital investment plan and the prepared slides we highlight is additional \$0.5 billion in the investment plan, what is that comprised of and is there a way to provide a little more color or granularity on what that additional \$500 million

A - Don Tarry {BIO 18979505 <GO>}

Yes, some of it relates to the additional industrial type customers that we have coming on plays a Part of it is kind of moving in our grid modernization elements and dealing with our substations and improving those. We continue to get more and more DC on the systems and our systems are designed back in the 1960s and '70s. So some of these substations, need to be. We told to really help and support the reliability related to the intermittent cycle of renewables.

Q - Unidentified Participant

Okay. And on the financing plan up to \$200 million of equity content kind of the determining factors on where, in that range. You could see yourself following presuming that the, Company is a standalone business

A - Unidentified Speaker

Yeah. Ryan I'd leave it up to that \$200 million. So I mean I think that's really what our focus is. We could go up to that \$200 million

Q - Unidentified Participant

Okay. And then last question for me. Maybe just to provide some context around what prompted reengaging the investment community in an earnings call and guidance and should we expect more regular earnings calls as the transaction process proceed

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Yeah Ryan. And we were missing. Our opportunity to celebrate days and put funds in our earnings script I'm being facetious, but as we said, we believe that the merger

A - Lisa Goodman {BIO 20408633 <GO>}

Ultimately consummate but we want to make sure that everybody is informed of our business plans and that we are running this as a standalone entity during this process. So that no matter what happens, we're a strong healthy company in good shape and we think that communicating with our investors and our analysts and our other stakeholders is a great way to be transparent about what's going on.

Q - Analyst

I appreciate it. Thank you.

A - Lisa Goodman {BIO 20408633 <GO>}

Thank you.

A - Unidentified Speaker

[ph] Ryan.

Operator

The next question is from Ashar Khan of Verition. Please go ahead.

Q - Ashar Khan {BIO 19979997 <GO>}

Hi, good morning, how are you guys doing?

A - Lisa Goodman {BIO 20408633 <GO>}

Good morning. Good.

Q - Ashar Khan {BIO 19979997 <GO>}

So my first question is on the financing side, so if I'm right, the share count in your assumption for 2022 is the same as for 2021, right? You give the share count. Correct?

A - Unidentified Speaker

Yes, we did.

Q - Ashar Khan {BIO 19979997 <GO>}

Okay and then. So my question is, why would you do straight equity, why wouldn't you do a convert because the convert would give you the ability, if the merger happens and all that to buyback or something like that. And so from an investor point of view, I don't understand the rationale of doing clean equity as we are in this uncertain period and where you have full trade that the merger will close.

I just don't understand why dilute your current shareholders by doing this, why not do a convert which you can buy back and have more optionality in it?

If the merger does go through.

A - Unidentified Speaker

Yeah, a couple of things I'm not sure I fully follow the diluted to dilute the additional shareholders because mandatory would flow through any way and the price the fixed price on the merger set to pay pay that price would be one element Ashar. The second

element is we're always very focused on our investment grade credit metrics and the important state to keep the company able to continue to grow.

And so the common equity provides 100% equity credit versus mandatory convertibles that oftentimes only give you 25% equity credit. So it's a combination of both, continuing to look to grow our investment portfolio, from that perspective as well as written and ensuring that we have the investment grade [ph]

Q - Ashar Khan {BIO 19979997 <GO>}

Okay. I hope I hope you as you said, you really require it over a two-year period that this decision is taken to the latest rather than the earlier. Right. It should really be a 2023 event unless you have some liquidity concerns this year. So I hope you are mindful not to dilute us and do anything until we are much further along in the process to have some more I think?

Secondly if I want to get on the regulatory side of the approval of the merger. So as you kind of pointed out

Q - Unidentified Participant

We have 18 months for the Supreme Court to come up with the decision. So what is the, how are you preparing. So if they come up with and go against us, are we planning to file a new approval process in front of the new commission next year. Can you elaborate how do we get through the merger approval process in case the Supreme Court Deny's goes against us in that decision.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Well, I think the first thing we would have to do is see why the Supreme Court denied it and see what the record is and then based upon that we would make a decision until I think it's too early to speculate what we would do if that happened will get right back to you with what we do, but I don't want to, speculate

Q - Unidentified Participant

Okay. So you're going to wait till the Supreme Court decision and then inform us what the next step is. And of course we will have a new Commission by then. Okay. And then, Pat. My last question if I may ask is if you look at the takeout price and we look at \$255. We are still trading at a discount to the average multiple.

Can you tell me how the board came up decision to continue this merger because there is lot of PV value lost by engaging in a suiter for such a long period of time and also taking out options and the price doesn't seem to be very attractive if we look at it on were multiples are trading this, we had, and you kind of like with the take out you basically floored the expectations of people.

