

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF
PUBLIC SERVICE COMPANY OF NEW MEXICO'S
ABANDONMENT OF SAN JUAN
GENERATING STATION UNITS 1 AND 4

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)
)
) Case No. 19-00018-UT
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FILED IN OFFICE OF

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NM PUBLIC REGULATION COMM
RECORDS MANAGEMENT BUREAU

DIRECT TESTIMONY AND EXHIBITS

OF

CHARLOTTE A. GRUBB

ON BEHALF OF
NEW ENERGY ECONOMY

OCTOBER 18, 2019

1 **Q. How does your experience relate to your testimony in this proceeding?**

2 A. I am able to use a comprehensive economic lens to assess the impact that an investor-
3 owned utility has on ratepayers during the transition away from fossil fuels, specifically coal in
4 this instance. During my work with EPI, I wrote ten exposé articles on regulatory capture that
5 affects customers' rates regarding utility renewable energy adoption. Most of my work was
6 focused on the monopoly utility Arizona Public Service (APS) in Arizona, but I also wrote one
7 piece regarding the New Mexico Public Regulation Commission. This piece exposed that two
8 utility commissioners received money for their elections from a solar contracting company
9 doing business with Public Service Company of New Mexico (PNM) that led to higher costs
10 for customers than other feasible alternative resources (at lower cost for equivalent solar
11 products). My work to expose regulatory capture in Arizona and New Mexico has included
12 reviewing the potential conflict of interest of utility commissioners and state legislators
13 through state lobbying disclosures, gift and honoraria disclosures, campaign contributions
14 (including PACs and company executives), as well as ethics/stocks disclosures. For
15 corporations this has included reviewing SEC forms, bankruptcy filings, and reviewing
16 investor quarterly earnings calls to see if the utility is conveying the same information to the
17 public as they are to investors. I am comfortable analyzing utility Integrated Resource Plans
18 (IRPs) to assess whether customers are receiving just and reasonable rates and to compare
19 demand estimates with what the utility is planning to build. I have also filed numerous public
20 records requests, Inspection of Public Records (IPRAs), and federal Freedom of Information
21 Act (FOIAs) requests to examine the relationships between utility commissioners and
22 monopoly utilities. Through county-level public records requests, I documented the efforts of

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1 APS to stop a renewable energy ballot initiative which led to a state-wide Attorney General
2 investigation that found 28 public officials guilty of breaking the law. From closely following
3 utility commission meetings and legislative sessions regarding energy policy, I am very
4 familiar with the different jurisdictions that the utility commission and state legislature have to
5 regulate energy policy.

6 To generate policy goals at Oceana, I used Cost-Benefit Analysis, Net Present Value
7 calculations, as well as input-output models to analyze the interdependence of different sectors
8 within a given economy. I also have experience using computer modeling frameworks such as
9 agent-based models, Biogeme, and Simulistics. My familiarity with these models allows me to
10 view the effects of simultaneous attributes, investments over time with adjusted discount rates,
11 appropriate sensitivity analysis, and the effect on different economic sectors as natural
12 resources or assets depreciate over time.

13 My full educational and professional background is presented in Exhibit CAG-1,
14 attached and incorporated herein.

15 **Executive Summary**

16 **Q. What is the purpose of your testimony?**

17 A. I submit testimony in support of abandoning the San Juan Generating Station in 2022.
18 The purpose of my testimony is to address three areas regarding PNM's Application to
19 Abandon the San Juan Generating Station ("SJGS"), the financing of those abandonment costs,
20 including undepreciated investments, and whether the ETA applies to Case No. 19-00018-UT.
21 Even if the ETA applies to the application for the financing order, PNM has failed to meet its
22 burden of proof and that ETA sections 4 and 5, read together, require denial of PNM's

1 financing order.

2 **Relevant Background**

3 **Q. What are the underlying facts of this case?**

4 A. Public Service Company of New Mexico (“PNM”) is a majority owner and is the
5 operator of the San Juan Generating Station (“SJGS”). In NMPRC Case No. 13-00390-UT,
6 PNM began “Phase I” of the abandonment process and abandoned its interests in San Juan
7 Units 2 and 3. Following Phase I, in Case No. 13-00390-UT, PNM agreed to a 2018 Review
8 Hearing¹ to determine if PNM should maintain and continue operating San Juan Generating
9 Station. That hearing never happened. Instead, PNM filed what it termed a “verified
10 compliance filing” on December 31, 2018. In response, the PRC opened this docket on January
11 10, 2019. Now PNM seeks to abandon its remaining interest in Units 1 and 4.

12 **Q. When did PNM agree to abandon SJGS?**

13 A. On July 1, 2017, PNM filed its integrated resource plan for 2017, and the key finding
14 was that it would save ratepayers money to close San Juan Generating Station.² On June 29,
15 2018, PNM informed all of the other SJGS co-owners that it did not intend to continue its share
16 beyond July 2022.³ “Between May 22, 2018, and July 26, 2018, all of the Participants [in San

¹ Approved by NMPRC Case No. 13-00390-UT, *Final Order* (Dec. 16, 2015).

² In February 2017, PNM’s board of directors decided that a shutdown scenario of San Juan in 2022 would create higher rate base earnings based on capital investment. *See* NMPRC Case No. 16-00276-UT, NEE Exhibit 16 (PNM Exhibit NEE 7-1), attached and incorporated herein as Exhibit CAG-2. Thereafter, in March 2017, PNM CEO Pat Vincent Collawn told employees that “a preliminary analysis of IRP data shows that abandoning San Juan Units 1 and 4 in 2022 could provide long-term benefits to customers.” *See* PNM Exhibit NEE 2-34 pp. 1-2 (10-16-19 Supplemental), attached and incorporated herein as Exhibit CAG-3.

³ Including Tucson Electric Power Co, Utah Associated Municipal Power Systems, Incorporated County of Los Alamos, and Farmington Electric Utility System. *See* NMPRC

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1 Juan, including PNM], with the exception of Farmington, sent notices that they did not intend
2 to extend the Exit Date Agreement and [Coal Supply Agreement] past July 1, 2022.” *Id* p. 5.
3 Further, as of 12/31/2018, recorded by the Federal Register, PNM made the irrevocable
4 decision: “On December 31, 2018, Public Service Company of New Mexico (PNM) filed for
5 abandonment of their share of the San Juan Generating Station with the State of New Mexico.”
6 *See*, Exhibit CAG-4 (highlighted). Thus, it is clear that PNM had committed to the
7 abandonment *prior* to the introduction of the Energy Transition Act (as S.B. 489) before the
8 Senate on February 7, 2019.

9 **Q. Do you support the application of the Energy Transition Act (“ETA”) to the**
10 **Abandonment & Securitized Financing in NMPRC Case No. 19-00018-UT?**

11 A. No. I strongly oppose application of the ETA to this case. PNM had committed to
12 abandon SJGS Units 1 and 4 as of June 29, 2018, and that was their unequivocal position in
13 PNM’s December 31, 2018 compliance filing.⁴ Moreover, the docket in NMPRC Case No 19-

Case No. 13-00390-UT, PNM Verified Compliance Filing (Dec. 31, 2018), PNM Exhibit TGF-4.

⁴ *See 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, attached to the *Response of New Mexico Public Regulation Commission in Opposition to Verified Petition for Writ of Mandamus Filed by Public Service Company of New Mexico*, as Exhibit B, which contradicts the claim that no irrevocable steps have been taken to abandon the coal operation; Without a coal supply SJGS cannot operate as a coal plant post 2022. (At p. 4: “PNM does not propose to pursue a new coal supply agreement that would allow SJGS to continue serving PNM customers post2022, and has so informed the coal supplier, SJCC.”) (At p. 6: “PNM does not propose to continue operating SJGS and has no actual negotiated coal supply or other plant operating agreements that extend beyond 2022 [.]” See also, *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). (At p. 2: “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

1 00018-UT was opened on January 10, 2019. Both of these events took place prior to the
2 *introduction* of SB 489/ETA in the NM Senate, let alone its passage. Therefore, if the ETA
3 were to apply, it would be changing the rights of litigants in an ongoing case, in violation of
4 New Mexico Constitution Article IV, §34.⁵

5 **Q. Please provide your understanding of the procedural history of NM PRC Case No.**
6 **13-00390-UT and how it relates to this case?**

7 A. NMPRC Case No. 13-00390-UT concerned Phase I of PNM's abandonment of the San
8 Juan Generating Station, Units 2 and 3. At the resolution of that case, PNM agreed in a
9 Modified Stipulation to make a filing, dubbed a 2018 Review Hearing, to determine if the
10 remaining two units at San Juan Generating Station would continue to serve customers after
11 the coal contract expires in 2022. In the 2018 review hearing, stakeholders and parties from
12 NMPRC Case Nos. 13-00390-UT and 17-00174-UT⁶ were to be given access to economic
13 modeling, alternative replacement power scenarios compared, and more. In the NM Supreme
14 Court's review of 13-00390-UT, the Court held that the 2018 review hearing would be a "net

seeking 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 is essentially moot." At p. 5: "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." At p. 8: "[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 post2022 [.] 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."

