



new energy economy

Addressing the Climate Challenge
With Bold Solutions

2019 Energy Transition Act SB 489

New Energy Economy Initial Analysis and Recommended Next Steps

Is this the same PNM Bill as last year?

Yes. Almost entirely in the most dangerous ways.

Senate Bill 489:

- does NOT close the plant. PNM would receive their \$320 million windfall from SB 489 and the San Juan Generating Station could continue operations.
- includes a 100% PNM bailout of all its “undepreciated assets” (expected earnings until 2053) of \$320 million contrary to law and statute. PNM’s Wall St. investors profit completely and ratepayers assume all cost.
- makes ratepayers pay for ALL clean up costs. Further, as the language stands currently, it leaves open the possibility that PNM could be legally insulated from any responsibility for insufficient funds when the money dries up and the toxic waste remains (coal ash leaking into the San Juan river).
- makes ratepayers pay for ALL worker transition costs – PNM doesn’t pay a penny despite that it is a for-profit Wall St. driven corporation.
- removes Public Regulation Commission (PRC) authority to determine costs and replacement power despite New Mexico’s Constitutionally delegated responsibility for the PRC, not the legislature, to regulate investor-owned electric monopolies.
- expands PNM’s monopoly power by 1) giving them > 400 hundred million dollars for San Juan; 2) for all practical purposes guarantees them replacement power on their site relieving PNM of any competition; 3) covers all their clean up risks and liabilities and insulates them from any corporate responsibility at San Juan; and 4) guarantees all bailout costs and clean up risks for their imprudent investment at the nearby Four Corners coal plant too.
- guarantees the possibility of >\$850 million to PNM in “non-bypassable” charges on customers’ bills monthly for the next 20-25 years.

Is the Renewable Portfolio Standard (RPS) strong?

Yes. Our concern is that it carves out and protects utility investments and continued use of nuclear energy (another gift to PNM & El Paso Electric) and a line in the sand for our indigenous partners who have borne the devastating impacts of uranium mining and waste. Through the Orwellian “carbon-free” exemption, SB 489 prevents renewables plus storage from ever reaching more than 70% of PNM’s and EPE’s energy portfolios - because it secures their reliance on nuclear energy. Claims that there will be 80% renewables by 2040 cannot be achieved under this bill and therefore are false.

The stand alone RPS bill, SB275/HB283, is far better for New Mexicans. The “trade” in SB489 is simply not worth it for New Mexicans.

We ask the question - why do we need to trade anything for RPS?

Can ratepayers save more money at the PRC than with securitization?

Yes. The BIG deal with securitization is that it allows a lower interest rate, 3.89% (the AAA bond rating as of 2/7/19) as compared to the utility’s “normal” rate of return of 9.5%.

However, the PRC is almost certain to follow the law, apply its own precedent and require PNM’s investors to share the burden of the \$320 million “undepreciated assets” – meaning the PRC would only burden ratepayers with half the costs, \$160 million, or even less. (The PRC authorized a 50/50 split of “undepreciated assets” when PNM shut down the last 2 units at San Juan in 2015.)

Additionally, and importantly, in the most recent rate case the PRC awarded PNM a lower return on assets of only 3.5% on its Four Corners coal plant, (Final Order, 16-00276-UT, 1/10/2018 pp. 23, 24 ¶¶67 and p. 35 ¶ C. (“at the reduced rate of return equal to PNM’s embedded cost of debt”))

PRC already has the authority to award a lower amount to a utility on both their undepreciated assets and the rate of return and has in fact done so. There is a definite possibility that PNM would only get \$160 million and at a 3.5% return which is more fair to ratepayers than what this bill offers. This is the reason PNM is doing this end run around the PRC through SB 489 – it fears its investors will make less at the PRC than at the legislature.

Why should PNM get to recover 100% of the remaining value of the abandoned plant?

It shouldn't! Proponents of this bill have been saying to us, “if the ETA is not enacted, PNM can file a legal case at the PRC for recovery of 100% of its SJGS investment, plus its normal profit on that investment, and it is possible that that would be the ultimate outcome.” The problem with their claim is that it has NO basis in reality.

The Law & PRC precedent:

- PNM is requesting 100% recovery from ratepayer on those future profits on its abandoned San Juan assets.
- This generous allocation is contrary to the Public Utility Act, specifically NMSA §62-3-1-B which declares the Legislature’s policy: that the public interest requires the balance of interests between a utility’s customers and investors.
- The New Mexico Supreme Court has held: To set a just and reasonable rate, the Commission must balance the investor’s interest against the ratepayers’ interest. As the New Mexico Supreme Court concluded in *In the Matter of the Rates and Charges of Mt. States Tel., v. Corporation Commission*, 653 P.2d 501, 507, (N.M. 1982), “The ratemaking process involves a balancing of investor and consumer interests. Neither is paramount. To argue that the consumer interest is best served by focusing solely on the investor interests ignores the Commission's duty to set rates.”
- The New Mexico Public Regulation Commission (NM PRC) has similarly held: The “public interest” is “a striking of the proper balance between the interests of all ratepayers and all investors.” NMPRC Case No. 2087, *In the Matter of the Prudence of Costs Incurred by the Public Service Company of New Mexico in Construction of Palo Verde Nuclear Generating Station*, Final Order, p. 85, affirmed on appeal, *Attorney General v. NM Pub. Serv. Comm’n*, 111 N.M. 636, 808 P.2d 606 (1991). And recently, in the San Juan abandonment case (closing units 2 & 3), the PRC held: “The Hearing Examiner finds that, under the facts and circumstances of this case, a Stipulation that provides for the recovery of one half of PNM’s undepreciated investment in San Juan Units 2 and 3 after the units’ abandonment reflects a reasonable balancing of the interests of investors and ratepayers.” 13-00390-UT, *Certification of Stipulation*, April 8, 2015, p. 114. Cost sharing “fairly balances the interests of investors and ratepayers and is reasonable.” *Id.*, at p. 124. “PNM should be allowed recovery of 50% of the undepreciated value of Units 2 and 3, estimated to be \$257 million as of December 31, 2017.” 13-00390-UT, *Certification of Stipulation*, November 16, 2015, p. 101. Adopted by Final Order, December 16, 2015.

