

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE JOINT APPLICATION OF )  
IBERDROLA, S.A., AVANGRID, INC., AVANGRID )  
NETWORKS, INC., NM GREEN HOLDINGS, INC., )  
PUBLIC SERVICE COMPANY OF NEW MEXICO )  
AND PNM RESOURCES, INC. FOR APPROVAL OF )  
THE MERGER OF NM GREEN HOLDINGS, INC. ) Case No. 20-00222-UT  
WITH PNM RESOURCES INC.; APPROVAL OF A )  
GENERAL DIVERSIFICATION PLAN; AND ALL )  
OTHER AUTHORIZATIONS AND APPROVALS )  
REQUIRED TO CONSUMMATE AND IMPLEMENT )  
THIS TRANSACTION )  
)  
IBERDROLA, S.A., AVANGRID, INC., AVANGRID )  
NETWORKS, INC., NM GREEN HOLDINGS, INC., )  
PUBLIC SERVICE COMPANY OF NEW MEXICO )  
AND PNM RESOURCES, INC., JOINT )  
APPLICANTS. )  
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**ORDER ON CERTIFICATION OF STIPULATION**

**THIS MATTER** comes before the New Mexico Public Regulation Commission (“Commission” or “NMPRC”) on the November 1, 2021 Certification of Stipulation (“Certification”) issued by Hearing Examiner Ashley Schannauer (“HE”) concerning the Second Amended Stipulation filed in this docket on June 4, 2021 (the “June 4 Stipulation”) pertaining to the November 23, 2020 Application filed by joint applicants Avangrid, Inc., Avangrid Networks, Inc., NM Green Holdings, Inc., Public Service Company of New Mexico (PNM), and PNM Resources, Inc. (PNMR), together with Iberdrola, S.A. (“Joint Applicants”), seeking approval of a Merger Agreement (the “Proposed Transaction”). **WHEREFORE**, the Commission, having

reviewed the Certification, Application, testimony and pleadings, and being duly informed,

**FINDS AND CONCLUDES:**

1. The Certification of Stipulation, including the Statement of the Case, Discussion, Findings of Fact and Conclusions of Law, and Decretal Paragraphs recommended by the Hearing Examiner, is well taken and should be ADOPTED, APPROVED, and ACCEPTED as the Order of the Commission, except to the extent it may be expressly modified by this Order.

2. Exceptions to the Certification of Stipulation were filed on November 12, 2021 by Joint Applicants.

3. Also on November 12, 2021, exceptions were filed jointly by the signatories to the June 4 Stipulation other than Joint Applicants, specifically, the New Mexico Attorney General (“NMAG”), Western Resource Advocates (“WRA”), International Brotherhood of Electrical Workers Local 611 (“IBEW Local 611”), Diné Citizens Against Ruining Our Environment (“Diné CARE”), NAVA Education Project (“NAVA EP”), San Juan Citizens Alliance (“SJCA”), Tó Nizhóní Aní (“TNA”), the Coalition for Clean Affordable Energy (“CCAЕ”), Interwest Energy Alliance (“Interwest”), Walmart, Inc., Onward Energy Holdings, LLC (“Onward”), the Incorporated County of Los Alamos (“LAC”), and M-S-R Public Power Agency (“M-S-R”) (collectively, the “Signatories”).

4. M-S-R and LAC jointly, and CCAE filed additional separate individual exceptions.

5. On November 19, 2021, New Energy Economy (“NEE”) filed a response to the exceptions filed by Joint Applicants. Also on November 19, 2021, the City of Albuquerque (“CABQ”) filed a response to the exceptions filed by the Signatories.

**JOINT APPLICANTS - EXCEPTION I; SIGNATORIES - EXCEPTIONS 1 & 2**

6. **Joint Applicants' First Exception** disagrees with the Certification on two basic grounds. Joint Applicants first disagree with the Certification's statement that "the majority of the parties are not in agreement that the Proposed Transaction should be approved based on the totality of benefits and protections agreed to by Joint Applicants." Secondly, Joint Applicants disagree with the Certification's ultimate conclusion that the "potential risks" of approving the Proposed Transaction outweigh the "concrete benefits of the Proposed Transaction."