⁵ "No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case."

⁶ PNM's 2017 IRP case.

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1 public benefit.” The 2018 Review Hearing was to take place between 7/1/2018 and
2 12/31/2018. It never happened. Instead, PNM filed its “verified compliance filing,” which
3 showed that it had decided to abandon its remaining interests in San Juan. As Thomas Fallgren,
4 PNM’s Vice President of Generation stated “[b]ecause the majority of SJGS owners have
5 given notice not to continue SJGS operations and there are no agreements that would allow it
6 to operate beyond 2022, SJGS will not be available to serve PNM customers after 2022.”
7 Verified Compliance Filing, p. 2.

8 On January 10, 2019, the PRC opened 19-00018-UT to determine whether PNM’s
9 compliance filing met the requirements of the Modified Stipulation to have a 2018 review
10 hearing. The PRC requested responses from parties to NMPRC Case No. 13-00390-UT on
11 whether the PRC should continue an abandonment docket. Twelve parties⁷ responded in
12 various forms, including NEE. In response, the PRC ordered PNM to file an abandonment
13 application, “to address the abandonment of PNM’s interest in SJGS Units 1 and 4. The scope
14 of the proceeding shall include all issues relevant to an abandonment proceeding.”⁸

15 **ETA Application to this Case**

16 **Q. Do other states have securitization statutes? If so, how do they typically work?**

17 A. Yes, 21 states, the District of Columbia, and Puerto Rico currently have securitization
18 legislation. Securitization has been used to recover costs of early plant retirement, to recover

⁷ The parties included PNM, Albuquerque Bernalillo County Water Utility Authority (ABCWUA), New Mexico Industrial Energy Consumers (NMIEC), the New Mexico Attorney General, PRC’s Utility Division Staff, the Coalition for Clean Affordable Energy (CCAEE), San Juan County Entities, Sierra Club, Southwest Generation Operating Company (SWG), Western Resource Advocates (WRA), and Interwest Energy Alliance.

⁸ See NMPRC Case No. 19-00018-UT, *Order of Jan. 30, 2019*. For a detailed timeline, see Exhibit CAG-5, attached and incorporated herein.

1 stranded costs in connection with storm recovery, and to help utilities cover the cost of new
2 pollution control equipment. First, state legislatures must pass legislation authorizing their
3 public regulation commission (or equivalent) to issue special types of financing orders for
4 securitization. After approving a utility's claim, a state regulatory commission issues an
5 irrevocable financing order that authorizes securitized bonds to be sold for the utility, and sets
6 out the conditions of that sale.

7 The idea behind securitization is that the utility will be able to issue highly-rated
8 securities through special purpose, bankruptcy-remote entities that allow them to finance
9 stranded assets. The bonds are then paid back over a fixed period of time by ratepayers,
10 through a line item added to utility bills (in this case for twenty-five years). The rate
11 component is periodically adjusted, up or down, to create a stable cash flow to pay off the
12 bonds for Wall St. investors by NM ratepayers.

13 The biggest difference between other securitization statutes and this one is that the ETA
14 is the only securitization statute on record that allows PNM (or another utility) to determine the
15 securitization amount. Because ratepayers are responsible for securitization costs, often for
16 twenty-five years or longer, states have generally held utilities to robust regulatory scrutiny
17 before agreeing to proceed with securitization. Without regulatory oversight there is no
18 advocate for ratepayers in this process, even though securitization imposes an irrevocable
19 financial commitment on them. Best practices would require a clear standard to evaluate
20 proposals, including the ability of the regulatory agency to adjust the financing order, decide
21 whether the requested amount is legitimate, provide oversight from the proposal stage all the
22 way to the bond issuance stage, and with no time limits for regulatory consideration.

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1 **Q. Does the ETA satisfy these best practices?**

2 A. No. The ETA turns the PRC into an administrative clerk, allowing them only to ensure
3 that the application meets the requirements of ETA §4. Once issued, the financing order is
4 irrevocable. The ETA requires the Commission to approve an application within 6 months of
5 filing (plus three additional months “[f]or good cause shown”). ETA §5(A). This is the biggest
6 change in utility resources in New Mexico in decades, and it is to be decided based on a 9-
7 month hearing. If the Commission does not approve the application within nine months,
8 PNM’s application for a financing order and approval to abandon SJGS will be deemed
9 approved under ETA §5(B). This removes regulatory review and denies consumer protection
10 standards that existed before the ETA.

11 **Q. Does the ETA change the rules of procedure for utility abandonment?**

12 A. Yes, again, in violation of Article 4 §34 of the New Mexico Constitution. I am aware
13 that 13-00390-UT, Phase I of the San Juan abandonment, lasted almost two years. San Juan
14 Generating Station is PNM’s flagship plant and has been operating for 45 years. We already
15 know that there is environmental contamination on the site, PNM is requesting a great deal of
16 money, and ratepayers deserve a long enough period of review to ensure that a meaningful
17 hearing is conducted and all information is considered before making a decision.

18 **Q. Was there a case pending at the NM PRC that affects the rights or remedies of**
19 **ratepayers?**

20 A. Yes, on 1/10/2019, the PRC opened an SJGS abandonment docket, 19-00018-UT to
21 determine “[t]he proper treatment and financing of undepreciated investments,
22 decommissioning costs, and reclamation costs”, “[t]he status of PNM’s acquisition of

1 generating resources to replace the resources being abandoned,” “how to address any negative
2 impacts of the abandonment” including remediation and cleanup, and “[i]dentification of ...
3 the rate impact of any abandonment costs PNM asserts should be borne by PNM ratepayers,
4 including affordability for residential customers, particularly low income customers, and for
5 small business customers.” *January 30th Order* pp. 15-16.

6 The ETA was introduced before the Senate (as SB 489) on February 7, 2019. The ETA
7 became law on June 14, 2019, nearly six months *after* this docket was initiated. The rights of
8 all New Mexico utility ratepayers are at stake in this litigation. Any application of the ETA
9 would change the procedural rules as well as the substantive rights of all parties.

10 **Q. What is the difference between ETA-defined costs and how costs would be**
11 **awarded under PRC’s traditional regulatory rules?**

12 A. Prior to the ETA, utility recovery was governed by the Public Utility Act, specifically
13 NMSA §62-3-1-B. Under that policy, recovery had to be in the public interest. The New
14 Mexico Public Regulation Commission would balance the interests of utility shareholders and
15 ratepayers. It would also ask if the investments the utility sought were “prudent,” and whether
16 the resulting rates were “just and reasonable.” These consumer protections, recognized not
17 only in New Mexico but across the country, require the Commission to conduct review and
18 exercise discretion over proposed rates. The Commission would then have the ability to modify
19 or deny requested rate increases if they were not prudent, or if they did not fairly balance the
20 interests of utility shareholders and ratepayers. I understand that in Phase I of San Juan
21 abandonment, the PRC decided that a 50/50 split between ratepayer and investor recovery was
22 the proper balance.

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1 Under the ETA, the Commission has to issue a financing order approving a utility's
2 application if the utility complies with the requirements of ETA §4. ETA §5(E). ETA §4
3 doesn't require PNM to show that its financing order is in the public interest. The ETA does
4 not allow the PRC to balance the interests of shareholders and ratepayers. It also does not
5 require that the utility show that their investments were prudent, or that resulting rates would
6 be just or reasonable. The ETA simply requires that PNM show that they satisfy the checklist
7 of requirements in ETA §4. ETA §4 essentially requires that the utility identify the facility to
8 be abandoned, estimate the costs, and then describe in detail how the securitization process will
9 collect those costs from ratepayers. Because the Commission must approve any financing order
10 that complies with Section 4, the Public Regulation Commission would not be able to modify
11 the recovery even if they found, for example, that the power plant had imprudent investments.
12 Even if the Commission does not approve the financing order, it will be deemed approved six
13 months after the application is filed. See ETA §5(B).

