

MEMORANDUM REGARDING AVANGRID'S PROPOSED BUYOUT OF PUBLIC SERVICE COMPANY OF NEW MEXICO

DATE: February 2023
FROM: NEW ENERGY ECONOMY
RE: AVANGRID ACQUISITION OF PNM

In 2020, Public Service Company of New Mexico ("PNM") and Avangrid, Inc., a subsidiary of the Spanish energy conglomerate, Iberdrola, applied to the New Mexico Public Regulatory Commission for approval of a merger by which PNM would sell its entire company to Avangrid. If the PRC approved the \$8.3 billion dollar transaction proposed by PNM and Avangrid, PNM would continue to exist but only as a wholly-owned subsidiary of Avangrid, headquartered in Connecticut, which answers to its parent, Iberdrola, in Spain.¹

If allowed, the transaction would result in the PNM's shareholders receiving a substantial price premium for their stock and PNM's current top management would receive millions of dollars in bonuses.

Because the people of New Mexico, through our government, granted PNM a monopoly in its service area (without which PNM would not exist), PNM must be regulated by the New Mexico Public Regulatory Commission ("PRC") for the benefit and protection of the public in general and PNM's rate-paying customers in particular. One of the PRC's regulatory obligations, therefore, is to evaluate whether the buyout of PNM is in the public interest, including whether the transaction provides adequate specific benefits for ratepayers, whose interest in PNM's monopoly business must be balanced against the interests of PNM's shareholders. The deal that PNM and Avangrid proposed, if completed, would provide very small monetary benefits to PNM's customers, including rate credits. Residential customers would receive rate credits of a value of \$1.64/month for three years (or between 5 and 6 cents a day). Avangrid and PNM argued that this would provide fair monetary compensation to ratepayers and, when combined with other commitments, would make the buyout in the public interest, even though the dollar total of the bonuses for PNM management exceeded the dollar total of the monetary benefits for all ratepayers combined.²

On December 8, 2021, after a seven-day evidentiary hearing addressing the terms, advantages and disadvantages of the proposed transaction and the evidence regarding Avangrid and Iberdrola's corporate conduct elsewhere, New Mexico's elected PRC rejected the proposed buyout as not in the public interest. It did so for a number of reasons, although they can be summarized as the PRC's concerns about the loss of local control and the resulting difficulty of continuing to regulate PNM, given that Avangrid had made it clear that it and its parent, Iberdrola, would exercise ultimate control over PNM. This loss of local

¹ Avangrid Inc. (NYSE: AGR) is a public company in the sense that its stock is traded publicly; 81% of its stock is owned by its parent corporation, Iberdrola Group, a Spanish corporation, and 8.69 percent of its stock is owned by Qatar Holdings LLC.

² For 500,000 residential ratepayers using 600 kWh per month the portion of the \$65 million is \$26,046,014. This is the total equivalent of \$52.09 per average residential customer, or \$18 per year for PNM residential ratepayer, which amounts to \$1.64 per month. Joint Applicants (JA: PNM/Avangrid) Exhibit 24, Rebuttal of PNM VP Ronald Darnell, July 29, 2021, JA Exhibit RND-1. The Golden Parachute for three PNMR/PNM Executives Equals \$31+Million (TR., 8/13/2021, (Tarry), pp. 699-700).

control of New Mexico’s largest utility was, in the PRC’s view, compounded by extensive evidence that where Iberdrola/Avangrid had acquired American utilities elsewhere, those utilities had provided poor service, had ignored or evaded regulatory control, had sacrificed basic standards of service in order to meet investors’ profit expectations and that there were allegations of serious corruption in Iberdrola’s top management in Spain. In addition, Avangrid made it clear during the hearing that it viewed the acquisition of PNM as establishing a “beachhead” for expansion of its affiliated business activities in the Southwest that were unrelated to providing reliable and cost-effective service to New Mexicans. These factors, in the PRC’s *unanimous* view, made the decision to reject the buyout an easy one. Specifically:

1) **LOSS OF LOCAL CONTROL.** Avangrid told the PRC that it would walk away from the transaction if PNM’s board were required to act independently of Avangrid/Iberdrola. Under the structure insisted on by Avangrid/Iberdrola, PNM’s board members would be subject to appointment and removal by Avangrid/Iberdrola’s CEO in Spain. Although a local board would control PNM’s day-to-day operations, even those minor decisions would be subject to being overruled by Avangrid/Iberdrola. The PRC was therefore particularly concerned about surrendering local control of our largest utility in light of the PRC’s legal obligation to affirmatively regulate PNM and other utilities. Its concern was compounded by evidence of Iberdrola’s influence on Avangrid’s management structure, rapid cycling of senior management and overemphasis on closing earnings gaps, all of which contributed to its subsidiaries’ poor performance.³ An independent audit of Avangrid’s management practices in Maine had found that Avangrid placed its need for increased profits above its customers’ need for reliable service.⁴