Some proponents of this bill also claim making PNM investors share the burden of the loss of its \$320M undepreciated assets is “excessively punitive.” Not only is this contrary to law, but this sends a terrible message to utilities: no matter what your business decision you will be bailed out and there is NO consequence for your imprudent decisions. We believe there needs to be corporate responsibility.

Does SB 489 undermine consumer protections?

Yes, by requiring a 100% location preference for San Juan. If the bill is enacted in its current form, it would circumvent the PRC's regulatory authority and discretion under existing law to approve resources only if they are the “most cost effective resource among feasible alternatives.” By providing a veiled preference for PNM ownership of 450 MW of replacement resources PNM may need after abandoning San Juan is anti-competitive and likely to result in higher replacement power procurement costs to PNM's customers as compared to the “most cost-effective” option among “feasible alternatives” standard for procurement of such resources under existing PRC precedent, also embodied in the Legislature's Efficient Use of Energy Act. (NMSA § 62-17-10) Further, it makes it much harder for Pueblos to compete and directly conflicts with HB 210, the community solar bill, we support.

Does SB 489 close the plant?

No. PNM has already admitted (July 2018 Legislative Interim Committee) that with or without a securitization bailout it will abandon its interest in San Juan. It has made several PRC filings stating its plan to get out of San Juan; additionally, it has written to all its co-owners at San Juan and all of the other co-owners, except for Farmington, has also agreed to close San Juan. Furthermore, even City of Farmington personnel admitted that it would be extremely hard to find an investor to buy San Juan and, even if one was stupid enough to show up, NO buyers exist for coal-generated electricity. Lastly, Westmoreland the coal mine operator, has filed for bankruptcy, so there may be no coal supply. The coal market is dead.

Does this bill allow PNM to build gas as replacement for coal?

Yes. The bill allows for uneconomic climate-altering gas to replace coal. This bill could be easily seen as encouraging overbuilding. Should PNM apply to build new gas plants for replacement power (“The [PRC] shall grant all necessary approvals for [PNM's] replacement resources ... up to 450 MW” bill, p. 11§3 D&F) and then build renewables too, then further stranded assets will be created and SB 489 could be used as precedent for another bailout when gas plants are retired “early” for lack of need or because they are uneconomic, too.

Does New Mexico need SB 489 to invest in the community?

No. A comprehensive reparations bill that addresses the needs of workers and community members, including the Indigenous community, should be forged, but this isn't it. No members of the impacted community were included in the drafting or decision-making of this bill. In fact, it specifically excluded them. Additionally, PNM should be required to invest in the community, instead of just green-washing. PNM has profited from this community for nearly 50 years – it has a corporate responsibility to pay its fair share of the workers' severance and re-training costs, clean-up costs, and transition costs.

Would New Energy Economy support a “clean” securitization bill?

Yes. New Energy Economy would not oppose a bill that established the tool of securitization – a Wall St. devised financing mechanism that turns a loss on a company's financial books into an asset by selling bonds to cover for that asset at a 3.98% return. SB489 is not a securitization only bill – it's a bill that rewards corporate malfeasance in exchange for a higher renewable portfolio standard with the customers paying ALL the costs.

Why do we care so much about these issues?

We feel accountable to the ratepayers of New Mexico - many of whom struggle to pay monthly electricity bills, to the Diné communities who have borne the brunt of the negative impacts from San Juan Generating Station, to frontline communities impacted by nuclear production, to the public interest and principles of justice that demand corporations who have made 100s of millions of dollars in profit at the expense of our environment and frontline communities are held accountable.

We are not alone. So many of you share our values and have stood up as advocates. New Mexicans across the board also agree. We recently conducted a poll in which only 4% of respondents representing diverse constituencies from across New Mexico said ratepayers should pay PNM to close the plant without PNM suffering financial losses at all.

Our Message and Recommendation

It is with great concern for the economy, and issues of fairness, equity, and justice that cause us to once again sound the alarms on this bill. We are deeply troubled by the twin challenges of climate disruption AND rampant and severe poverty. That's why we support energy democracy and stand behind the Local Choice Energy Act, SB 374.

We have been impressed and delighted by early actions of Governor Lujan Grisham, not only her commitment to support the rapid transition to renewable energy by endorsing the RPS, but other social justice minded decisions, most notably to withdraw troops from the border.

We respectfully request that Governor Lujan Grisham reconsider her administration's support for SB 489 as it currently reads. We are requesting that the Governor consider supporting amendments to the legislation that:

- includes the tool of securitization but leave all decision-making regarding amount of undepreciated asset recovery, replacement power and clean up to the PRC;
- require PNM to pay their fair share of half the amount of the workers' severance, cleanup, and economic development fund;
- excludes Four Corners coal from the bill;
- remove all RPS language here and support stand alone RPS bill, SB275/HB283.