7. On the first point, Joint Applicants assert there was "consensus among almost all of the parties that they support, or at least do not oppose, the Proposed Transaction based on the significant benefits set forth in the June 4 Stipulation as well as the additional benefits and enhancements agreed to by Joint Applicants." Joint Applicants assert: "None of the 23 of the 24 parties supporting or not opposing the Proposed Transaction objected to Joint Applicants agreeing to additional benefits and protections."

8. The Signatories similarly argue that the Certification erred in stating that "the original Signatories to the June 4 Stipulation no longer support the terms of that stipulation. "The Signatories argue that "the post-hearing Statements of Position filed by each of the Signatories on August 30, 2021 .... demonstrate that each continued to support the June 4 Stipulation. Differences related to the post-stipulation regulatory commitments that Joint Applicants made in order to address issues raised by non-signatories did not change that support."

9. The Joint Applicants nonetheless go on acknowledge that "following the filing of the June 4 Stipulation, negotiations continued among the parties for additional benefits and enhanced commitments to the Stipulation." This activity apparently underlies the HE's observation that the signatories no longer support the June 4 Stipulation. While Joint Applicants argue that those benefits and commitments "were confirmed in the record by the Joint Applicants and certain parties

during the evidentiary hearing”, they also acknowledge those benefits were “not reflected in a consolidated written agreement that embodies all of these additional benefits and enhancements.”

10. In addition to affirming support and implicitly urging approval of what would constitute a new “stipulation,” modified through oral concessions during the hearing proceedings, but not reduced to a writing executed by the parties, Joint Applicants now and the Signatories now further confirm that Joint Applicants would accept the HE’s suggested modifications to June 4 Stipulation set forth as the Modified Stipulation attached as Appendix 2 to the Certification. In their exception, the Signatories likewise affirm: “All of the Hearing Examiner modifications contained in Appendix 2 are acceptable to and supported by the Signatories.” In its response to exceptions, the CABQ also indicates it would accept the provisions of Appendix 2.

11. Notwithstanding this, although not identified expressly as exceptions, several sections of Joint Applicants’ pleading express continued disagreement with certain Appendix 2 modifications. Specifically, Joint Applicants indicate continued dissatisfaction with the reliability metrics and automatic penalties in Regulatory Commitment No. 36 of Appendix 2. While acknowledging that the goal of these provisions is “to ensure that PNM’s reliability does not deteriorate under Avangrid ownership,” Joint Applicants reassert that the Commission limit the application of these standards to a five-year period and that the Commission should develop reliability standards and penalties applicable to all utilities. Joint Applicants assert the Appendix 2 standards would be “a discriminatory approach to quality of service that does not correlate with identifiable impacts of the merger.” Joint Applicants argue that “PNM’s reliability metrics over both the last five years and the last 15 years are consistent with or more reliable than those of other electric utilities operating in the State” and “no other New Mexico electric utility is subject to penalties for failing to meet the same or similar standards to be required of PNM.” Yet, Joint

Applicants also assert “imposition of the proposed standards could place PNM immediately in non-compliance and subject to substantial penalties that would not necessarily be tied to any degradation in overall service.” Nonetheless, Joint Applicants go on to acknowledge they would accept this provision, if necessary.

12. Joint Applicants further note disagreement with Regulatory Commitment 17 in Appendix 2 requiring a majority of independent directors in PNM’s board of directors. The Joint Applicants continue to argue that 23 of the 24 parties in the case did not seek this requirement and it is unnecessary due to “other protections and commitments agreed to by Joint Applicants, including the authority of the three independent directors to make determinations regarding dividends, dividend policy and compensation for officers and directors.” Again, Joint Applicants indicate they would accept this provision, if necessary.

13. The second point of Joint Applicants’ first exception argues that the Regulatory Commitments accepted under the June 4 Stipulation, as augmented through testimony at the hearing, and further augmented by their acceptance of the terms of Appendix 2 Modified Stipulation are sufficient to outweigh any perceived risks of the Proposed Transaction. Joint Applicants devote almost 7 pages of their exception to reiterating the benefits already outlined in the Certification together with the additional concessions.

14. The Signatories, without elaboration, and CCAE also, assert the Certification erred in finding that the potential harms of the Proposed Transaction outweigh its proposed benefits.