2) **AVANGRID/IBERDROLA’S VISION OF NEW MEXICO AS A “BEACHHEAD”.** The PRC also expressed its concern that Avangrid regarded its purchase of PNM as establishing a “beachhead” from which to expand its regulated and non-regulated activities.⁵

Of concern to the PRC was that Avangrid is engaged in many other affiliated businesses that supply and service the electricity market, including electric utilities like PNM.⁶ The PRC expressed deep

³ Final Report, Central Maine Power’s Management Structure and Affiliate Services, Liberty Consulting Group, July 12, 2021, NEE Exhibit 24, attached to Sandberg (7/16/21), as Exhibit CKS-2 (hereafter “Maine Audit”); 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at ES 4. (For example: “This is not our first encounter with financial-driven measures at Iberdrola, S.A.’s U.S. utilities. A decade or so ago, we saw similar measures, at that time driven by Spanish leadership’s overarching focus on controlling its New York utility financial results through pressure on reducing headcount and vegetation management expenditures and even on transferring core utility functions to a profit-making subsidiary. . . .one thing that has not changed is the leadership focus we saw on these headcount and vegetation management as sources of cost cutting today.”)

⁴ *Id.*, at 120-126.

⁵ 20-00222-UT, TR., 8/12/21, (Kump), pp. 526, line 11.

⁶ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at 239-249; Commissioners expressed concern regarding an inability to police affiliate transactions if the merger took place: For instance, Commissioner Hall: “[T]his is the basis of risk to ratepayers, this issue right here about aggressive non-utility growth strategy presenting a special risk. That decisions made in the integration process could result in PNM ratepayers subsidizing the activities of Avangrid Renewables and Avangrid’s other non-utility subsidiaries through preferential and inter-affiliate agreements. I mean, to me, that’s the sort – that’s the one area where, you know, it

concern that Avangrid will be in a position to favor its affiliated companies in supplying PNM with power and other services, with the result either that the favoritism will drive out the competition in the development of solar and wind facilities that would supply PNM with power to sell to its customers, or because other solar and/or wind developers will see that in New Mexico they will be up against competitors that, because they are affiliated with Avangrid/Iberdrola will have inside tracks for contracts with PNM.⁷

Iberdrola is being actively investigated for market manipulation in Mexico,⁸ and Italy.⁹

3) “ABYSMAL” CUSTOMER SERVICE WHERE AVANGRID HAS ACQUIRED UTILITIES IN THE NORTHEAST UNITED STATES. Where Avangrid has acquired other utilities in the Northeast, including Maine, Connecticut, Massachusetts, and New York, most of its utilities have provided unacceptably poor service to their customers. For example, the utility Avangrid acquired in Maine, during years of Avangrid’s ownership, ranked last among all comparable utilities in the nation in JD Powers’ customer satisfaction surveys (128th among the 128 investor-owned utilities in the nation). Maine’s legislature was so incensed by Avangrid’s management of Maine’s major utility that it passed a bill that would have transferred the utility to state ownership.¹⁰ Maine’s governor vetoed the bill but conceded that the service the utility had provided after Avangrid’s acquisition was “abysmal.”¹¹ Two of

would be very difficult for us to police. ... Larry Blank from NMSU and Scott Hempling, they were both saying, you know, these inter-affiliate agreements are just very hard to police.” 20-00222-UT, TR., 12/1/2021 at 59-60. Commissioner Hall: “[I]f a company both owns utilities, regulated entities and in a different division the means for serving those utilities’ needs through PPAs [purchased power agreements] is very hard – there’s a lot of pressure on them, a lot of opportunity. It’s hard for them to avoid self-dealing. And what’s even harder in that scenario is our ability to meaningfully police those activities to make sure that every transaction they have is on the up and up. And even if we were able to do that, nevertheless there is still the depressing effect on competition when other developers look at the situation of a corporation, a huge, multinational corporation acting in our state from both ends of the business. They own utilities and they also own the companies that serve utilities, and they are in a perfect position to take advantage of their own RFP’s in responding to them. So, I think that’s something that our agency simply would be very challenged with, and I think any agency would be challenged with. *Id.*, at 124-125.