14 The PRC's regulatory power has been an important bulwark against utility overreach.
15 New Mexico is one of the poorest states in the Union. Per capita, New Mexicans average
16 \$25,257 in annual income, and 19.7% of New Mexicans live in poverty.⁹ In fact, New Mexico
17 is ranked 49th out of 50 states for poverty. Out of a population of just over 2.044 million, more
18 than 400,000 New Mexicans live in poverty.¹⁰ PNM's customers consistently struggle to pay
19 for their utilities. In 2017 PNM sent customers 388,851 disconnect notices, and in 2018 PNM

⁹ <https://www.census.gov/quickfacts/NM>.

¹⁰ 2018 Talk Poverty Report (New Mexico), available at <https://talkpoverty.org/state-year-report/new-mexico-2018-report/>.

1 sent customers 365,027 disconnect notices.¹¹ Many PNM customers also receive federal energy
2 assistance through the Low Income Home Energy Assistance Program (LIHEAP). In 2017,
3 19,992 PNM customers received LIHEAP and that number increased to 20,795 in 2018.¹² In
4 contrast to the relative poverty of their customers, PNM reported net earnings in 2018 of \$85.6
5 million, and in 2017 it made \$79.9 million.¹³ In the 2019 fiscal year, PNM's CEO Patricia K.
6 Collawn was compensated \$4,754,536, and its CFO Charles N. Eldred was compensated
7 \$2,213,830.¹⁴ This money was extracted from some of the poorest people in the nation—New
8 Mexico ratepayers. Historically, the PRC's job has been to ensure that energy monopolies do
9 not have runaway power to extract costs from vulnerable ratepayers (consistent with the PRC's
10 concern about "the rate impact of any abandonment costs PNM asserts should be borne by
11 PNM ratepayers, including affordability for residential customers, particularly low income
12 customers, and for small business customers." January 30th Order, pp. 15-16. However, the
13 ETA would change that, granting PNM power to extract whatever money it sees fit throughout
14 the abandonment process not just of SJGS, but of all its coal, nuclear, and gas plants in service
15 before 2019.

16 **Q. Does it fairly balance the interests of ratepayers and investors for PNM to expect**
17 **100% recovery of undepreciated investments?**

¹¹ Case Nos. 19-00018-UT/19-00195-UT, *PNM's 7th Supplemental Objections and Responses to NEE's 1st Set of Interrogatories* (Oct. 9, 2019), PNM response to NEE Interrogatory 1-34, attached as Exhibit CAG-6.

¹² *Id.*, PNM response to NEE Interrogatory 1-97.

¹³ PR Newswire, "PNM Resources Reports Fourth Quarter and Year-End Results," *available at* <https://www.prnewswire.com/news-releases/pnm-resources-reports-fourth-quarter-and-year-end-results-300802852.html>.

¹⁴ PNM, relevant portion of Notice of 2019 Annual Meeting of Shareholder, attached as Exhibit CAG-7.

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1 A. No. Of course PNM has the right to request 100% undepreciated investments, but
2 ratepayers have the right to present a claim or defense to the amount the utility requests. The
3 PRC has previously both adjusted utility-requested amounts to balance the interests of
4 ratepayers and investors, and also reduced the percentage of return that the utility can recover
5 on the principal amount. In contrast, the ETA makes it so that the utility defines the costs and
6 the PRC can't use its traditional tools to protect ratepayers by changing the return on
7 investment or the principal amount.

8 **PNM's Application Fails Even if the ETA Applies**

9 **Q. If the ETA applies to Case No. 19-00018-UT, does PNM's financing order comply**
10 **with the requirements of Section 4 of the ETA, specifically the criteria outlined in**
11 **§§4B(5) and 4B(12)?**

12 A. No. PNM has failed to meet the criteria outlined in ETA §§4B(5) and 4(B)(12).
13 ETA §4B(5) requires that the application include "a memorandum with supporting exhibits
14 from a securities firm, such firm to be attested to by the state board of finance as being
15 experienced in the marketing of bonds and capable of providing such a memorandum, that the
16 proposed issuance satisfies the current published AAA rating or equivalent rating criteria of at
17 least one nationally recognized statistical rating organization for issuances similar to the
18 proposed energy transition bonds."

19 ETA §4B(12) requires that the application include "a statement from the qualifying
20 utility committing that the qualifying utility will use commercially reasonable efforts to obtain
21 the lowest cost objective." ETA §2N defines "lowest cost objective" such that "the structuring,
22 marketing and pricing of energy transition bonds results in the lowest energy transition charges

1 consistent with prevailing market conditions at the time of pricing of energy transition bonds
2 and the structure and terms of energy transition bonds approved pursuant to the financing
3 order.”

4 **Q. Has PNM met the requirements of Section 4 of the ETA?**

5 A. No. PNM’s application includes the testimony of Charles Atkins, a bond writer for
6 Guggenheim Securities. Atkins’ testimony merely provides the securities firm’s opinion on
7 what *could* be the best bond configuration. *See* Testimony of Charles Atkins at p. 4.¹⁵
8 (identifying the purpose of his testimony to “[p]resent a *proposed preliminary energy*
9 *transition bond structure* and discuss certain structuring considerations”). Atkins further
10 testifies that “this preliminary structure and pricing information is illustrative and subject to
11 change, and the actual structure and pricing will differ, and *may differ materially* from this
12 preliminary structure.” TR Atkins at 21 (emphasis supplied). This is complete wobble language
13 that does not provide any assurance of what the final security will look like.

14 ETA § 4(B)(5) requires assurance that the security satisfies the current AAA rating. In
15 contrast, Atkins’ testimony merely says that “The Company and its lead underwriter *will*
16 *prepare* written presentations and may meet with rating agency personnel to discuss the credit
17 framework and credit strengths of the proposed Energy Transition bonds with each hired rating
18 agency ...” TR Atkins at p. 29.

19 Further, Atkins’ testimony directly contravenes the requirements of § 4(b)(12). Where
20 4(b)(12) requires that utilities seek the “lowest cost objective,” Atkins testified that “My
21 testimony ... describes how the proposed securitization is structured to achieve *the highest*

¹⁵ Cited throughout as “TR Atkins.”

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1 *possible credit ratings and price* at the lowest market-clearing interest costs consistent with
2 investor demand and market conditions at the time of pricing.” TR Atkins at 1 (emphasis
3 supplied). The concern Atkins identifies with meeting the “lowest market-clearing cost” does
4 not reflect PNM’s obligation to make the bonds as inexpensive for *ratepayers* as possible.
5 Atkins acknowledges that the securitization financing is a financial decision for Guggenheim
6 (or whatever security firm ultimately issues the bond), not a decision that meets the consumer
7 protection standards the ETA requires. The fiduciary duty of security firms like Guggenheim is
8 to make the most money possible and that directly conflicts with the PRC’s obligation to
9 protect ratepayers by having the lowest possible interest rates. Specifically, Atkins and
10 Guggenheim’s concern is likely that they not be left ‘holding’ any of the bonds at the end—
11 they want to sell them at market rather than be forced to underwrite them. However this
12 reflects the best interests of *Guggenheim*, not New Mexico ratepayers, who are supposed to be
13 the primary concern under the ETA. Likewise, Atkins later testifies that

14 Based on the strength of the book, the underwriter(s) may adjust the pricing levels
15 lower (or tighter). ... [This process] is done to ensure maximum distribution of
16 the Bonds at *the lowest bond yields reasonably consistent with a market*
17 *conditions*. If a tranche is oversubscribed, the underwriter(s) may continue to
18 lower the pricing level (thus improving execution for the issuer), provided that
19 this adjustment does not decrease the aggregate investor interest below the size of
20 the tranche. If a tranche is undersubscribed, the pricing level may be adjusted
21 higher until the tranche is fully subscribed. TR Atkins at 35 (emphasis supplied).
22

23 The “lowest bond yields reasonably consistent with [] market conditions” are not the same
24 thing as the “lowest cost objective” required by the ETA. The qualifier “reasonably consistent
25 with [] market conditions” indicates that the primary goal is not to adhere to the statute’s
26 requirements, but to follow the whims of the market. It is clear from his testimony that the

1 bonds are being issued based on the best interest of the financial services entity and “market
2 conditions,” not what is in the best interest of New Mexico ratepayers.