15. Joint Applicants argue these commitments “will provide more than \$300 million in quantifiable benefits in the form of customer rate credits/funding, economic development funding and funding for a wide array of other beneficial programs.” Joint Applicants point to \$67M in customer rate credits over three years; \$10M in residential COVID relief; \$2M to increase access

to electric utility service for rural and Native American communities; \$15M for new low-income energy efficiency programs and a commitment that PNM will not file a new rate case prior to December 31, 2022.

16. Joint Applicants also point to unquantifiable benefits in the form of economic development, environmental and miscellaneous additional Regulatory Commitments they assert will “provide significant benefits to PNM’s customers, the communities where PNM does business and the State as a whole.” Joint Applicants cite to the following economic development commitments: 150 new full time jobs within three years; no layoffs or wage reductions at PNM for at least three years; \$25M in funding for economic development projects over ten years; \$12.5M in funding for economic development projects by indigenous community groups in the Four Corners region; commitment for an Avangrid nonutility affiliate to work with the Navajo Nation toward the development of a renewable energy generation project of at least 200 MW; \$1M over two years to create or supplement a scholarship program in the Albuquerque/Bernalillo County metropolitan area; \$1M to create or enhance apprenticeships in local high schools and colleges; partner with government agencies to improve internet access in New Mexico by waiving rental fees for a three-year period for local government access to PNM-owned wooden street-lighting poles within one-half mile of public schools and government-owned or authorized low-income facilities; providing Albuquerque parkstreetlighting; and completing construction of a PNM-owned substation to serve a growing area of southeast Albuquerque that includes the Albuquerque International Sunport.

17. Joint Applicants point to environmental commitments to foster sustainability and carbon reduction, including: Executive Compensation Incentives for meeting PNM’s 2040 carbon reduction target; creation of a Chief Environmental Officer position; environmental studies

addressing infrastructure requirements of projected electric vehicle demands; decarbonization of commercial buildings and achieving a 1.5% annual incremental energy efficiency savings in PNM's service territory; making efforts to join a Regional Transmission Organization ("RTO") by January 1, 2030; and expanding the existing Solar Direct Program.

18. The Joint Applicants assert these benefits "significantly exceed[] the benefits offered in any previous utility merger proceeding in the State's history" noting that the financial credits exceed those rate credits made in the last three acquisition/merger cases approved by the Commission, e.g., Emera acquisition - \$8M million, TECO merger - \$11M and EPE merger - \$8.7M.

19. CCAE's separate exception likewise argues that the HE did not give sufficient weight to the "substantial benefits" of approving the Proposed Transaction. CCAE points to many of the same commitments identified in PNM's exceptions. CCAE urges that customer benefits include "low-income and all-customer energy efficiency programs and investments, weatherization, arrears forgiveness, and electric energy access to service." CCAE points to environmental benefits, including "a commitment and plan to accelerate decarbonization – aiming at a zero emissions grid by 2035, a full ten years before New Mexico law currently requires - with a clear timeline and milestones, accelerating transportation electrification with low-income access, grid modernization, building electrification (with low-income access), expanding demand response programs, and joining a regional transmission authority (RTO). CCAE identifies just transition commitments including "applying shareholder funds to provide additional assistance to workers and the community that is equal to, but not tied to, the regulatory process of energy transition funds resulting from securitization with community involvement in the allocation of the

funds; and a commitment to expand the workforce in New Mexico to include renewable energy development and expertise.”

20. CCAE further characterizes the Certification’s concerns about the level of regulatory supervision that will be needed to ensure that Avangrid/PNM adheres to its regulatory commitments, including complying with protections to ensure service quality and reliability, is the result of what CCAE characterizes as the “elephant in the room.” Without further specificity, CCAE asserts the PRC “has been operating over the past couple of years” under “difficult circumstances and [a] challenging regulatory environment” which has made the PRC’s “essential work challenging.” CCAE states that it “disagrees with the Hearing Examiner that the PRC is not up to the task of regulating an Avangrid-owned PNM, but recognizes that proper resources and staffing for the PRC is needed for the PRC to do its job, including the implementation of the merger commitments as well as the important laws the legislature has passed to combat climate change and commence a just transition.”