⁷ *Id.*

⁸ <https://www.reuters.com/business/energy/mexican-regulator-fines-spains-iberdrola-subsiary-466-mln-2022-05-27/>; <https://www.voanews.com/a/mexico-energy-regulator-fines-spain-s-iberdrola-467-million-6593291.html>; https://www.elconfidencial.com/espana/2022-06-27/fiscalia-iberrola-juicio-directivos-inflar-luz_3450533/.

⁹ <https://www.reuters.com/markets/europe/italys-antitrust-probes-iren-iberdrola-eon-over-customer-contracts-2022-10-19/>

¹⁰ <https://mainebeacon.com/cmp-ranked-last-once-again-in-j-d-power-business-customer-satisfaction-survey/>; since PNM/Avangrid announced its application to merge it has fallen to last in the West, mid-size utility, <https://www.jdpower.com/business/press-releases/2022-electric-utility-business-customer-satisfaction-study>. In 2020, Avangrid CEO testified that the 2018 and 2019 low rankings were an anomaly and that the low satisfaction ratings would turn around, but in fact, rankings have continued to decline. 20-00222-UT, *Certification of Stipulation*, November 1, 2021, pp. 118-120.

Avangrid's other utilities ranked near the bottom in surveys (New York's 17th out of 18 in the region; Connecticut's 11th out of 12).¹²

Avangrid's subsidiaries, NYSEG and RG&E, in New York have failed to provide basic aspects of utility service, including the installation of electric meters within a reasonable time, an impediment to economic development.¹³

Additionally, NYSEG displayed gross systemic incompetence when responding to a gas leak. On February 16, 2023, the New York State Public Service Commission settled with New York State's Gas & Electric (NYSEG), owned by Avangrid, for \$2.75 million in an interest-bearing regulatory deferred liability account funded at NYSEG shareholder expense.¹⁴ Following a blaze that destroyed a two-family home, the investigation revealed NYSEG:

- failed to have proper equipment to effectively respond to the leak and wasted valuable time searching for working equipment. Additionally, department staff concluded that NYSEG's own policies and procedures were inadequate to ensure field staff have the necessary equipment while investigating leaks.
- NYSEG employees made an excruciating series of missteps and delay.
- took over three hours and multiple phone calls by the Fire Department to finally shut off the natural gas line feeding the flames.
- after nearly 1 hour of fighting the blaze, the Fire Department was unable to extinguish the fire and NYSEG could not confirm that the gas main was shut down, nor could they explain their protocols to the Fire Department.
- even after the fire was extinguished, puddles from the firefighting operations contained visible bubbling as the natural gas percolated up through the ground.

4) PLACING CORPORATE PROFITS AHEAD OF SERVICE TO ITS CUSTOMERS.

The reason Avangrid's service in the Northeast is so poor is substantially grounded in its management's prioritization of profits over service. An independent audit of Avangrid's management structure and conduct, commissioned by the Maine regulatory body found that Avangrid-owned utilities provided poor service as a result of "Management's overemphasizing of cuts in and limits on resources as a means of

¹¹ <https://www.maine.gov/governor/mills/news/governor-mills-urges-legislature-further-consider-consumer-owned-utility-2021-07-13>

¹² https://news.yahoo.com/cmp-versant-both-score-last-173500585.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAJIEaQBOMkyAKzdN5-CTu3_ZAS7_TMaCHEz7_W5buZ9yMi5hgkCr15c8P8sIH04HovKaIVVbPPYlbI99_h_wyFX0-YB9Rmh9S0nNyCU7NOXTetfmxHl8OMm4jY-OWptWzE5R03Ek5FemTG1CmtK3q6LP2HFW-LSmNkBvSmFN36l

¹³ <https://13wham.com/news/local/frustration-over-delay-in-connecting-utilities-to-new-homes-properties-in-monroe-county>

¹⁴ <https://patch.com/new-york/southeast/new-york-fines-nyseg-2-75-million-over-brewster-gas-leak-fire>

closing the gaps in meeting the earnings expectations of the investment community,” and thereby “sacrificed effectiveness in providing service.”¹⁵