3 **Q. Does Atkins’ opinion bind the Guggenheim Securities firm?**

4 A. No, Atkins’ opinion does not bind the Guggenheim Securities firm. ETA §4(B)(5)
5 states that “An application for a financing order shall include ... (5) A memorandum with
6 supporting exhibits *from a securities firm, ... that the proposed issuance satisfied the current*
7 *published AAA rating* or equivalent rating criteria of at least one nationally recognized
8 statistical rating organization for issuances similar to the proposed energy transition bonds.”
9 (emphasis supplied). PNM has provided Exhibit CAN-4 (attached to Atkins’ testimony) as if it
10 were the memorandum required by ETA §4(B)(5). However, Guggenheim Securities’
11 memorandum comes with a significant disclaimer. In it, Guggenheim states that:

12 This Presentation does not constitute financial advice or create any financial
13 advisory, fiduciary or other commercial relationship. In addition, this Presentation
14 does not constitute and should not be construed as (i) a recommendation, advice,
15 offer, or solicitation by Guggenheim Securities, its affiliates ... with respect to
16 any transaction or other matter, or with respect to the purchase or sale of any
17 security ... or addressing (ii) addressing (a) any underlying business and/or
18 financial decision to pursue any transaction or other matter, (b) the relative merits
19 or any such transaction or matter as compared to any alternative business or
20 financial strategies that might exist for any party, (c) the financing of any
21 transaction, or (d) the effects of any other transaction in which any party might
22 engage. *The views expressed herein are solely those of the author(s) and may*
23 *differ from the views of other Representatives of Guggenheim securities.* PNM
24 Exhibit CNA-4 p. 15 (emphasis supplied).
25

26 As the italicized portion of the quote above suggests, this is not the opinion of Guggenheim,
27 but of Atkins. This does not satisfy the ETA requirement that the *firm* attests to the bond rating.
28 Guggenheim further states:

29 In providing this presentation we (i) do not assume any responsibility, obligation

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1 or liability for the accuracy, completeness, reasonableness, achievability or
2 independent verification of, and have not independently verified, any information
3 included with this Presentation ... *We do not provide legal, regulatory, tax,*
4 *accounting, or actuarial advice.* We understand that each potential investor or
5 other third party will consult its own legal, regulatory, tax, accounting, actuarial
6 and other professional advisors in connection with any potential transaction or
7 otherwise. *Id* (emphasis supplied).
8

9 It is clear from this thorough disclaimer that Guggenheim is refusing to provide the consumer
10 protection assurance required by ETA §4(B)(5). When considered in relation to this disclaimer,
11 it is clear that Guggenheim Securities is not at all attesting that PNM's security will satisfy any
12 kind of bond rating, let alone a AAA standard. This is not the binding certification the statute
13 requires.

14 Fitch Ratings' AAA criteria state that:

15 Fitch's analysis of the legal risks in tariff bond transactions is comparable to its
16 analysis of other structured finance transactions ... There are also some unique
17 aspects to the analysis of utility tariff/stranded cost/stranded cost transactions and,
18 therefore, Fitch also considers: enforceability and constitutionality of the
19 statute/order/pledge; the rights of and effect on bondholders upon an action
20 seeking to impair the rights established pursuant to the statute/order and
21 transaction documents under the U.S. Constitution and the relevant state
22 constitution; the severability of the provisions of the statute/order; and the ability
23 of citizens of the relevant state to seek to amend or repeal the statute/order and the
24 likelihood of success. PNM Exhibit CNA-4 p. 120.
25

26 In this case, NEE is raising the issue of whether the ETA, and the securitization provisions in
27 particular, are constitutional. If any part of the ETA is found unconstitutional it might
28 invalidate or impair the possibility of AAA rating for bonds. Similarly to irregularities in real
29 property which might "cloud" title, NEE (and other parties') claims of unconstitutionality
30 "cloud" the AAA rating. The testimony of Charles Atkins attached to PNM's application does
31 not address any of the issues raised by the Fitch AAA criteria, particularly constitutionality and
32 applicability of the ETA.

1 **Q. Is the Memorandum/Opinion provided in Atkins' testimony sufficient to address**
2 **ETA requirements?**

3 A. No. As described above, the memorandum is not the one anticipated by ETA §4(B)(5),
4 as it is not an assurance by a firm that the bonds meet AAA criteria.

5 **Q. Does Atkins' testimony meet the criteria?**

6 A. No, Atkins' testimony only provides a checklist of the requirements PNM's bond
7 would have to meet. Usually, for something of this magnitude the affiant and/or person/firm
8 providing testimony reiterates the law's specific requirements and then explains how the
9 criteria have been met. A mere checklist of the criteria that *should be* met does not provide
10 assurance to the NM PRC as required by ETA §4(B)(5).

11 Worse, the checklist provided in Atkins' testimony does not correspond to the ETA
12 provisions it claims to apply. *See* PNM Exhibit CNA-4 p. 3. The first row, "Property Right"
13 describes how the financing order "should establish future special tariff collections as a
14 property right ... defined in the order approved by the commission or the equivalent rating
15 agency ..." It then indicates that this corresponds to "ETA sec. 2(I)" and has a check to
16 indicate that the PNM transaction meets the criteria in that section. However, ETA § 2(I) has
17 no requirements—it merely defines the term "energy transition property" as used throughout
18 the statute. The final two rows of the checklist do not refer to the Energy Transition Act at
19 all—so it is unclear how the checks indicating that "PNM Transaction Meets Criteria" actually
20 indicate that PNM's transaction is following ETA guidelines. At a more general level, the
21 contents of the table at PNM Exhibit CNA-4 pp. 3-4 simply state requirements and then check
22 them off without description. The table simply states, for example, that "[t]o effectively de-link

Case No. 19-00018-UT
Direct Testimony of Charlotte A. Grubb
On behalf of New Energy Economy
October 18, 2019

1 the rating of tariff bonds from that of the utility, Fitch considers it essential that the order create
2 an obligation on the commission to ensure that, in the event of the incumbent utility's sale or
3 bankruptcy, any successor to the utility be treated as a successor ..." Then, to the right of that,
4 there is a checkmark referencing ETA §§9(B) and (G). For one thing, there is no ETA §9(G).
5 For another, simply stating that "Fitch considers it essential" that a requirement be met does
6 not show that PNM's proposed bonds *actually meet that requirement*. Neither does simply
7 putting a checkmark next to it. ETA §4(B)(5) requires an actual affirmation by a firm that the
8 ETA's requirements are met. This means that a firm should actually describe how the criteria
9 are met. The checklist at PNM Exhibit CNA-4 pp. 3-4 clearly does not satisfy that.

10 **Q. Do Atkins/Guggenheim have a unity of interest with ratepayers?**

11 A. No. Underwriters do not have the best interests of ratepayers at heart. As the bond
12 issuer, Guggenheim has an interest in making the most money possible off the assets by getting
13 the highest cost. Atkins admits this on the first page of his testimony when he says "My
14 testimony ... describes how the proposed securitization is structured to achieve *the highest*
15 *possible credit ratings and price* at the lowest market-clearing interest costs consistent with
16 investor demand and market conditions at the time of pricing." TR. Atkins at 1 (emphasis
17 supplied). This is the opposite of what ratepayers want—ratepayers want to be charged as little
18 money as possible at the lowest rate of interest. The Public Regulation Commission's primary
19 function is to review utility filings to ensure that ratepayers pay the lowest costs at the lowest
20 interest rate possible, not to enhance the profit margin of Wall Street firms. As Atkins'
21 testimony reveals, what's best for New Mexican ratepayers was not considered in financing
22 these bonds, despite the fact that ratepayers are the ones responsible for paying them back.