21. Joint Applicants further disagree with the Certifications’ skepticism about the purported financial benefits the Proposed Transaction would bring. The Joint Applicants continue to assert that the merger will improve PNM’s credit metrics and credit rating, and therefore save customers money due to PNM’s lower cost of borrowing and PNM’s greater access to capital for utility investments and operations. Joint Applicants point out that Avangrid will extinguish all of PNMR’s debt and improve PNMR’s credit metrics as well which they assert will “help improve PNM’s financial flexibility, resilience and access to debt capital and will likely lead to S&P upgrading PNM’s credit rating.” Joint Applicants assert that these financial benefits “have been verified by third parties” and point to Joint Applicants’ testimony that PNM’s customers “may save an estimated \$21.5 million over ~~tn~~ years from a one-notch improvement in PNM’s credit rating.”



They further assert that “following the announcement of the Proposed Transaction, S&P upgraded the credit outlooks for both PNMR and PNM from “stable” to “positive.” Joint Applicants also note that PRC Utility Division Staff “is in agreement that PNM’s credit metrics are likely to improve as a result of the Proposed Transaction with resulting benefits to customers in the form of better credit terms and a lower cost of debt.” Joint Applicants note that all Avangrid’s utility subsidiaries with published credit ratings have higher credit ratings than PNM and PNMR.

22. Joint Applicants further assert the Certification’s focus on the penalties and negative revenue adjustments that have been incurred by Avangrid’s utilities in the Northeast ignores that many of those utilities meet or exceed “the vast majority of customer service metrics and reliability standards set with our customers.” They argue that many of the revenue adjustments are related to performance incentive rate making methodologies adopted by other jurisdictions and “do not necessarily reflect decreased or deficient levels of customer service, just as rate adjustment increases do not necessarily correlate with issue pertaining to customer service.”

23. Joint Applicants further argue that “fines or penalties that have been leveled against Avangrid utilities in New York, Connecticut, and Maine have either been remedied by Avangrid or are far lower than peer utilities in the region, reflecting comparably better performance.” They argue this “overlooks the broader context of state-wide penalties for *all* of the major utilities in those states, which are the result of more frequent and more intense weather events in the Northeast due to climate change.” Joint Applicants assert for the same storm events in New York Consolidated Edison was fined \$80M compared to Avangrid’s \$10M fine, while in Connecticut Eversource was fined \$28M compared to Avangrid’s \$2M.

24. Joint Applicants acknowledge that Central Maine Power Company (“CMP”) did not meet customer service expectations between 2016 and 2019, but assert “Avangrid and CMP

moved quickly to add resources, implement system changes, and promote new leaders to improve customer service. Since then, for almost two years, the evidence reflects that CMP has addressed these issues and has satisfied, and continues to satisfy and exceed, the Maine Public Utilities Commission's stringent customer service metrics." Joint Applicants assert Avangrid has been reinvesting in CMP's infrastructure to address performance issues and "its reliability metrics are better than those of its peer utilities." Joint Applicants assert it is "incorrect to suggest they are providing poor service to customers."

25. Joint Applicants further argue that the Regulatory Commitments as revised by Appendix 2 will "protect against any concern that PNM might face any pressures to divert funds from system investments to dividend payouts" because "independent board members must approve any PNM dividend payments to its shareholder[s]." Joint Applicants point to the provisions in Appendix 2: "PNM cannot pay dividends if its credit rating is too low or if its capital structure is not maintained (Appendix 2, paragraphs 28-30); PNM must adhere to its existing plans to invest in system maintenance, upgrades and improvements (Appendix 2, paragraph 36); PNM must maintain adequate personnel and hire new electric craftsmen as necessary (Appendix 2, paragraphs 2, 21, and 36); and PNM must meet stringent reliability metrics or face penalties (Appendix 2, Attachment 1).

26. Joint Applicants also argue Avangrid's actions in Maine in investigating the Clean Energy Matters ballot initiative against Avangrid subsidiary NCEC's transmission line were not contrary to the law. They assert the record evidence showed that Avangrid's challenge of the ballot signatures was proper as the signatures were ultimately invalidated by the Maine Secretary of State. Joint Applicants assert the Certification erred in asserting that Joint Applicants provided no evidence that signature gathering firm Revolution Field Strategies (RFS) had a documented history

of fraud, noting that witness Mr. Kump provided letters to the Maine Ethics Commission as evidence of fraudulent activity in previous campaigns.

27. With regard to the ongoing criminal investigation in Spain, Joint Applicants state no criminal charges levied against any Iberdrola executives and no charges may ever be filed. Joint Applicants assert it would be “inappropriate and prejudicial to draw negative inferences in this case by assuming a particular outcome or wrongdoing due to this investigation.”

