


Joey D. Moya

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

**PUBLIC SERVICE COMPANY
OF NEW MEXICO,**

Petitioner,

v.

No. S-1-SC-37552

**NEW MEXICO PUBLIC
REGULATION COMMISSION,**

Respondent.

**In the Matter of Public Service Company
of New Mexico's Abandonment of San Juan
Generating Station, NMPRC Case No. 19-00018-UT**

**MOTION PURSUANT TO RULE 801 (d) (2) AND 804 (b) (3) NMRA TO
SUPPLEMENT THE RECORD AND TAKE JUDICIAL NOTICE OF
THREE PAGES IN THE FEDERAL REGISTER AND STATEMENT BY
PARTY OPPONENT**

Intervener New Energy Economy respectfully moves, through its counsel, pursuant to Rules 801 (d) (2) and 804 (b) (3) NMRA, to supplement the record of the *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") and to request that the Court take judicial notice of: 1) Notice of

Record of Decision by the Office of Surface Mining Reclamation and Enforcement, Interior, dated April 22, 2019, 84 FR 18574-6,¹ §II., a copy of which is attached (and highlighted for convenience) as Exhibit “A”; and 2) Letter from Ronald N. Darnell, Senior Vice President, Public Policy, Public Service Company of New Mexico (“PNM”), of June 5, 2019, a copy of which is attached as Exhibit “B”. In summary, this request is necessitated because the information contained in the attached documents contradict PNM’s statements in its pleadings to this Court and the Public Regulation Commission (“Commission” or “PRC”) below that 1) the company has not made a decision to abandon its interests at the San Juan Generating Station (“SJGS”) and; 2) that the PRC was unreasonable, and acted arbitrarily and capriciously by opening a docket to address abandonment issues in an expeditious manner. More specifically, New Energy Economy states as follows:

1) In PNM’s Writ the company states: “No compelling or exigent circumstances require PNM to immediately apply for abandonment.” (PNM Writ, p. 4) Further PNM argues that: “no ‘irrevocable’ steps have been taken to abandon SJGS.” (PNM Writ, pp. 7-8) Lastly, at p. 9: “PNM is not presently relinquishing any rights in SJGS or its continued operation to serve retail customers.”

¹ <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>

Similar claims were also made below in its *Motion and Supporting Brief of Public Service Company of New Mexico for Rehearing on Commission Order Initiating Proceeding and Request for Oral Argument*, February 7, 2019, attached as Exhibit B to PNM’s Writ. For example:

- a. “There are *no* proper legal or factual bases to require PNM to involuntarily initiate an abandonment proceeding on March 1, 2019.” At p. 4. (emphasis supplied.)
- b. “No irrevocable steps have been taken that require the abandonment of SJGS, just as no irrevocable steps have been take that require its continued operation.”² At p. 6

² 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 post-2022, 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 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

- c. “No actual or irrevocable abandonment of SJGS is currently pending or underway. All that has occurred is the exchange of preliminary contractual notices, which are subject to further contractual obligations and Commission approvals.” At p. 12.
- d. “PNM’s Verified Response, as factually supported by Mr. Fallgren, unequivocally confirms that no actual or irrevocable abandonment of SJGS is currently pending or underway.” At p. 15.

2) Yet in the Federal Register it states that PNM has already made the irrevocable decision: “On December 31, 2018, Public Service Company of New Mexico (PNM) filed for abandonment of their share of the San Juan Generating Station with the State of New Mexico.” *See*, Exhibit A, § II. Background on the San Juan Generating Station, highlighted section.

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 post-2022 [.] Further, the Exit Date Agreement and CSA terminate in 2022. Any Strategist® analyses that assume the continued operation of SJGS would necessarily be speculative and nothing more than a theoretical exercise.” ... “Under these circumstances, the Participants are contractually required to take steps toward the orderly shutdown of SJGS operations in 2022.”)

3) The fact that PNM has already decided to abandon its shares at the San Juan Generating Station, a position taken by parties³ and the PRC⁴ below and by NEE⁵ and the PRC⁶ in this proceeding, necessitated the opening of the abandonment docket to address a myriad of issues, including replacement power.