1

CONCLUSION

2 **Q. Do you have concluding thoughts?**

3 A. Yes I do. Under the ETA, the PRC no longer has regulatory power to amend any
4 financing order, giving PNM unprecedented power. Under this securitization statute, PNM
5 determines the securitization amount and in the process strips ratepayers of any regulatory
6 protection against unjust rates. This oversight power was given to the Commission under the
7 New Mexico Constitution to protect ratepayers through assuring that only “prudent”
8 investments are available for recovery, as well as ensuring that rates are “just and reasonable.”
9 Under the ETA these consumer protection standards no longer apply. Under the securitization
10 of the ETA, the PRC is no longer able to adjust the financing order or engage in other
11 traditional means to adjust utilities’ financial requests.

12 Further, even if the ETA does apply, PNM’s application fails to meet the burden of
13 proof under Section 4 of the ETA, specifically in §§4B(5) and 4B(12). These statues require
14 supporting exhibits from a securities firm that show the proposed issuance satisfies AAA
15 rating, and that the utility prove it is achieving the “lowest cost objective.” PNM does not meet
16 these criteria and therefore the financing order should be denied.

17 **Q. Does this conclude your testimony?**

18 A. Yes, at this time.

19



EMPLOYMENT

TAYLOR REES, *Documentary Filmmaker*
Researcher

May 2019- present

- Led research for investigative documentary on lithium mining and trade in Chile and Argentina.

ENERGY AND POLICY INSTITUTE, *Fossil fuel watchdog organization*

Nov 2017-April 2019

Research and Communications Manager

- Wrote an [article](#) that documented utility efforts to stop a renewable energy ballot initiative which led to a state-wide Attorney General investigation that found 28 public officials guilty of breaking the law.
- Wrote ten exposé [articles](#) on regulatory capture for utility renewable energy adoption.
- Reviewed Integrated Resource Plans (IRPs) to ensure regulatory rate payer protection.
- Exposed utility regulatory capture through public records requests, campaign finance contributions, SEC filings, front group affiliations, lobbying disclosures, and gift/honoraria disclosures.

OCEANA, *Science-based policy advocacy organization*

Oct 2013-March 2017

Marine Economist and Consultant

- Analyzed data and wrote global report on the economic potential of well-managed fisheries.
- Created policy recommendations based on cost-benefit analysis, net present value analysis, and input-output models for competing fisheries policies.
- [Published](#) research findings, "Contributions by Women to Fisheries Economies Fisheries Economies: Insights from Five Maritime Countries" in peer-reviewed academic journal *Coastal Management*.
- Developed concise fact sheets for the economics of fisheries for each of the 11 country offices.
- Created the economic platform for the campaign titled "Save the Oceans, Feed the World" which combined employment and food security goals alongside ecological and conservation goals.
- Developed framework used for campaign impact evaluation assessments, which led in part to securing \$53 million from Bloomberg Philanthropies.

KILIMANYIKA LTD, *Ecological and economic development consulting firm*

April 2009-May 2010

Project Manager

Nairobi, Kenya

- Developed a participatory impact evaluation model and collected qualitative and quantitative data to derive specific monitoring indicators for pilot forestry project for WWF.

EDUCATION

UNIVERSITY OF EDINBURGH

2012 Edinburgh, UK

MSc - Ecological Economics, *with distinction*

Thesis: Multinomial regression analysis of contingent valuation model that led into agent-based computer model for smallholder farmers in Malawi. Awarded DfID and World Bank research grant.

THE GEORGE WASHINGTON UNIVERSITY

2007 Washington, DC

BA – International Affairs: International Economics, *cum laude*

Vietnam National University 2006



In conformance with the *Order Granting Joint Motion to Resolve Discovery Dispute Regarding NEE Interrogatory NEE 7-1* which was issued by the Hearing Examiners on July 26, 2017 PNM submits the following information:

On February 24, 2017, the Board of Directors for PNM Resources, Inc. discussed a financial forecast that compares a San Juan Generating Station ("SJGS") shutdown scenario to the continued operation of the plant. That forecast as it relates to Public Service Company of New Mexico ("PNM") included the following:

- A capital plan that demonstrated a SJGS shutdown scenario that includes \$532 million of incremental capital spending on new resources.
- Earnings per share ("EPS") annual growth is 5-6% during the 2017-2023 period under both continued operations and shutdown scenarios.
 - Earnings growth is driven by increased recovery from rate cases.
 - Higher rate base earnings result from significant capital investment - SJGS replacement power, renewables and other resource additions.
- Higher annual rate base growth of 3.5% in shutdown scenario results from additional capital investment.
 - Shutdown scenario provides for transitioning of PNM Generation portfolio to fewer baseload resources and more opportunities in renewable, gas, and newer generation technology.



Exhibit CAG3

From: Vincent-Collawn, Pat
Sent: Thursday, March 16, 2017 10:56 AM
Subject: memo from Pat

**PNM Resources
Interoffice Correspondence**

DATE: March 16, 2017
TO: PNM and PNM Resources Employees
FROM: Pat Vincent-Collawn
RE: Preliminary IRP Analysis

Every three years, PNM is required to develop and file an Integrated Resource Plan (IRP), in which we analyze the various energy supply options for the future and identify a resource portfolio that will most effectively balance reliability, affordability, and environmental responsibility. The IRP process includes many different activities- modeling literally thousands of different resource options, seeking public input through a series of open meetings, and evaluating a large amount of data. The IRP looks at a 20-year planning horizon, and includes a detailed action plan for the next four years. The last PNM IRP, which we filed in 2014, was integral to developing our plan for San Juan Generating Station (SJGS), which we are in the process of implementing.

We are currently working on the 2017 IRP, which must be filed with the New Mexico Public Regulation Commission (PRC) this coming July. This year, the IRP we are developing will be different from previous plans. The BART settlement agreement and PRC order regarding SJGS requires PNM to include two resource scenarios in this IRP- one with and one without SJGS after 2022.

While there remains a lot of work to be done, a preliminary analysis of the new IRP data shows that retiring the remaining two units at SJGS in 2022 could provide long-term benefits to customers.

I want to stress that this is only a preliminary analysis. Additional public advisory meetings will be taking place over the next several months and further analysis will be conducted before we file the IRP in July. Before any actions could be taken regarding SJGS, there are many legal, regulatory and other processes that would have to take place, including discussion with the other SJGS owners. An ultimate determination about the future of SJGS will be made through a separate regulatory process with the PRC.

I wanted you to hear this information from the company first, since it will likely garner attention from the media, advocates, and others. We are also reaching out to other key stakeholders to inform them about the preliminary analysis.

As we move forward with this process, it is critical that we all remain focused on our work at hand, put safety first and not be distracted. I also encourage you to not become part of any rumors that may be generated by this news. Should you have questions about the IRP and our process moving forward, please ask your supervisor or email your questions to: SanJuanIRP@pnmresources.com. We

are here to support you. We will keep you posted on any significant developments. In addition, information about the IRP is available on-line at <https://www.pnm.com/irp>.

Thank you for all you do each and every day.

This site displays a prototype of a "Web 2.0" version of the daily Federal Register. It is not an official legal edition of the Federal Register, and does not replace the official print version or the official electronic version on GPO's govinfo.gov.

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LEGAL STATUS

Notice of Record of Decision for the San Juan Mine Deep Lease Extension Mining Plan Modification

A Notice by the [Surface Mining Reclamation and Enforcement Office](#) on 05/01/2019

DOCUMENT DETAILS

Printed version:

PDF (<https://www.govinfo.gov/content/pkg/FR-2019-05-01/pdf/2019-08869.pdf>)

Publication Date:

05/01/2019 (/documents/2019/05/01)

Agencies:

Office of Surface Mining Reclamation and Enforcement (<https://www.federalregister.gov/agencies/surface-mining-reclamation-and-enforcement-office>)

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S2D2S SS08011000 SX064A00 19XS501520

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2019-08869

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DOCUMENT STATISTICS

Page views:

195

as of 10/18/2019 at 4:15 pm EDT

DOCUMENT STATISTICS

AGENCY:

Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION:

Notice of Record of Decision.

SUMMARY:

In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Office of Surface Mining Reclamation and Enforcement (OSMRE) has prepared a Record of Decision (ROD) for the Westmoreland San Juan Mining, LLC (SJCC) proposed Deep Lease Extension (DLE) at the existing San Juan Mine (Project) in San Juan County, New Mexico. This Notice of Availability (NOA) serves to notify the public that the ROD has been prepared and is available for review. In developing the ROD, the OSMRE considered the public comments received on the Final EIS.