5) EVASION OF REGULATORY CONTROL. Avangrid-managed utilities in the Northeast have a history of evasion of regulatory control and regulatory violations resulting in millions of dollars in fines and penalties.¹⁶ Our PRC found that even in this merger case, Avangrid had been evasive in discovery, had violated discovery orders, had already evaded New Mexico regulations in constructing a wind power project here and had a history elsewhere of ignoring regulatory restraints.¹⁷ For example, during Covid, the Connecticut legislature passed legislation requiring utilities to temporarily cease collection efforts and to contact customers who were in arrears to work out payment plans. Avangrid management, however, ignored the law by engaging in an aggressive program of suing delinquent customers and garnishing their wages. Connecticut’s regulatory authority assessed penalties against the Avangrid-owned utility of \$10,000 per infraction, totaling over \$4.5 million.¹⁸ Connecticut’s regulatory authority had this to say about the Avangrid-owned utility’s conduct: “Garnishing wages is one of the most severe forms of debt collection therefore, violations of Authority orders that may have resulted in unwarranted or avoidable wage garnishments are particularly egregious and necessitate substantial sanctions.”¹⁹ Connecticut’s regulatory authority also found Avangrid had violated state law by referring inactive accounts to third-party collection agencies without notifying customers that their information would be submitted to credit agencies. PURA said at least 48,833 inactive accounts were referred to third-party collection agencies between April 29, 2020 and April 29, 2022, in violation of state law. Avangrid was fined \$50 per violation, totaling \$2.4 million.²⁰

Over all, Avangrid’s regulatory misconduct in the Northeast had resulted in over \$65 million in fines and penalties by the time of the PRC hearing in New Mexico.²¹

¹⁵ Liberty Consulting Management Audit, July 12, 2021, *supra*, p. 1. “Avangrid’s lack of success in meeting forecasted financial results proved a strong driver of operational decisions and actions that adversely affected [Central Maine Power] during the period we examined. Long Term Outlooks intended primarily for the investment community formed a core of the Avangrid planning process, which occurred primarily at the Networks level.”

¹⁶ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at 44, 107-165.

¹⁷ *Id.*, at 166-194.

¹⁸ <https://www.utilitydive.com/news/connecticut-regulators-pura-fine-avangrid-covid/635548/>; <https://www.courant.com/business/hc-biz-utilities-covid-violations-20221101-pbxlcvwfnjgeboi5msoclxsrjy-story.html>; <https://ctexaminer.com/2022/11/01/avangrid-fined-4-48-million-by-state-regulators-for-pandemic-debt-collections/>; <https://www.ctinsider.com/business/article/CT-utility-regulators-fine-Avangrid-companies-17549870.php>; <https://www.hartfordbusiness.com/article/pura-fines-avangrid-45m-for-unwarranted-or-avoidable-wage-garnishments-during-pandemic>

¹⁹ <https://ctexaminer.com/2022/11/01/avangrid-fined-4-48-million-by-state-regulators-for-pandemic-debt-collections/>

²⁰ <https://www.accountsrecovery.net/wp-content/uploads/2022/11/PURA-Enforcement-Order.pdf>

²¹ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at 44.

After the PRC hearing, other information regarding Avangrid’s conduct has emerged. In May 2022, Mexico’s Energy Regulatory Commission (CRE) fined Iberdrola Mexico \$466 million for violating Mexico’s electrical supply laws.²² Mexico regulators have also ordered disconnections of several of Iberdrola’s facilities during the past year, most notable being the disconnection of Iberdrola’s Wind Energy Plant in Guanajuato after regulators found that Iberdrola had placed it in a location other than the location where Iberdrola had received authorization to build it. The Mexican regulatory authority had previously denied an application by Iberdrola to modify its permit for the facility.²³

In 2022, a Spanish court ordered Iberdrola to dismantle 60% of 500 MW operational PV solar plant because Iberdrola built a plant on property that was illegally expropriated.²⁴

6) RATE GOUGING. In Connecticut, unlike New Mexico, the regulatory authority has largely lost control over rates, which have become largely subject to fuel price volatility. Avangrid’s Connecticut utility submitted a rate increase proposal for the January-July 2023 period representing a 106% increase.²⁵ The news spurred Connecticut Gov. Ned Lamont to call the state’s General Assembly into special session to adopt legislation aimed at providing financial relief for residents to help cover electric and heating oil costs.

“I am disappointed electric distribution utilities are enjoying historic profits at the same time electric generation rates are increasing and customers are experiencing economic hardships,” Lamont [said in a statement](#). He urged Avangrid-owned UI to “come to the table with solutions that recognize their investors and executives can and should support customers while we work together towards long-term solutions that untether us from the volatility of global fossil fuel markets.”