28. **NEE’s Response to the Exceptions** argues that the exceptions essentially consist of the Joint Applicants and Signatories signaling their agreement with the suggested additional terms set out by the HE in Appendix 2 to the Certification in the event the Commission disagreed with the Certification and found that the benefits of the Proposed Transaction outweighed the potential harms. NEE argues that the “Joint Applicants and signatories ask this Commission to overlook Avangrid/Iberdrola’s track record because of the purported strengths of Avangrid/Iberdrola, which are experience with renewable energy and financial strength, but the evidence at the hearing demonstrated otherwise.”

29. NEE argues that the record demonstrates Iberdrola/Avangrid cannot be trusted to comply with laws, rules, standards and management dictates. NEE points to Iberdrola/Avangrid’s violation of discovery rules by providing incomplete responses, failing to supplement responses and over designation of materials as confidential which led to the HE’s recommendation of sanctions. NEE also points to the Joint Applicants inclusion of compromise positions in their Post-Hearing Brief contrary to the HE’s direction which led to the HE striking a portion of Joint Applicants’ pleading. NEE notes that these concerns underlie the Certification’s concern about the “significant effort” needed to enforce the terms of the Proposed Transaction, noting the pending

criminal investigation in Spain and Avangrid's efforts to avoid regulatory location control review for its El Cabo wind project.

30. NEE further points to Avangrid and its affiliates in the Northeast accumulation of \$63.1M in fines and violations over the last 5 years, Avangrid's formation of a PAC to oppose an initiative to oppose CMP's transmission line, and reliability and performance issues with Avangrid's subsidiaries in Maine, New York, and Connecticut resulting in regulatory actions.

31. NEE further argues that Avangrid/Iberdrola's touted experience in renewables is restricted to wind and that Joint Applicants admitted Avangrid's lack of experience in solar.

32. NEE argues against the Joint Applicants' characterization of the value of the proposed benefits of the transaction in comparison to previously approved mergers, noting the size differential between the utilities in those cases.

33. NEE notes its agreement with the HE that "taken together, the promised benefits do not outweigh the potential risks and harms" and argues: "The reference point to determine net public benefit must take into consideration the distribution of benefits between ratepayers (\$1.64 per month for three years for residential ratepayers<sup>75</sup>), senior management (golden parachutes for three PNMR/PNM Executives equaling more than \$29 million far exceeds the amount *all* residential ratepayers will receive<sup>76</sup>) and hundreds of millions to shareholders. If the Four Corner divestiture, required by this merger, is approved as recommended by the Hearing Examiner in Case No. 21-00017-UT, ratepayers will be required to pay \$300 million in a non-by passable charge on their monthly bill, and this will adversely impact ratepayers' existing rates and result in a *net loss as a result of the merger.*"

34. NEE further urges the Commission to reject Avangrid/Iberdrola's argument that in with respect to the penalties incurred in the East, they should be viewed in comparison with are

other the major utilities in those states. NEE argues this is part of an emerging pattern: “Iberdrola/Avangrid skirt the law or rules to their own advantage, and if caught, either blame external circumstances, claim confusion (by the company or the interrogator), downplay the “relative” seriousness of the claim, and then settle or litigate.”

35. NEE argues that Joint Applicants’ exceptions acknowledges Central Maine Power (“CMP”) did not perform to Avangrid’s expectations for customer service between 2016 and 2019 and agrees that the billing system rollout in Maine was not executed well, and that there were initially not enough customer service representatives to help with customer questions and concerns. NEE argues the Commission should reject Joint Applicants’ argument that Avangrid has “moved quickly to add resources, implement system changes, and promote new leaders to improve customer service” noting that management audits continue to show quality of service deterioration, staffing instability, organizational flux, and mismanagement lead to widespread system unreliability, customer dissatisfaction, and failure to abide by regulatory rules.

36. Finally, NEE notes that while Joint Applicants assert that they would accept the provisions of Appendix 2, their exceptions show that Joint Applicants don’t want to abide by Commission determined reliability metrics to protect customers and argue that an independent PNM board of directors isn’t necessary.