4) Just as NEE and the PRC anticipated, if an abandonment hearing docket was not opened PNM would box the Commission, parties, and the public into a corner, especially with respect to replacement power alternatives and their associated impact on rates.⁷ Giving parties enough time to evaluate and consider

³ PNM Writ, Exhibit F, *Staff response in Opposition to Public Service Company's Motion for Rehearing*, pp.1-4.; PNM Writ, Exhibit G, *[NMIEC'S] Response to PNM's Motion for Rehearing*, (At p. 1: "NMIEC agrees with the Commission's finding that PNM has already begun the abandonment of San Juan Generating Station ('SJGS')."); PNM Writ, Exhibit H, *New Energy Economy's Response to Motion and Supporting Brief of Public Service Company of New Mexico for Rehearing on Commission Order Initiating Proceeding*.

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

⁵ *New Energy Economy's Response in Opposition to PNM's Emergency Verified Petition for Writ of Mandamus, Request for Emergency Stay, and Request for Oral Argument*.

⁶ *Response of New Mexico Public Regulation Commission in Opposition to Verified Petition for Writ of Mandamus Filed by Public Service Company of New Mexico*, March 19, 2019. (At p. 15: "PNM tries to portray abandonment as something the Commission is forcing PNM to do, that it is not 'voluntary.' Thus ignores the fact that PNM has acknowledged it is not merely 'planning' to abandon SJGS. It has stated that there are no circumstances under which it would continue to operate SJGS and it [is] in fact already taking concrete steps toward abandonment of its own interest.")

⁷ 19-00018-UT, *Order Initiating Proceeding On PNM's December 31, 2018 Verified Compliance Filing Concerning Continue Use of And Abandonment of San*

replacement power alternatives (life-cycle costs, location, environmental impact, system integration, etc.) was the reason justifying PRC’s regulation and supervision of PNM’s SJGS abandonment and is consistent with the Court’s recent decision in *Public Service Company of New Mexico v. New Mexico Public Regulation Commission*, 36,115, Opinion, 5/17/2019, at p. 19.) (“it was not inappropriate for the Commission to address whether PNM had demonstrated Palo Verde to be cost-effective. . . . The goal of the consideration of alternatives is, of course, to reasonably protect ratepayers from wasteful expenditure. The failure to reasonably consider alternatives was a *fundamental flaw* in PNM’s decision-making process.” (citations omitted; emphasis supplied) That is *why* the PRC opened up the docket in a timely fashion, so there would be adequate time to explore these very important issues that will have long lasting cost, energy, and environmental implications.

5) PNM’s argument in January and February of 2019 was that there is no rush – they claimed that “no compelling or exigent circumstances” exist that warrants investigation of SJGS abandonment issues. Yet a recent letter written June 5, 2019 to “stakeholders” by their Senior Vice President directly contradicts this argument and confirms the concern argued by the PRC – that PNM will stall

Juan Generating Station, 1/30/2019, pp. 11-12, ¶18. (At p. 12: “This potentially legitimizes the concerns raised by NEE that PNM may be seeking to gain an advantage and box in parties that oppose PNM’s choices with a time limit.”)

and then rush the filing through to the detriment of ratepayers and the public interest.

Now for the crunch...

I am writing to personally inform you of our plans for abandonment and replacement resources for the San Juan Generation Station, our timeline, and the confluence of events **that has created a narrow window** for when PNM must apply. **Because the window is small and quickly approaching**, we wanted to open a clear channel of communication.

The plan PNM must file with the PRC is **time sensitive** in large part **to ensure that full use of the renewable tax credits may be utilized in resources used to serve our customers.**

...

These two factors create **the narrow window which PNM must navigate through, regardless of how small the opening is and how large the task at hand.**

...

On or about June 28th we will be filing our application with the PRC.

I want to take this opportunity to say we fully understand that **this gives little time for input before the filing**, but the filing is only the beginning of this process.

...

[We want to] hit the ground running immediately after our filing. Once we meet the demands of the narrow window to file our abandonment application, replacement resource plan and financing plan [.]

(emphasis added.) *See*, Exhibit B.