The Office of Consumer Counsel pointed to recent increases in the natural gas market price, which is used to generate the majority of Connecticut’s electricity. Connecticut’s unique deregulated energy market has limited PURA’s oversight of rate increases.

The Chair of the Connecticut General Assembly’s Energy & Technology Committee issued a statement proposing that the utility “consider absorbing some of these costs given their recently reported record profits.” “We are at a point where control of our energy costs is out of our hands and we are now responding to decisions made by Wall Street energy traders and global energy providers.”²⁶

On February 15, 2023, dozens of frustrated RG&E customers, another Avangrid subsidiary in NY, attended a legislative meeting to complain about high bills (including claims that their bills had doubled) and billing irregularities, which they called a “RG&E crisis” because of incompetent management (significant attrition in workforce, utility representative absenteeism increased from 36% to

²² <https://www.reuters.com/business/energy/mexican-regulator-fines-spains-iberdrola-subsiidiary-466-mln-2022-05-27/>

²³ <https://www.lexology.com/library/detail.aspx?g=1c1dcbb1-00e4-47c6-a2d1-a46c9da52424>

²⁴ <https://www.pv-magazine.com/2022/06/17/spanish-court-forces-iberdrola-to-dismantle-60-of-500-mw-operational-pv-plant/>.

²⁵ <https://portal.ct.gov/-/media/OCC/20221117-Consumer-Update-Winter-Rates---Updated420pm.pdf>

²⁶ <http://www.senatedems.ct.gov/needleman-news/4587-needleman-221118#sthash.bQSVK1BZ.dpbf>

41%), billing errors,²⁷ poor customer service,²⁸ and called for the establishment of a publicly-owned utility company.²⁹ Also, on February 15th, it was reported that customers of Avangrid's other Northeast subsidiary, United Illuminating, are now paying 28 percent to 38 percent more than in 2022. The Connecticut legislature is considering caps on utility increases and tying any rate increases to performance-based metrics and executive pay.³⁰

Iberdrola (Avangrid parent) subsidiary Scottish Power has customers experiencing the same kind of “chaotic” cruel harassment of householders debt that they don’t owe: calls pursued a woman in the hospital when the phone rang at her bedside where she was being treated for cancer, allegedly she owed Iberdrola money for an indebted account, even when her family was not even a Scottish Power customer.³¹ Another woman was hounded for eight years, until an “Energy Ombudsman upheld her complaint and ordered Scottish Power to cease all contact. Within months another £7,000 bill arrived

²⁷ https://www.ithaca.com/news/regional_news/nyseg-cooperating-with-state-in-billing-error-investigation/article_85601872-8d2c-11ed-b79c-97fe8d16a22b.html

(“Michelle Porter says her NYSEG bills have been “insane” for the last several months. ...[W]ithin one week she received three separate bills. The first was for \$700, then a day later another arrived for \$1,200, and the next day another bill arrived for \$1,500. ... In 2022, the number of consumer complaints against the two [Avangrid subsidiary] companies soared to more than 4,700, 60 percent more than the two previous years combined. ... In 2022, NYSEG proposed a 22 percent increase for the average electric bill. This would take effect on May 1, 2023 and increase the average electricity bill by roughly \$18.31. ... These rate hikes disproportionately impact low-income households. Additionally, a census based study found that the median Black household pays 64 percent more on utilities than the median white household.)

<https://www.democratandchronicle.com/story/news/2023/01/19/rge-nyseg-billing-issues-ceo-opens-up-about-public-outcry/69797132007/>

(“Consumer complaints are rampant, with state investigations ratcheting up; a proposed rate increase is receiving significant pushback and has led to negotiations with state officials; and there is growing momentum for a publicly-owned utility. ... [I]t will clearly take a significant turnaround in public attitude toward the utility to alter widespread dissatisfaction. RG&E is asking for a rate hike of approximately 20 to 30 percent in its electric and gas rates [] and that request has brought out intense opposition.”)

²⁸

<file:///Users/marielnanasi/Downloads/Notice%20Announcing%20Public%20Forums%20&%20Inviting%20Public%20Comment%20-%20errata%20fixed.pdf> – State of New York Department of Public Service, Matter 23-00068.

(In January 2023, New York State Department of Public Service (DPS) and the DPS Consumer Advocate gave notice of a public hearing: “To monitor utility performance, DPS Staff tracks utility customer service metrics and compiles monthly complaint statistics. DPS staff has observed a significant increase in complaints against the companies and a deterioration in the companies’ customer service performance metrics in 2022 and especially since August 2022. Among other issues, customers have reported high, inaccurate, or delayed bills, which they assert are inordinately based on estimated meter readings. These problems have been compounded by the inability of customers to timely reach the companies’ customer service representatives by telephone.”)

