

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF AN INVESTIGATION INTO THE)
PUBLIC SERVICE COMPANY OF NEW MEXICO'S)
PURCHASE OF PALO VERDE NUCLEAR GENERATING)
STATION UNIT 1 & 2 LEASES AND THE FINANCIAL)
IMPACT ON RATEPAYERS)**

Case No. 19-00102-011

FILED IN OFFICE OF

JAN - 8 2020

ORDER ON PETITION FOR INVESTIGATION

NM PUBLIC REGULATION COMM
RECORDS MANAGEMENT BUREAU

THIS MATTER comes before the New Mexico Public Regulation Commission (Commission) on the April 22, 2019 Joint Petition for Investigation (Petition) filed by New Energy Economy (NEE), Daniel Earnest Tso - Navajo Nation Council Delegate; Citizens for Fair Rates and the Environment (CFRE); Climate Change Leadership Institute (CCLI); Concerned Citizens of Wagon Mound & Mora County; Dooda (NO) Desert Rock; Earth Care; Food & Water Watch; Hispano Round Table de Nuevo México; Honor Our Pueblo Existence (HOPE); Honor the Earth; Indigenous Life Ways, Inc.; Institute for Local Self-Reliance; League of United Latin American Citizens (LULAC); Los Jardines Institute; Multicultural Alliance for a Safe Environment (MASE); Physicians for Social Responsibility-NM; Renewable Taos; Retake Our Democracy; Rio Arriba Concerned Citizens (RACC); Securing Economic and Energy Democracy (SEED); Southwest Indigenous Uranium Forum (SIUF); Student Advocacy Union NM; Taos United/Taoseños Unidos; Tewa Women United; and WildEarth Guardians., (collectively, Petitioners).

Having reviewed the pleadings and being otherwise duly informed, the Commission
FINDS AND CONCLUDES:

- 1) The Commission has jurisdiction over this matter.
- 2) The Petition argues that the passage of the Energy Transition Act ("ETA"), requiring that by no later than January 1, 2025, renewable energy shall compromise no less than

forty percent of PNM's total retail sales of electricity to New Mexico customers, constitutes a "material change" to the most cost effective portfolio (MCEP) of generation resources identified and approved as PNM's 2017 Integrated Resource Plan (IRP) in Case 17-00174-UT.

3) The Petition argues the Commission therefore should initiate a formal investigation into PNM's MCEP, including PNM's planned re-purchase of its leased generating capacity at Palo Verde Nuclear Generating Station (PVNGS) Unit 1 (104 MW) and Unit 2 (10 MW) which expire January 15, 2023 and January 15, 2024, respectively. The terms of the current PV leases do not provide for further renewals and require PNM to provide irrevocable notice to the lessors of PNM's intent to purchase of PNM's expiring leases by January 15, 2020 and January 15, 2021, respectively.

4) NEE's Petition refers to the Commission's repeated reaffirmations of the obligation on PNM (and all investor owned utilities) to satisfy the burden of demonstrating that any chosen generation resource is the most cost-effective resource among feasible alternatives.

5) NEE argues that because PNM must consider all feasible alternatives, it must re-assess whether the resources comprising the MCEP remain the most cost effective alternatives under the changes imposed by the ETA prior to making any financial commitment to reacquire the leased PVNGS interests. NEE argues that it is a logical expectation that, consistent with its imprudent actions at issue in case 15-00261-UT, PNM will continue to make its own financial interests its primary motivating factor and again act imprudently should it proceed to re-purchase the remaining leased capacity in PVNGS. NEE argues the Commission should therefore act proactively to investigate and prevent such action by PNM.

6) Notice of the Petition was served on PNM, the Commission's Utility Division Staff, and all parties listed on the certificate of service from PNM case 17-00174-UT.

7) PNM's Response to the Petition asserts that having failed in its challenge to PNM's 2017 IRP in Case 17-00174-UT, NEE now seeks to use the passage of the ETA to preemptively prevent PNM from re-acquiring the 114MW of leased PVNGS capacity.

8) PNM asserts the passage of the ETA and the results of PNM's 2017 Request for Proposals (RFP) are not material changes to the 2017 IRP because the ETA does not impose changes that would be effective during the effective period of the 2017 IRP. PNM acknowledges that while reacquisition of the PVNGS leased interests is part of the MCEP in its 2017 IRP, any actual determination to reacquire those interests remains subject to re-evaluation at the appropriate time based on updated price figures rather than the assumptions utilized in its IRP which in turn relied on the prices accepted in Case 15-00261-UT. PNM asserts those prices are currently being re-evaluated as part of its preparation of its 2020 IRP.

9) PNM further asserts the investigation sought by NEE would be contrary to the Commission's established precedent with respect to the PVNGS resources, which places assessment of whether to continue the use of that resource with the utility. PNM further notes that NEE's requested investigation raises issues that rest on a categorical objection to nuclear power that has already been rejected in previous cases and re-litigation of those issues is not necessary and would strain the resources of the parties at a time where there are already significant burdens on the parties with other pending cases.