6) As stated in *Doña Ana Mut. Domestic Water Consumers Ass'n v. New Mexico Public Regulation Comm'n*, 140 N.M. 6, 10, 139 P.3d 166, 170 (2006) the factual and legal questions presented “implicate special agency expertise or the

determination of fundamental policies within the scope of the agency's statutory function," *Morningstar*, 120 N.M. at 583, 904 P.2d at 32 (quoting *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903 (Alaska 1987)), and it appears that the agency has been delegated policy-making authority in the area. *Pub. Serv. Co. of N.M. v. N.M. Pub. Serv. Comm'n*, 112 N.M. 379, 382-83, 815 P.2d 1169, 1172-73 (1991).

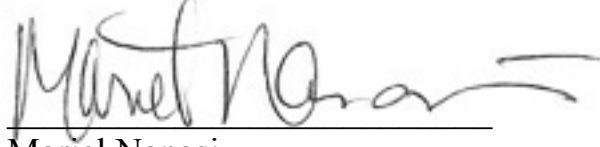
However, we long have recognized the power of agencies to interpret and construe the statutes that are placed, by legislative mandate, within their province. In other words, by delegating [a specific] power to the Commission in such broad terms, our legislature expected that the Commission would develop an appropriate test to fit the regulatory climate.

Id. (citations omitted).

PRC joins in this this request. PNM opposes this request. WRA and New Mexico Attorney General did not respond to a request seeking their positions despite email and voicemail messages.

Respectfully submitted this 25th day of June 2019.

NEW ENERGY ECONOMY

A handwritten signature in black ink, appearing to read "Mariel Nanasi", written over a horizontal line.

Mariel Nanasi

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was e-mailed on June 25, 2019, to the following individuals:

Steve Michel
smichel@westernresources.org

Cholla Khoury
ckhoury@nmag.gov

Michael C. Smith
MichaelC.Smith@state.nm.us

Richard Alvidrez
ralvidrez@mstlaw.com

NEW ENERGY ECONOMY



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*Exhibit A***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 Minerals Management (ASLM) before SJCC may significantly disturb the environment in order to develop 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 (<https://www.govinfo.gov/link/uscode/16/1531?type=usc&year=mostrecent&link-type=html>) *et seq.*) and 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 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.

IV. Alternatives

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 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
- Land Use, Transportation, and Agriculture
- 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.

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Ronald N. Darnell
Senior Vice President, Public Policy

Exhibit B



June 5, 2019

Greetings,

I want to first acknowledge and express my gratitude for working with you and your organization during a period of unprecedented collaboration, a period where diverse stakeholders came together to pass legislation which will change the way we not only do business, but how we power our collective future. While we always agreed on where we wanted to go, the route to get there required us to compromise to make possible the mutual goal of 100% emissions-free, affordable, reliable energy for New Mexicans. To meet our 100% goal - 5 years earlier than the mandate in the Energy Transition Act, we will continue to transition our resources toward renewable generation and rely on existing zero-emissions resources like nuclear.

As historic an achievement as the Energy Transition Act is, we still have much work to do. We must continue to work as partners and collaborators, and not go back to our respective silos. As we proved with the Energy Transition Act, the old ways of doing things simply do not serve the interests of the communities and constituents we serve.

A traditional filing for abandonment and replacement resources meant PNM put forth a lowest cost plan regardless of other opportunities and presented it to the New Mexico Public Regulation Commission (PRC) for an up or down approval.

I am here to tell you that the old way is officially over.

A new way has emerged through our collective hard work and resilience. At the end of June, we plan to file for abandonment of the San Juan Generating Station, to propose energy resource replacement plan alternatives and for approval of securitization financing under the Energy Transition Act.

This regulatory filing will include proposed replacement resources with the lowest-cost plan, as required by law, along with three other distinct full generation portfolio alternatives that address the policy considerations in the Energy Transition Act and the expressed interests of stakeholders.

Replacement Portfolio:

1. **Least Cost Portfolio under PRC legal standards**

Alternative Portfolios:

2. **No New Fossil Fuel Portfolio**
3. **San Juan School District Replacement Location Portfolio**
4. **Compromise Between New Flexible Gas and Battery Storage**

PNM is planning this new way of filing in order to give you more information, more input, and more options as well as data to decide the most advantageous energy portfolio for New Mexicans. This new approach will give you and our customers unprecedented opportunities to engage with us and the PRC about the replacement resources for San Juan Generating Station.