²⁹ <https://www.rochesterfirst.com/rochester-gas-and-electric/customers-blast-rge-call-on-county-to-take-action-for-public-utility/>

³⁰ <https://www.ctinsider.com/business/article/ct-eversource-ui-avangrid-electricity-17783229.php>;
<https://www.ctinsider.com/business/article/electric-rate-increase-hits-ct-customers-hard-17776967.php>

³¹ <https://www.theguardian.com/money/2020/mar/01/scottish-power-bills-bailiffs-accounting-chaos>

with threats of bailiffs if she didn't pay and she feared even leaving her house.”³² Debt collectors followed other people, even when it turned out, they too, didn't owe anything and were not even customers. Iberdrola/Scottish Power blamed a national database, yet they were “[fined £18m by the regulator Ofgem in 2016](#). Billing chaos caused by a new IT system prompted the penalty and Ofgem admonished it for inadequate complaints handling and unfair treatment of customers.”³³

According to the Energy Ombudsman Scottish Power was the most complained about energy supplier in 2019, with 8,441 cases referred to the office.³⁴ People have been harassed, aggravated, felt desperate and helpless, and outraged. They feel that Scottish Power chaotic misconduct has been cruel and illegal.³⁵

A whistleblower of an outsourced Scottish Power company claims call handlers working on behalf of Scottish Power were told to threaten customers with debt enforcement - even over mistaken bills.³⁶

“The call centre whistle-blower said the tactics he is asked to deploy have taken a toll on his mental health. He said: ‘We’ve all raised concerns about it. I’ve had people screaming, crying, threatening to kill themselves on the phone. It does have a toll on you, yeah, definitely. Just as a normal human being because you’ve got morals, you've got principles.’”³⁷

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ <https://www.bbc.com/news/uk-scotland-59707817> (“It follows **the case of Irene Girvan, from Glasgow**, who claimed the energy giant hounded her for a year over money she insists she did not owe. The 64-year-old told BBC Scotland she was threatened with debt collectors and missed a Covid booster jab while waiting for enforcement officers she believed were coming to change her locks. Scottish Power has apologized for distress caused to Ms. Girvan and cleared the debt. Officials said there was “no excuse for our failures” in this case.)

³⁷ *Id.*

While the firm was fined £18m by the regulator Ofgem over poorly-handled customer complaints in 2016,³⁸ the Iberdrola/Scottish Power billing practice errors continued in 2020.³⁹ In 2021, the “living hell” continued for customers.⁴⁰

“ScottishPower’s dividend payments to Iberdrola have amounted to nearly one billion pounds in the past two years alone as customers face energy bills doubling since last winter, despite government intervention.”⁴¹ The Scottish Power executive defended this outsourcing but an economic critic who decried the executive pay, soaring from £200,000 to £1.35m in a year, also chastised the unfair system: “How’s that for trickle down economics? £7 billion handed over from Scottish Power to Iberdrola in Spain. That’s trickle down economics alright. Trickle down from Scotland to Spanish shareholders. Proof that government trickle down policies are rhetoric that is doomed from the start to fail.”⁴²

7) AVANGRID’S POLITICAL BEHAVIOR/MISBEHAVIOR. Our PRC expressed concern that Avangrid had funded a Political Action Committee, “Clean Energy Matters” that “hired private investigators and consultants to research and allegedly interfere with Maine residents attempting to organize a citizens initiative opposing a transmission line proposed by CMP [Central Maine Power, an Avangrid-owned utility].”⁴³ After the PRC hearing concluded, Brown University’s Climate and Development Laboratory performed an analysis of the companies most engaged in opposing climate bills before the Connecticut legislature. **Avangrid and Iberdrola characterize themselves as leaders in the conversion to renewable energy sources, but according to the Brown University Laboratory’s analysis, Avangrid opposed more climate legislation between 2013 and 2020 than any other group identified in the report, spending \$2.8 million lobbying against climate bills during that period.**⁴⁴