10) Staff's Response similarly recommends that the Commission not open the investigation requested by NEE. Staff agrees that any changes imposed by the ETA would occur after the action period of PNM's 2017 IRP and that the Commission should not insert itself into the role of "micromanaging" PNM's decisions. Staff agrees that the Commission properly reviews such utility decisions through rate recovery proceedings. However, Staff argues that

in the event PNM determined to relinquish the Palo Verde capacity, such decision should be subject to an abandonment proceeding under §62-9-5.

11) Albuquerque Bernalillo County Water Utility Authority (ABCWUA) notes that PNM's apparent intentions, as expressed in the 15-00261-UT case and its IRP, are to reacquire the remaining PVNGS leased capacity and supports requiring PNM to conduct additional modeling related to the PVNGS interests either in this docket or another relevant proceeding.

12) As the parties acknowledge in their pleadings here, the New Mexico Supreme Court confirmed in its decision in Case 36,115 – the appeal of PRC Case 15-00261-UT, that in PRC Cases 1995 and 2019 the Commission granted PNM the authority to both sell and lease back its ownership interest in PVNGS and to determine at the expiration of those leases whether to repurchase or renew the leased capacity. Because the leased capacity was already a certificated resource, PNM was not required to provide special notice or seek advance approval before taking these actions.

13) Notwithstanding this grant of authority, the Commission expressly retained full ratemaking authority over “all issues of ratemaking treatment for the lease payments, the costs of and any gains or losses from the sale and leaseback concerning said Facilities, including the authority to disallow any or all of the lease expenses and transaction costs on a used and useful basis, on the basis of imprudency in the cost of the facilities, or on any other lawful basis, and the approval of the Lease Transactions granted by [that] Order [was] contingent on the Commission's retention of such full authority.”

14) Accordingly, the appropriate time for review of PNM's decision with respect to the remaining leased capacity at PVNGS remains at the time PNM seeks rate recovery for its expenses in reacquiring or continuing use of a certificated resource.

15) While NEE may seek to avoid a contentious adversarial proceeding similar to that which took place in 15-00261-UT, the outcome of that case should provide ample instruction to PNM that its decision with respect to the PVNGS capacity will be subject to intense scrutiny and must be fully supported by an adequate analysis of alternatives and cost-effectiveness. Moreover, attempting to litigate PNM's decision before it actually makes a determination will be unlikely to simplify the necessary proceeding and will likely result in an even more protracted series of disputes.

16) While Staff asserts an abandonment proceeding should be required if appropriate, it does not appear that PNM's intended course of action includes abandonment of the remaining PVNGS capacity at this time given PNM's inclusion of the PVNGS as part of the MCEP in its 2017 IRP.

17) As this Commission has repeatedly noted, PNM will bear full responsibility for any course of action it may choose to pursue. To the extent PNM may remain committed to reacquisition of the PVNGS interests, the proceedings in Case 16-00276-UT should place PNM 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.

18) The Commission specifically places PNM on notice that the Commission is not bound by the remedies it employed in Case 15-00261-UT and reserves the right to identify and impose any appropriate remedies for any additional imprudent actions by PNM, up to and including total disallowance.

WHEREFORE, IT IS ORDERED:

A) NEE's Petition is denied.

- B) All pending motions, requests or any other matter not expressly ruled on or addressed in the hearing or in the discussion of this Final Order herein are hereby deemed denied and disposed of consistent with the discussion of this Final Order.
- C) A copy of this Order shall be served on all parties listed on the certificate of service via email, if the email addresses are known, and only if not known by regular mail.
- D) This matter is closed.
- E) This Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 8th day of
January, 2020.

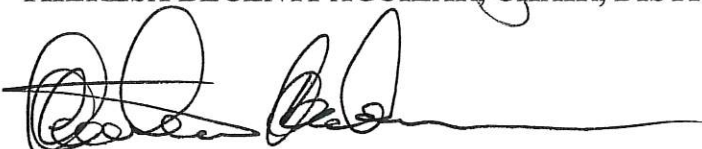
NEW MEXICO PUBLIC REGULATION COMMISSION


CYNTHIA B. HALL, COMMISSIONER, DISTRICT 1


JEFFERSON L. BYRD, COMMISSIONER, DISTRICT 2


VALERIE ESPINOZA, VICE CHAIR, DISTRICT 3


THERESA BECENTI-AGUILAR, CHAIR, DISTRICT 4


STEPHEN FISCHMANN, COMMISSIONER, DISTRICT 5



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GENERATING STATION UNIT 1 & 2 LEASES AND THE)
FINANCIAL IMPACT ON RATEPAYERS)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order on Petition for Investigation** issued by the New Mexico Public Regulation Commission on January 8th, 2020 was sent via email to the parties indicated below:

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DATED this 8th day January, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION



Isaac Sullivan-Leshin, Paralegal