Now for the crunch...

I am writing to personally inform you of our plans for abandonment and replacement resources for the San Juan Generation Station, our timeline, and the confluence of events that has created a narrow window for when PNM must apply. Because the window is small and quickly approaching, we wanted to open a clear channel of communication.

The plan PNM must file with the PRC is time sensitive in large part to ensure that full use of the renewable tax credits may be utilized in resources used to serve our customers.

Additionally, PNM has been working hard with vendors, the national labs, and others to ensure our customers can get the full value of battery storage technology. That is why we recently issued that second Request for Proposal, which just closed. This means that the final inputs for modeling were not available until very recently. These two factors create the narrow window which PNM must navigate through, regardless of how small the opening is and how large the task at hand.

As part of keeping our commitment to collaboration, today PNM provided certain modeling inputs to parties that traditionally have conducted resource planning modeling. By June 27th, we will again reach out to those parties with additional inputs our modeling results.

On or about June 28th we will be filing our application with the PRC.

I want to take this opportunity to say we fully understand that this gives little time for input before the filing, but the filing is only the beginning of this process. We are reaffirming our commitment to continue to work with you after the filing. The remainder of this letter spells out how we intend to uphold that commitment.

To best prepare you for the upcoming regulatory process, we want to ensure you have not only the important dates, but important information which will allow us to hit the ground running immediately after our filing. Once we meet the demands of the narrow window to file our abandonment application, replacement resource plan and financing plan, we will introduce new tools that will allow us to collaborate in unprecedented ways.

To make this collaboration sustainable and efficient, PNM will launch a new online portal to be the one stop shop for communication about the filing, including submitting written input, accessing presentations and reports, and serving as a central hub for events, scheduling and stakeholder access for you and your organization. The portal will go live on the day of filing and will be located at [PNM.com/PoweringTheFuture](https://www.pnm.com/PoweringTheFuture).

In addition to providing new modes of communication while fueling the collaboration sparked by the Energy Transition Act, the site will be a repository for detailed information on the most cost-effective plan and the three alternative replacement portfolios. The site will include such information as bill impacts, expert witness testimony, model inputs, customer risks, forecasts and other detailed information.

I want to let you know that all of this is rooted in partnership.

Soon after the filing, we will kick off our post-filing feedback sessions. These sessions will be held between July 8th to July 15th. Any stakeholder wishing to participate in these meetings will be able to attend in person or webcast. Interested parties will be able to sign up for a virtual meeting on the portal. For those who cannot attend, the meeting will be recorded and posted on the portal as well.

PNM has already had an historic year in the first half of 2019:

- We announced a goal to be 100% emissions free by 2040 – 5 years earlier than the ETA requirement.
- We announced that we would join the Western Energy Imbalance Market, which will allow us to sell renewable energy to the benefit of our customers.
- We announced a partnership with the City of Albuquerque to convert 11,000 streetlights to LED lights and saving the city \$1.3 million dollars annually.
- We announced another project with governmental, tribal and large business customers to create PNM Solar Direct- this 50 MW solar site will help those entities and businesses or reached their carbon-free goals.
- We've announced a 140 MW wind project to meet the increased Renewable Portfolio Standard of the Energy Transition Act without increasing customer bills due to fuel savings resulting in some of the lowest energy costs in the country.
- Last month, PNM linemen traveled to Arizona to participate in Light Up Navajo, which brings electricity to homes and families on the Navajo Nation. The Navajo Nation is the largest Native American territory in the United States. Among the 55,000 homes located on the 27,000 square mile reservation, about 15,000 families or 60,000 people live without access to electricity. They make up 75% of all un-electrified households in the United States.
- Last year, PNM Resources, PNM, and TNMP employees, along with our Foundation, donated more than \$3 million to nonprofits in our service areas. Additionally, our employees and retirees collectively volunteered more than 11,500 hours, supporting more than 250 not for profit organizations.

Now we're asking you to help us responsibly exit coal generation. Let us together make the second half of 2019 even better than the first half!

Respectfully,



Ron Darnell
Senior Vice President, Public Policy
Public Service Company of New Mexico