³⁸ *Id.*; <https://www.independent.co.uk/news/business/news/scottish-power-fined-ps18m-for-poor-customer-service-that-prompted-one-million-complaints-a7001346.html>. (“1 million complaints. ... Scottish Power customer service left an elderly relative “terrorised”... encountered a range of technical issues, which lead to an “unacceptable” increase in complaints and reduced the quality of customer service ... Scottish Power didn’t act quickly enough to fix the [problems, which] created frustration and worry for many customers, who also wasted a lot of time trying to contact the supplier by phone... Many customers experienced “unacceptably” long call waiting times with many calling multiple times and hanging up before getting through. Scottish Power’s failures also resulted in over 300,000 customers receiving late final bills. This meant some customers did not promptly receive money they were owed.”) Also see, <https://www.telegraph.co.uk/bills-and-utilities/gas-electric/scottish-power-billing-fiasco-here-are-some-of-the-firms-unbelie/>; <https://www.theguardian.com/business/2016/apr/26/scottish-power-fined-18m-pounds-for-poor-customer-service-ofgem>.

³⁹ <https://www.thisismoney.co.uk/money/experts/article-8086169/TONY-HETHERINGTON-ScottishPowers-billing-shambles-bankrupt-us.html>

⁴⁰ <https://www.bbc.com/news/uk-scotland-59690022>

⁴¹ <https://www.heraldscotland.com/news/homenews/22639464.uk-union-leader-says-eyewatering-7bn-scottishpower-dividends-helps-prove-need-energy-renationalisation/>

⁴² *Id.*

⁴³ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at 48.

Although not before our PRC during its merger hearing, Avangrid was involved in a number of front groups in New York, representing utility and fossil fuel interests that campaigned against climate legislation, often resorting to misinformation to sway public opinion against the measures. One such group, New Yorkers for Affordable Energy (NY4AE), has over the past five years lobbied against the state’s key climate initiatives, including the Climate Leadership and Community Protection Act (CLCPA), its predecessor bill, the Climate and Community Protection Act; the Climate and Community Investment Act, the All-Electric Building Act, the Clean Futures Act, the Statewide Natural Gas Transition Plan, and the Build Public Renewables Act. Avangrid’s lobbying spending was nearly a million dollars and was pooled together with other fossil fuel corporate forces to fight legislative action on climate and also influence politics by donating money to politicians and the committees they control.⁴⁵

In 2022, after our PRC’s hearing, when New York was considering a ban on natural gas appliances in new home construction, NY4AE ran an advertising campaign “with the false narrative that banning gas appliances would require New Yorkers to spend thousands of dollars on retrofitting their homes,” according to a report from the Public Accountability Initiative. The [ads](#), which ran on Facebook, falsely claimed that a gas appliance ban would cost homeowners \$30,000.

Avangrid, which owns two gas utilities that operate in the state, also spent some \$920,000 lobbying against New York’s natural gas plan. But [an analysis from the Rocky Mountain Institute](#) (RMI) found New York homes would see a \$6,800 cost **savings** across 15 years in both upfront costs and monthly bills by switching to all-electric appliances, while also preventing 46 tons of carbon dioxide emissions from being released.⁴⁶

The irony is that Avangrid/Iberdrola characterize their companies as in the forefront of addressing climate change.

8) AVANGRID’S EFFORTS TO SUPPRESS SOLAR DEVELOPMENT. Although Avangrid presents itself as on the cutting-edge of addressing climate change through development of renewables, it hindered solar development in Maine by unilaterally and significantly raising interconnection fees for solar development projects, hampering their completion. Maine’s regulatory authority conducted an investigation and mentioned that the estimated fees for one project jumped from \$100,000 to \$1,420,000; a second project saw fees increase from \$239,000 to \$12,239,000. Maine’s governor said it was “deeply regrettable that [Avangrid’s Central Maine Power] apparently did not anticipate these issues at the time they entered into these interconnection agreements” and asked the PUC to investigate the matter.⁴⁷ The increase in fees was related, CMP said, to capacity concerns after the company received hundreds of distributed solar projects requesting to connect to Avangrid’s networks.

⁴⁴ See Table 1: Top testifiers for and against priority climate legislation, Connecticut, 2013-2020; chart b (pg 14), [of the Brown University report](#).