ADDRESSES:

You can download the ROD at the following OSMRE Western Region website:

<https://www.wrcc.osmre.gov/initiatives/sanJuanMine.shtm>

(<https://www.wrcc.osmre.gov/initiatives/sanJuanMine.shtm>).

FOR FURTHER INFORMATION CONTACT:

For further information about the Project, contact: Gretchen Pinkham, OSMRE Project Manager, at 303-293-5088 or by email at osm-nepa-co@osmre.gov (<mailto:osm-nepa-co@osmre.gov>). Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

- I. Background on the Project
- II. Background on the San Juan Generating Station
- III. Mining Plan Modification for the DLE
- IV. Alternatives
- V. Environmental Impact Analysis
- VI. Decision

I. Background on the Project

As established by the Mineral Leasing Act (MLA) of 1920, the Surface Mining Control and Reclamation Act (SMCRA) of 1977, as amended (30 U.S.C. 1201 (<https://www.govinfo.gov/link/uscode/30/1201?type=usc&year=mostrecent&link-type=html>)-1328), and the Cooperative Agreement between the State of New Mexico and the Secretary of the U.S. Department of the Interior (DOI) in accordance with Section 523(c) of SMCRA (30 U.S.C. 1273 (<https://www.govinfo.gov/link/uscode/30/1273?type=usc&year=mostrecent&link-type=html>)(c)), SJCC's Permit Application Package (PAP) must be reviewed by the OSMRE and a mining plan modification approved by the Assistant Secretary for Land and

the DLE Federal Coal Lease Tract NM-99144. The NM Mining and Minerals Division (NM MMD) is the SMCRA regulatory authority principally responsible for reviewing and approving PAPs. Under the MLA, the OSMRE is responsible for making a recommendation to the ASLM about whether the proposed mining plan modification should be approved, disapproved, or approved with conditions (30 CFR 746.13 (/select-citation/2019/05/01/30-CFR-746.13)). The NM MMD approved the PAP for the DLE on October 22, 1999. The ASLM first approved the mining plan modification for DLE Federal Coal Lease Tract NM-99144 on January 17, 2008, after receiving a recommendation from the OSMRE for approval that included a Finding of No Significant Impact signed by the OSMRE in 2007 and the Bureau of Land Management's (BLM) 1998 decision record on an amendment to the 1988 Farmington Resource Management Plan to include Federal Coal Lease Tract NM-99144.

The OSMRE's NEPA analysis supporting the 2008 mining plan modification was challenged in the U.S. District Court of New Mexico. *WildEarth Guardians v. U.S. Office of Surface Mining et al.*, Case 1:14-cv-00112-RJ-CG (D. NM) (amended petition filed March 14, 2014). On August 31, 2016, the Court granted the OSMRE's Motion for Voluntary Remand, which remanded the matter to the OSMRE to prepare an EIS within 3 years of the Court's order. The Final EIS available today has been prepared in accordance with the voluntary remand.

The San Juan Mine has contractual obligations to deliver approximately 3 million tons of coal per year to the San Juan Generating Station (Generating Station) from 2008 through 2022. Mining activities within the DLE have been ongoing since the OSMRE approval in 2008 and continue presently. Per the voluntary remand, mining operations within the DLE are allowed to proceed during the EIS process. However, the court-approved voluntary remand indicated that the Secretary's approval of the 2008 mining plan modification for the DLE would be vacated if the agency does not complete the required NEPA analysis in a timely manner. As a result, the OSMRE has prepared the Final EIS to re-evaluate its previous mining plan modification recommendation for this area. Among other information, the Final EIS considers (1) the PAP submitted to the OSMRE and NM MMD, and (2) new information available since the 2008 MPDD approval for potentially affected resources considered under direct, indirect, and cumulative analytical frameworks.

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The DLE underground operations use longwall mining methods consisting of one longwall miner and two continuous miners (i.e., pieces of equipment). The mine employed approximately 282 people in 2017. The mining plan modification would not add any acres of federal surface lands or any acres of federal coal to the approved permit area but would authorize the recovery of approximately 53 million tons of coal from 4,464.87 acres of federal coal and would add approximately 10 to 15 years to the life of the operation until 2033. For reasons discussed in sections II and III below, annual production rates of the mine are projected to be approximately 3 million tons per year in order to meet the contractual obligations with the Generating Station.

The BLM, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and New Mexico MMD are Cooperating Agencies for this NEPA process. As the NEPA analysis proceeded, the OSMRE also consulted with the New Mexico State Historic Preservation Officer in compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101 (<https://www.govinfo.gov/link/uscode/54/300101?type=usc&year=mostrecent&link-type=html>)-307108), as provided for in 36 CFR part 800.2 (/select-citation/2019/05/01/36-CFR-800.2)(d)(3) and providing for public involvement, as required. Consultations with Native American Tribes have been completed in accordance with DOI policy. The OSMRE has completed the Section 106 process and has included the final stipulations in Appendix B of the ROD and the stipulations will be in effect once the ROD is signed.

As part of its consideration of impacts of the proposed Project on threatened and endangered species, the OSMRE initiated informal consultation with the USFWS on May 8, 2018, pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531

its implementing regulations. The consultation considered direct and indirect impacts from the proposed Project, including Project related coal combustion emissions from the Generating Station. On June 27, 2018, USFWS signed a letter concurring with the OSMRE's findings in its Biological Assessment, completing the consultation process.

In addition to compliance with NEPA, NHPA Section 106, and ESA Section 7, all Federal actions will be in compliance with applicable requirements of the SMCRA; the Clean Water Act, 33 U.S.C. 1251 (<https://www.govinfo.gov/link/uscode/33/1251?type=usc&year=mostrecent&link-type=html>)-1387; the Clean Air Act of 1970, as amended, 42 U.S.C. 7401 (<https://www.govinfo.gov/link/uscode/42/7401?type=usc&year=mostrecent&link-type=html>)-7671q; the Native American Graves Protection and Repatriation Act of 1990, as amended, 25 U.S.C. 3001 (<https://www.govinfo.gov/link/uscode/25/3001?type=usc&year=mostrecent&link-type=html>)-3013; and all applicable laws, regulations, and Executive Orders on topics such as Environmental Justice, Sacred Sites, and Tribal Consultation.

II. Background on the San Juan Generating Station

The Generating Station, operated by the Public Service Company of New Mexico, is one of the largest coal-fired generating stations in the United States and provides power to customers in Arizona, New Mexico, and Utah. The Generating Station is located approximately 4 miles northeast of Waterflow, NM and 15 miles west of Farmington, NM. Pursuant to an agreement with the EPA, the Generating Station shut down two of the four energy generation units (Units 2 and 3) on December 19, 2017, decreasing the power output from approximately 1,800 megawatts to 910 megawatts (specifically, Units 2 and 3). 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. Through 2022, the continued operation of Units 1 and 4 will require approximately 3 million tons of coal per year to produce the 910 megawatts.

III. Mining Plan Modification for the DLE

SJCC's mining plan modification would continue to develop the DLE, Federal Lease NM-99144, within the San Juan Mine. Due to the retirement of energy generating Units 2 and 3 at the Generating Station, the annual production rate of the DLE was reduced from the previous annual production rate of 6 million tons to an annual production rate of approximately 3 million tons beginning in 2017. Federal lease NM-99144 encompasses 4,464.87 acres and includes: Township 30, North, Range 14 West, New Mexico Prime Meridian

Section 17: All;

Section 18: All;

Section 19: All;

Section 20: All;

Section 29: All;

Section 30: All; and portions of

Section 31: (Lots 1, 2, 3, and 4).

With the completion of the NEPA process (via publication of the Final EIS) and issuance of the Record of Decision, the OSMRE will submit a mining plan decision document to the ASLM that will recommend approval of the proposed mining plan modification for the continuation or cessation of the San Juan Mine to mine the DLE within federal coal lease NM-99144. The ASLM will decide whether the mining plan modification is approved, disapproved, or approved with conditions.