So I just want to ask, apart from the strategic that you mentioned and all that. From a financial perspective, how did the Board justify this has been fair and reasonable to

extend the timeline

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Q - Julien Dumoulin Smith {BIO 20008787 <GO>}

You have to think about the strategic. I know you only want to talk about the financial, but you've also got to think about the strategic benefits and the Board unanimously believes that the Merger Agreement continues to have significant benefits for shareholders and we can't forget about our customers and our communities. In our employees the transaction price still represents a significant premium.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

At this point and shareholders are also continuing to receive a dividend at a higher dividend rate and we also wanted to retain the progress that we've already made in the other approvals received in the agreement with the parties in New Mexico changing the transaction price would have been a material could change as construed and a new Merger Agreement would have required approval and Texas and we need to start the process over and the Commissioners, so both strategically, it made sense and financially, it's still an attractive price and you get a higher dividend, so that was there they're thinking

Q - Ashar Khan {BIO 19979997 <GO>}

Okay. Okay, appreciate it. Thank you so much.

A - Unidentified Speaker

Thank you. Ashar.

Operator

The next question is from Vedula Murti of Hudson Bay Capital. Please go ahead.

Q - Vedula Murti {BIO 22277708 <GO>}

Good morning.

A - Unidentified Speaker

Morning.

Q - Vedula Murti {BIO 22277708 <GO>}

A lot of off[ph] has been asked, but I guess some is there any way for you to engage the regulatory process to the[ph] issues that are contained within the appeal independent of the premium end [ph] or having to wait for the spin were [ph] to come back to you on individual topic bases or it's all but one way package?

A - Lisa Goodman {BIO 20408633 <GO>}

Bloomberg Transcript

No, you once you file the case at the Supreme Court, the Commission loses jurisdiction over it. And we couldn't talk to them about a case that might come back because it would be considered ex-parte, there is a time the supreme court process where you can ask for a mediation and we might be able to do it then.

But we can't violate the ex-parte rule self.

Q - Vedula Murti {BIO 22277708 <GO>}

So you can't like cherry pick items and basically start a target of some type. And so to try to resolve dosing while be appeal [ph] spending?

A - Lisa Goodman {BIO 20408633 <GO>}

No.

Q - Vedula Murti {BIO 22277708 <GO>}

Okay. In the extension to April, 23 came up about the dividend, can you tell us, any other changes that were made as part of the extension benefits either the company or other stakeholders such that would it look it helps justify in addition to all the factors you listed to continue to process?

A - Unidentified Speaker

Yeah. The amendments that we made were driven primarily by allowing us to run the stand-alone business. So they were dividend financing elements that we would need to facilitate the stand-alone business. So a lot of that flexibility.

Q - Vedula Murti {BIO 22277708 <GO>}

So it really does come down to their Supreme Court remands it or if they rejected you then decide whether to come up with a brand new equipment start all of it?

A - Lisa Goodman {BIO 20408633 <GO>}

Yeah. With that, it's Supreme Court remands at or if we decide we would have to decide whether or not that was the right thing to do for the company at that time.

Q - Vedula Murti {BIO 22277708 <GO>}

And you it did come up with this has any break-up fees or whether this is simply lack of regulatory approvals. So there is nothing the amendments that you made to extend this, there is nothing tied to the. We were in the right and that's it. [ph]

A - Lisa Goodman {BIO 20408633 <GO>}

No regulatory related that he [ph] is only attainable if the Merger Agreement were to be terminated and

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Grid was in breach of its obligations under the merger agreement with respect to obtaining that approval, regulatory related breakup is not solely payable due to the failure to get regulatory approval

Q - Unidentified Participant

Okay, thank you very much.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Kate before you give me the next question. Ryan or Julien whoever I answered your question about whether not that Supreme Court has to hear the case. Reason they've heard of malls, because they do have to hear, so my apologies. I gave you a wrong answer on that. My great team corrected me

Kate go ahead with the next question

Operator

Okay. The next question is from Andy Levi of HITE Hedge. Please go ahead.

Q - Unidentified Participant

Did you guys hear me.

A - Unidentified Speaker

Yeah.

Q - Unidentified Participant

How are you. Sorry, (Multiple Speaker) So just to kind of piggyback on some of these other stuff. So I guess what I'm just trying to figure out. Pat is so you extend the agreement there is not a higher price. We could debate back and forth. We're not going to with you on the call today. Whether going to deal with this deal is itself is better, for customers or not, Pat if we were shareholder I'd be pretty upset because basically, you put a cap on the stock. And based on the guidance that you gave today and where the Group is trading and what the Group has done since you announced the merger of the stock is a \$50 stock from standalone give or take \$0.50

Again my valuation, but looking at pure values and everything on a relative based so stocks trading 45, how can you kind of just to, how can you or the Board justified. We feel for shareholders and the timeframe. See the way and really quite honestly there likelihood that the Supreme Court is going to remanded back to. I understand that we'll have a new Commission in January and maybe that's the ultimate play, but that's still get.