⁴⁵ https://public-accountability.org/wp-content/uploads/2022/11/LittleSisFuelingObstruction_11.02.pdf; <https://www.cityandstateny.com/policy/2022/11/fossil-fuel-industry-has-worked-hard-opposing-new-york-climate-action/379212/>

⁴⁶ <https://www.documentcloud.org/documents/22416419-rmi-nyc-all-electric-10-20-1#document/p1/a2149017>

⁴⁷ <https://www.pressherald.com/2021/02/08/mills-calls-on-maine-puc-to-investigate-cmp-solar-snafu/>

Solar developers were [reportedly shocked](#) to learn of the interconnection fee issue so late in the process. CMP ultimately [admitted](#) that “mitigation could and should have been identified sooner and CMP’s communications about the scope of the issue to interconnection customers were deficient in timeliness and clarity.” As the CEO of Avangrid testified during the PRC merger hearing in describing CMP’s, lack of experience in integrating distributed generation projects onto its system: “I’m not an engineer by trade, but in talking to our team, it’s a very, you know, complex issue, and one that we’re quite frankly learning on the fly as we go through this.”⁴⁸

9) CRIMINAL INVESTIGATIONS IN SPAIN.

Before and during the PRC hearing, members of Iberdrola’s topmost management, who personally control Avangrid and will control PNM through Avangrid, were under criminal investigation in Spain for bribery, violation of privacy and falsification of documents. This caused the PRC to identify a risk that this reflects the culture of Iberdrola/Avangrid and that Avangrid/Iberdrola might not maintain PNM’s “culture of respect for state and federal law.”⁴⁹ After the PRC investigation ended, the charges in Spain were dismissed. The dismissal, however, was not because the executives were found not guilty but because a court ruled that the statute of limitations had expired and they could not be prosecuted.⁵⁰

Not before New Mexico’s PRC at the time of the hearing were further developments in Spain arising from allegations of corruption on the part of Iberdrola. Spain’s Anti-Corruption Prosecutor’s Office recently opened an investigation into Iberdrola and four of its executives for illegally increasing the price of electricity generated through three hydropower plants in 2013. [According to El Confidencial](#), the prosecutor’s office has asked a national court to fine the company €84.9 million and suggested a two year prison sentence for each of the executives involved in the scheme to raise the price of electricity by limiting supply.⁵¹

Iberdrola has also been accused in Spain of illegally draining reservoirs to generate and sell electricity during a period of high demand. [In Spain News reports](#) that in the summer of 2021, mayors of municipalities in Zamora, Spain, filed complaints against Iberdrola because the global powerhouse “does not comply with climate change, environmental and sustainability legislation,” and drained reservoirs in order to sell more electricity, which has had a “brutal degradation of the territory and its habitat, [and] leaves damage very difficult to repair, both from a landscape and economic” perspective.⁵² Reservoirs in the area went from 95% of capacity to just 12% in four months due to Iberdrola management of the floodgates, according to *In Spain News*.⁵³

⁴⁸ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at 156-158.

⁴⁹ 20-00222-UT, *Certification of Stipulation*, November 1, 2021, at 47; <https://www.ft.com/content/aa01092c-d42c-4597-a41d-aa59a6198e20>;

⁵⁰ <https://www.reuters.com/article/spain-court-iberdrola/spanish-court-ends-investigation-into-iberdrola-boss-over-spying-case-idUKKBN2O41DP>

⁵¹ <https://www.bloomberg.com/news/articles/2021-08-13/spain-scolds-iberdrola-over-scandalous-draining-of-reservoir>; <https://www.theguardian.com/world/2021/aug/15/spain-launches-inquiry-after-dams-drained-for-profit-amid-heatwave>.

⁵² <https://inspain.news/spanish-electricity-company-emptying-reservoirs-for-own-profit/>

CONCLUSION.

Under New Mexico statute § 62-6-13, the PRC was required to consider the following factors in determining whether to allow the merger transaction, under which New Mexico's largest regulated, monopoly utility would be acquired and operated by a foreign corporation:

1. Would the transaction provide benefits to utility customers?
2. Would the transaction preserve NMPRC's jurisdiction?
3. Would the transaction diminish the quality of service received by PNM's customers?
4. Would the transaction result in the improper subsidization of non-utility activities.

The foregoing evidence, most of which was came before the PRC during the course of its hearing on the Avangrid buyout of PNMN, was more than enough to deter the commission from approving the transaction. The additional evidence cited above, if it came before the commission, would make the case for denial even stronger.

PNM and Avangrid have made it clear that they will not accept the PRC's refusal to give them what they want: The sale of PNM to Avangrid. New Mexico's Public Regulatory Commission, as a result of the PNM-funded effort to amend our constitution to eliminate our formerly elected PRC and replace it with a politically appointed PRC, is now entirely new. PNM and Avangrid are so certain that the new PRC will accede to their merger that they are already engaging in joint activities that are being advertised under both of their names.

⁵³ *Id.*