The OSMRE selected Alternative B, its preferred alternative, after consideration of all alternatives analyzed in the Final EIS. The analysis in the Final EIS considers direct, indirect, and cumulative impacts of the Proposed Action and two Alternatives. Per 40 CFR 1501.7 (/select-citation/2019/05/01/40-CFR-1501.7), the issues raised during the scoping period (March 22-May 8, 2017) were used to inform the analyses and identify the alternatives considered in the EIS. Alternatives for the Project that were analyzed in the Final EIS include:

- Alternative A—Proposed Action: As described above in Section I, second paragraph. The Proposed Action Alternative would be as approved from the time of the original PAP and initial approval of the mining plan modification in 2008 until 2033.
- Alternative B—Continuation of San Juan Mine Operations Following Generating Station Shut-Down in 2022: This alternative assumes that that the remaining units of the Generating Station shut down in 2022, but that mining continues at the DLE at the same rate (approximately 3 million tons annually) from 2023 through 2033. After 2023, this alternative assumes that either a new operator will purchase the Generating Station or the mine will send the coal to an unidentified coal-fired power plant(s). Without knowing the location of the end-use of the DLE coal, the Final EIS bounds the potential effects of combusting DLE coal at an unidentified power plant by relying on the analysis of effects at the San Juan Generating Station. Under Alternative B, the mining techniques would be identical to those for the Proposed Action.

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- Alternative C—No Action Alternative: This alternative assumes that the OSMRE would recommend that the ASLM disapprove the mining plan modification for the DLE at the San Juan Mine, the ASLM disapproves of the mining plan modification, and mining ceases on August 31, 2019. Implementation of the No Action Alternative would result in the discontinuation of mining activities in the DLE on August 31, 2019, completion of all mining activities at the San Juan Mine in December 2019 and cessation of burning coal from San Juan Mine at the Generating Station approximately 6 months later. Under this alternative, SJCC would complete reclamation activities of all surface disturbance in accordance with its existing permit. Considering mining activities in the DLE have been ongoing since 2008 and have continued throughout the NEPA process, the baseline conditions for the No Action Alternative includes mining through August 2019.

A wide range of additional Alternatives were considered by the OSMRE but not carried forward for detailed analysis in the EIS. The following Alternatives were not analyzed in the EIS because they either did not meet the purpose and need of the Project or were not considered technically feasible or economically feasible or

- Alternative D—“Just” Transition Alternative
- Alternative E—Alternative Panel Alignment, Timing or Sequence
- Alternative F—Continue to Mine at a Rate of 6 Million Tons Per Year
- Alternative G—Modifications to Underground Mining Technique
- Alternative H—Relocation of Portal Sites
- Alternative I—Alternative Coal Combustion Residue Disposal Sites

V. Environmental Impact Analysis

The Final EIS analyzes the potential environmental impacts to 16 different resource categories, including:

- Air Quality
- Climate Change
- Geology and Soils
- Archaeology and Cultural Resources
- Water Resources and Hydrology
- Vegetation
- Wildlife and Habitats
- Special Status Species

- Recreation
- Social and Economic Values
- Environmental Justice
- Visual Resources
- Noise and Vibration impacts
- Hazardous and Solid Wastes
- Public Health and Safety

VI. Decision

In consideration of the information presented above, the OSMRE approves the ROD and selects Alternative B (Continuation of San Juan Mine Operations Following Generating Station Shut-Down in 2022) as the Preferred Alternative as described in the FEIS (Section 2.2.2). This action can be implemented following approval of the MPDD by the ASLM.

Dated: April 22, 2019.

David Berry,

Western Regional Director, OSMRE.

[FR Doc. 2019-08869 (/a/2019-08869) Filed 4-30-19; 8:45 am]

BILLING CODE 4310-05-P

PUBLISHED DOCUMENT

Relevant Timeline

In “Phase 1” of the San Juan case PNM agreed in a Modified Stipulation to make a filing, dubbed a 2018 Review Hearing, to determine if San Juan Generating Station (“SJGS”) would continue post 2022. In that hearing stakeholders and parties in two cases (13-00390-UT and 17-00174-UT) were to be given access to economic modeling, alternative replacement power scenarios compared, and more. In the NM Supreme Court's review of 13-00390-UT, the “Phase 1” case, the Court held that the 2018 Review Hearing was a net public benefit. The 2018 Review Hearing was to take place between 7/1/2018 and 12/31/2018. The Review Hearing never happened.

12/31/2018: PNM made a “compliance filing” without ANY of the required hearing accoutrements and called it done. *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.

The Federal register reports that PNM abandoned San Juan on **12/31/2018**, 84 FR 18574-6, §II.,

<https://www.federalregister.gov/documents/2019/05/01/2019-08869/notice-of-record-of-decision-for-the-san-juan-mine-deep-lease-extension-mining-plan-modification>.

January 10, 2019: in Case No. 13-000390-UT (Phase 1) and 19-000018-UT PRC asked parties in the Phase 1 case and PNM’s IRP case two answer 2 questions: 1) did PNM’s compliance filing comport with the Modified Stipulation’s requirement to have a 2018 Review Hearing? And 2) should PRC open a docket to address “already pending abandonment of SJGS”? See, Exhibit C, p.4, ¶11.

A dozen parties responded in various forms. NEE was one of them. See, Exhibit B.

January 30, 2019: NMPRC issues its *Order Initiating Proceeding On PNM’s December 31, 2018 Verified Compliance Filing Concerning Continue Use of And Abandonment of San Juan Generating Station*, 19-00018-UT, initiated “an abandonment proceeding under NMSA 1978 §62-9-5 of the Public Utility Act ... to address the abandonment of PNM’s interest in SJGS Units 1 and 4. The scope of the proceeding shall include all issues relevant to an abandonment proceeding under NMSA 1978 §62-9-5 and any

other applicable statutes and NMPRC rules, including §62-6-12.” *Id.*, ¶A. Then in the following paragraph B and its sub parts 1-13 PNM was ordered to file testimony relating to the abandonment of San Juan Generating Station, including “the proper treatment and financing of undepreciated investments, decommissioning costs and reclamation costs,” *Id.*, at ¶B5 and replacement resources. *Id.*, at ¶¶B11-13. The Commission orders PNM to file its abandonment application by March 1, 2019.

February 7, 2019: PNM files a motion for rehearing of the *Order Initiating Proceeding*.

February 7, 2019: SB 489, also known as the ETA was introduced in the Senate.

February 27, 2019: NMPRC deems the rehearing request denied by lapse of time, and PNM files its *Emergency Verified Petition of Public Service Company of New Mexico for Writ of Mandamus, Request for Emergency Stay, and Request for Oral Argument* (“PNM Writ”), in this Court, claiming that 1) “No compelling or exigent circumstances require PNM to immediately apply for abandonment”¹; “no ‘irrevocable’ steps have been taken to abandon SJGS²”; the Commission “exceed[ed its] authority”;³ and PNM had a First Amendment right to remain silent.⁴ (Docket No. S-1-SC-37552).

March 1, 2019: This Court issues a stay preventing NMPRC from taking further action in Commission Case 19-00018-UT, and orders responses to PNM Writ.

March 19, 2019: NM Attorney General, PRC and NEE file its responses to PNM’s Emergency Petition.

March 22, 2019: The Governor signs SB 489, the ETA.

June 14, 2019: The ETA becomes law.

¹ PNM Writ, p. 4.

² PNM Writ, pp. 7-8.

³ PNM Writ, p. 2

⁴ PNM Writ, pp. 11-15.

June 25, 2019: NEE files a Motion to supplement it's filing in Docket No. S-1-SC-37552 stating that PNM has already decided to abandon and it is documented in the Federal Register and that PNM has announced its plan to file its abandonment application at the PRC (both documents stating the facts were attached).

June 26, 2019: NM Supreme Court lifts the stay and denies PNM's writ of mandamus, and denies NEE's motion because it has become moot.

July 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.

July 10, 2019: The PRC issued a *Corrected Order on Consolidated Application* ("Bifurcation Order"), providing for two separate proceedings regarding the issues raised in PNM's Application. Those portions of PNM's Application seeking approval of the abandonment of SJGS and a financing order, were ordered to be considered in the original PRC-initiated case, 19-00018-UT, and the aspects of the Application related to replacement power would be considered in a new case, No. 19-00195-UT.