Two years out on those so it's a long time. The way to capture value that probably if there was no deal the value would be there tomorrow.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

We are indeed just remember, the board for all shareholders. And probably the largest individual shareholder in the company. So we obviously think it makes sense for shareholders. You're right, we could other price, but we won't do it here. It has those benefits. It's a premium at this point, you get a higher dividend and we still believe. Andy, this is the right thing to do for the company in the long term. We need that bigger balance sheet we need access to technology expertise that as a company, we are just too small to

A - Unidentified Speaker

They're going to enhance our cyber security abilities. There's just a lot benefits in there that make it a good deal. Think about employees for example. Right. A lot of our employees are really excited for the opportunities to rotate around in a bigger company and in a time when keeping employees is difficult for everybody having that excitement in that optionality for employees is key when you're running a business so there are just like there are lots of factors in there and I understand you disagree.

And that's the great thing about America but it just makes sense financially and strategically.

Financially, as you know and someone who could be a potential shareholder the mix really could the [ph] time value of the money. Yes, I understand the dividend, but I think the main point that I'm just going to leave it alone. But getting out there is that the stock would be a \$50 [ph] stock without the deal. So you shouldn't think of a higher price. Now if you take what taken [ph] a higher price.

Then you know, there is no argument right time, value of money, but you didn't take a higher price. Just making a sense, but I just want to get that out there like something that, [ph] and I want to get it out there. Publicly. [ph] I appreciate your comments and I appreciate. [ph] Thank you very much.

A - Lisa Goodman {BIO 20408633 <GO>}

And thank you, and I appreciate you're not being shy and bring it out. So we do appreciate that.

Operator

And the last question is from Paul Fremont of Mizuho. Please go ahead.

Q - Paul Fremont {BIO 1745706 <GO>}

Thank you very much. I actually want to go back to one of your older slide presentations, you had initially planned on issuing a convert of between \$250 and \$300 million in the fourth quarter of 21 that would have converted in 24. So when I look at the \$200 million of equity that you're issuing in 22 and 23, how should I, should I think of that as being a part of what you would have issued under the convert through 24?, should I think of that as

incremental to that equity that you talked about in 24 or should I think of it as you now defining a lower equity need and what you would have otherwise issued?

A - Unidentified Speaker

Thanks, Paul. And appreciate the question. Yes. The original \$250 mandatory convert was to facilitate the Western Spirit transaction we did close on that transaction and I think the way to think about it is \$200 million between 22 and 23. We did add additional capital in \$500 million over the four-year window as well too. So that's what our equity

Q - Unidentified Participant

It is in 22 and 23. So I think you can take the mandatory convertible that was assumed in the previous slide off and that's the equity would be looking to issue in 2022 and 2023 is up to \$200 million

So if you were not to merge with Avangrid you would have no equity need in 24

A - Unidentified Speaker

No we haven't specifically identified needs beyond 2023. But of course the outcome of the merger will play into that. Paul, we do remain committed to investing in the business while maintaining our investment grade credit rating, which is absolutely critical. And our commitment to hit the 5% long-term target in 2022, or 2025 factors.

What we will need in during that period of time so

Q - Unidentified Participant

Okay. And then I think if you go back to sort of that timeframe. You had initially talked about a 5% to 6% targeted EPS growth rate is the equity issuance, that you're planning to do in 22 and 23, the principal driver of that now being 5% instead of 5% to 6%

A - Unidentified Speaker

Correct Paul underlining plan is continue in fact we've added capital associated with it but underlining plan. The business model, it's, there is good. So it's driven by the equity itself.

Q - Unidentified Participant

Great. And then I guess what based on sort of what you need the oops that you need to jump through. What type of a timeline, are you assuming that the merger would ultimately be consummated in if it were to be approved

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Were we extended the agreement until April of next year. Paul, with the three month optionality so that would be our hope

Q - Unidentified Participant

And is that. I mean I guess from what you're saying, if the courts decide in your favor it gets remanded back to the Commission. And then you would hope in other words, I guess I'm trying to figure out what would be sort of the best case outcome in terms of merger scenario that the court rules in your favor. And then the Commission basically adopts an amended decision that approves the deal is that sort of that is that the best case

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Yeah I'd say so, Paul, because we would hope it would be on the shorter side and if you get a chance to read the statement of issues, it's pretty clear what they are and they're all based on really points of and then the reason that we're keeping the Merger Agreement intact right with the stipulation is that that could be approved easily the record is already there. So

A - Lisa Goodman {BIO 20408633 <GO>}

You don't have to establish a new record, and that makes it a simpler and quicker.

A - Unidentified Speaker

Okay. And then conversely last question from me, if the. If the court were to decide not in your favor then what would be your options?

A - Lisa Goodman {BIO 20408633 <GO>}

But I said earlier, we have to do is take a look at why the court decided and what their record was and then we would have to assess whether or not we felt it made sense to renegotiate and file again, we just have to wait and see on that one.

A - Unidentified Speaker

Great, that's it. Thank you.

A - Lisa Goodman {BIO 20408633 <GO>}

Thank you, Paul.

Operator

This concludes our question-and-answer session. I would like to turn the conference back over to Pat Vincent Collawn for closing remarks.

A - Pat Vincent-Collawn {BIO 16031697 <GO>}

Thank you, Kate. And thank you all for joining us this morning. We hope that you all remain healthy and safe. And then, we're actually able to visit with you in person in investor conferences and other events in 2022. Thank you all so much.

Operator

The conference has now concluded. Thank you for attending today's presentation. You may now disconnect.

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FIFTY-FIFTH LEGISLATURE
SECOND SESSION

PROPOSED AMENDMENT DIRECTED TO A COMMITTEE

February 15, 2022

Madam Chair:

I propose to the HOUSE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS COMMITTEE the following amendments to

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE TAX, BUSINESS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 14, as amended

1. On page 1, line 16, after the second semicolon, insert "AUTHORIZING THE TEMPORARY ACQUISITION OR OPERATION OF NEW RESOURCES OR UTILIZATION OF UTILITY FACILITIES PREVIOUSLY APPROVED FOR ABANDONMENT TO MAINTAIN SYSTEM RELIABILITY;".

2. On page 13, between lines 2 and 3, insert the following new section:

"SECTION 6. TEMPORARY PROVISION--AUTHORIZING THE TEMPORARY ACQUISITION OR OPERATION OF NEW RESOURCES OR UTILIZATION OF UTILITY FACILITIES PREVIOUSLY APPROVED FOR ABANDONMENT TO MAINTAIN SYSTEM RELIABILITY--REQUIREMENTS.--Upon a verified statement filed on or before March 10, 2023 from an electric public utility to the public regulation commission of an anticipated system operating inadequacy or potential resource shortfall to serve retail customer loads, no approval shall be required for the public utility to acquire or operate new resources on a temporary basis for up to one year or extend the service life of a public utility plant that has received abandonment approval for up to four months during calendar year 2022; provided that the rate recovery for the reasonable costs of such actions shall be subject to commission review in a future proceeding."

Respectfully submitted,

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO’S)
CONSOLIDATED APPLICATION FOR)
APPROVALS FOR THE ABANDONMENT,) Case No. 19-00195-UT
FINANCING, AND RESOURCE REPLACEMENT)
FOR SAN JUAN GENERATING STATION)
PURSUANT TO THE ENERGY TRANSITION ACT)**

**IN THE MATTER OF THE APPLICATION OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO)
FOR APPROVAL OF RENEWABLE POWER)
AGREEMENTS AND ENERGY STORAGE) Case No. 20-00182-UT
AGREEMENTS AND PROPOSAL FOR DEMAND)
RESPONSE PLAN PURSUANT TO FINAL ORDER)
IN CASE NO. 19-00195-UT)**

**PUBLIC SERVICE COMPANY OF NEW MEXICO’S
SUPPLEMENTAL RESPONSE TO ORDER REQUIRING JANUARY
COMPLIANCE NOTICE AND REQUIRING RESPONSES**

Public Service Company of New Mexico (“PNM” or “Company”) hereby supplements its January 26, 2022, Response to the New Mexico Public Regulation Commission’ information requests in its *Order Requiring January Compliance Notice and Requiring Responses* (“BR”) issued January 14, 2022. PNM supplements its response to Bench Request A8(xii) as follows:

Bench Request A8(xii):

Please describe any legislative proposals that PNM is contemplating to help it deal with its Summer 2022 resource adequacy issues format, that are responsive to this question.

Original Response (January 26, 2022):

PNM has proposed no such legislation in the current legislative session and is not aware of any pending legislative proposals or action that would provide assistance in meeting PNM’s Summer 2022 resource needs.

Supplemental Response (February 16, 2022):

An amendment to Senate Bill 14 has been introduced and adopted during the February 16, 2022 House Government, Elections and Indian Affairs Committee meeting which would allow utilities to temporarily acquire or operate new resources or utilize abandoned plant to meet resource inadequacy circumstances through a notification process made to the Commission on or before March 10, 2023.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW MEXICO

/s/ Stacey Goodwin

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