July 25, 2019: *Procedural Order* issued by the Hearing Examiners, PNM Attachment I, requires briefing "regarding the issue of the extent to which N.M. Const. Article IV, § 34 prevents the application of the Energy Transition Act, NMSA 1978, §§ 62-18-1 to -23 (2019), to the issues in this case." pp. 4-5, ¶¶3 & 8.

August 23, 2019: PNM's files its brief about why the ETA should apply to cases 19-00018-UT and 19-00195-UT.

October 18, 2019: NEE files its brief about why the ETA should *not* apply to cases 19-00018-UT and 19-00195-UT.

INTERROGATORIES

NEE INTERROGATORY 1-32:

HOW MANY DISCONNECT NOTICES WERE SENT TO CUSTOMERS IN 2017 AND 2018?

OBJECTION:

PNM objects to NEE's Interrogatory 1-32 on grounds that it seeks information which is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) NMRA; 1.2.2.25 NMAC.

SUPPLEMENTAL OBJECTION / RESPONSE (OCTOBER 9, 2019):
REBECCA TEAGUE / MARK FENTON

Subject to and without waiving the objections provided with PNM's original response to this interrogatory, PNM responds as follows:

In 2017 there were 388,851 disconnect notices included on customer bills. In 2018 there were 365,027 disconnect notices included on customer bills. PNM issues disconnect notices pursuant to PNM Rule Nos. 10 and 20, and 17.5.410.33 NMAC. Issuance of a disconnect notice does not mean that a customer was actually disconnected.

NEE INTERROGATORY 1-35:

PLEASE DEFINE THE OWNERSHIP OF THE LAND FOR THE SAN JUAN MINE. PLEASE PROVIDE A MAP SHOWING THE OWNERSHIP OF THE LAND FOR THE SAN JUAN MINE.

ORIGINAL OBJECTION (JULY 29, 2019):

PNM objects to NEE's Interrogatory 1-35 on grounds that it seeks information which is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) NMRA; 1.2.2.25 NMAC.

SUPPLEMENTAL OBJECTION / RESPONSE (OCTOBER 9, 2019):
THOMAS FALLGREN

Subject to and without waiving the objections provided with PNM's original response to this interrogatory, PNM responds as follows:

Please see PNM Exhibit NEE 1-35 (October 9, 2019 Supplemental).

System became operational in December 2018, however, there will still be additional construction for a few other elements required under the Consent Decree.

No costs associated with the Recovery System have been collected from customers. PNM would seek recovery of these costs in a future rate proceeding.

The Decommissioning Study includes estimates to decommission both the recovery trench and the Recovery System in the future.

PNM is searching for change orders and will supplement this response if any are located.

NEE INTERROGATORY 1-97:

HOW MANY PNM CUSTOMERS RECEIVED LOW INCOME HOME ENERGY ASSISTANCE PROGRAM ("LIHEAP") ASSISTANCE IN 2017 AND 2018?

OBJECTION:

PNM objects to NEE's Interrogatory 1-32 on grounds that it seeks information which is not relevant to the subject matter involved in the pending action and is not reasonably calculated to lead to the discovery of admissible evidence. Rule 1-026(B)(1) NMRA; 1.2.2.25 NMAC.

SUPPLEMENTAL OBJECTION / RESPONSE (OCTOBER 9, 2019):
REBECCA TEAGUE / MARK FENTON

Subject to and without waiving the objections provided with PNM's original response to this interrogatory, PNM responds as follows:

In 2017 19,992 PNM customers received low income home energy assistance (LIHEAP). In 2018 20,795 PNM customers received low income home energy assistance (LIHEAP).

Exhibit CAG-7
2018 NEO COMPENSATION INFORMATION

SUMMARY OF EXECUTIVE COMPENSATION

The table following summarizes the total compensation paid to or earned by the NEOs for the years ending December 31, 2018, 2017 and 2016.

SUMMARY COMPENSATION TABLE

(a) Name and Principal Position	(b) Year	(c) Salary (\$) (1)	(d) Bonus (\$)	(e) Stock Awards (\$) (2)	(f) Option Awards (\$)	(g) Non-Equity Incentive Plan Compensation (\$) (3)	(h) Change in Pension Value and Non-Qualified Deferred Compensation Earnings (\$) (4)	(i) All Other Compensation (\$) (5)	(j) Total (\$)
Patricia K. Collawn, Chairman, President and CEO	2018	854,108	—	1,765,078	—	1,332,408	—	802,942	4,754,536
	2017	817,539	—	1,724,548	—	1,144,000	—	739,835	4,425,922
	2016	791,923	—	1,539,856	—	974,050	—	677,328	3,983,157
Charles N. Eldred, EVP and CFO	2018	489,660	—	502,680	—	520,820	—	700,670	2,213,830
	2017	468,695	—	484,957	—	417,362	—	579,349	1,950,363
	2016	452,760	—	441,784	—	351,624	—	396,244	1,642,412
Patrick V. Apodaca, SVP, General Counsel and Secretary	2018	351,054	—	260,053	—	271,746	—	105,238	988,091
	2017	343,725	—	275,787	—	241,354	—	97,006	957,872
	2016	335,776	—	258,624	—	209,319	—	133,249	936,968
Ronald N. Darnell, SVP, Public Policy	2018	282,013	—	198,329	—	219,450	—	150,315	850,107
	2017	269,403	—	203,010	—	183,889	—	149,891	806,193
	2016	255,829	—	173,870	—	159,481	—	144,248	733,428
Chris M. Olson, SVP, Utility Operations	2018	290,577	—	166,865	—	220,500	—	78,438	756,380

(1) 2018 salary amounts include cash compensation earned by each NEO during 2018. This also includes any amounts earned in 2018, but contributed into the RSP and the ESP II. For amounts deferred pursuant to the ESP II, see the 2018 Non-Qualified Deferred Compensation Table.

(2) Represents the grant date fair value of all stock awards calculated in accordance with FASB ASC Topic 718. For 2018, the amount indicated is the aggregate grant date fair value of all grants of (A) time-vested restricted stock rights granted on March 2, 2018 (shown as RSA in the GPBA Table) and (B) performance share awards (shown as PS in the GPBA Table), based on target performance, which the Company considered the probable outcome on the grant date. The assumptions used in determining the grant date fair value of stock awards are set forth in Note 12 of the Consolidated Financial Statements in the Company's Annual Report on Form 10-K for the year ended December 31, 2018. The actual cash value that the NEO may realize on the vesting of the restricted stock rights or performance shares will depend on the number of shares that ultimately vest, the market price of our common stock at the date of vesting, and ultimately, the value received by the employee on the sale of the stock. Time-vested restricted stock right awards vest over a three-year period beginning on March 7th following the first anniversary of the grant date. The following table shows the grant date fair value of all 2018 stock awards assuming maximum performance of the 2018 LTIP performance share awards (shown as PS in the GPBA table) and the actual RSA awards shown in the GPBA Table. As discussed above, column (e) of the SCT assumes target performance of PS awards. Both column (e) of the SCT and the following table also include the grant date fair value of the actual RSA awards.



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

Case No. 19-00018-UT

AFFIDAVIT OF CHARLOTTE A. GRUBB

STATE OF CALIFORNIA)

COUNTY OF Alameda)

1. My name is Charlotte A. Grubb.
2. I am providing testimony on behalf of New Energy Economy before the New Mexico Public Regulation Commission.
3. I wrote the attached testimony and believe the contents therein to be true and correct to the best of my knowledge.

Further Affiant sayeth naught.

Charlotte A. Grubb

Signature

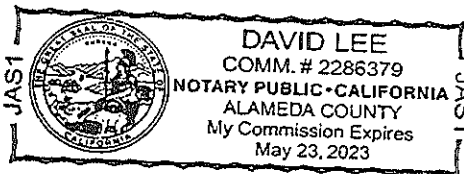
10/16/2019

DATE

Subscribed and sworn to before me by CHARLOTTE A. GRUBB on this 16 day of October, 2019.

[Signature]
Notary Public

My Commission Expires: 05/23/2023





BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

19-00018-UT

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

**THE DIRECT TESTIMONY & EXHIBITS OF NEW ENERGY ECONOMY EXPERT
WITNESS CHARLOTTE A. GRUBB**

issued on October 18, 2019.

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DATED this 18th day of October, 2019.

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