### **COMMISSION RESPONSE**

37. The Joint Applicants and Signatories focus their exception on their newly expressed willingness to accept the HE’s revisions set forth the Modified Stipulation included as Appendix 2 to the Certification. Significantly, those revisions impose greater protections and safeguards in the form of Regulatory Commitments than the provisions of the June 4 Stipulation which was the subject of the evidentiary hearing and the Certification’s analysis. The HE’s Order on Post-

Hearing Filings affirmed that the certification would be based on the parties' positions as expressed in their statements of position filed at the close of the evidentiary hearings. While Joint Applicants' and Signatories' assert those statements indicate continued support for the June 14 Stipulation, those statements demonstrate a lack of uniform agreement over the additional regulatory commitments proposed or agreed to by Joint Applicants during the hearing. Notably, the Joint Applicants' and Signatories' exceptions to the Certification primarily assert their belief that the Certification erred in the relative weight it accords to the purported benefits of the Proposed Transaction and the various matters that the Regulatory Commitments address – what are otherwise referred to as the potential risks of the Proposed Transaction. That many of the Signatories recognized the need for additional enhanced Regulatory Commitments beyond those initially agreed to in the June 4 Stipulation is evident from the continued negotiations that took place during the evidentiary hearing on the June 4 Stipulation.

38. The proponents of the Proposed Transaction now gloss over the potential risks of the Proposed Transaction based on the enhanced revisions proposed in the Appendix 2 Modified Stipulation which they now recast as additional enhanced benefits, rather than revisions necessary to mitigate the very real concerns about risks of harm identified by many of those same parties in this case during the proceedings. As the Certification notes, given the nature of the facts that gave rise to concerns, these provisions will not eliminate those risks, but instead will require sustained and vigilant regulatory oversight to maintain. Ultimately, in evaluating the six factors the Commission applies when determining whether a utility merger satisfies the public interest under NMSA 1978, §62-6-12 the Certification concludes the potential harms of the Proposed Transaction continue to outweigh its benefits. The Certification makes clear that in the HE's estimation, this

conclusion holds true even with the application of the revisions included in the proposed Appendix 2 Modified Stipulation.

39. This Order does not reiterate the full analysis of the Certification, which is set forth by the HE in intricate detail over several hundred pages. However, in reviewing the testimony in this case, the Commission does not find fault with the Certification's conclusion that that the benefits cited by the Joint Applicants, while not insubstantial, are not as significant as they are portrayed and are insufficient to overcome the potential risk of the Proposed Transaction as set forth in the Certifications recitation and analysis of the factual record in this case. This is especially true given that many of the most concrete financial benefits are limited to investments or expenditures of specific sums certain and regulatory commitments limited to terms of three to five years. By contrast, the concerns of risks based on the demonstrated performance and compliance history of Iberdrola/Avengrid with regard to quality-of-service issues, including reliability, as well as risks of improper subsidization of non-utility activities, will be ongoing. Even more so, the Commission finds valid the HE's concerns about Avangrid/Iberdrola's qualifications in light of the ongoing criminal investigation in Spain involving high level officers and the compliance issues experienced by the HE in this proceeding which led to a finding of discovery violations and a recommendation of sanctions against Avangrid. Based on the record in this case, the Commission accepts the recommendation of the Certification to reject the June 4 Stipulation.

### **JOINT APPLICANTS - EXCEPTION II**

40. Joint Applicants argue Avangrid should not be sanctioned for failing to fully answer NEE's discovery requests, by requiring Avangrid to pay NEE's attorney's fees, asserting

that Avangrid “acted in good faith in attempting to answer all discovery requests and has already been appropriately admonished by the Hearing Examiner for filing incomplete responses to NEE 4-55” which requested “all current or pending instances of non-compliance with any state, federal law or Commission rule or order by Iberdrola, Avangrid, or any of its affiliates for which the company may be liable and subject to civil or criminal penalties for the last ten years.” Joint Applicants continue to argue that Avangrid properly disclosed certain additional matters not previously disclosed when responding to the HE’s May 11 Order which requested “a list of enforcement actions and enforcement measures in rate or other proceedings initiated or concluded by state and federal regulatory agencies since January 1, 2016 against Avangrid, Inc.’s electric and gas utility subsidiaries and the results of the actions and measures.”

41. Joint Applicants argue Avangrid’s May 18 Response to the HE’s request and its response to NEE 4-55 were meant to address different questions. They further argue “Not all fines and penalties are assessed because of enforcement actions or enforcement measures and not all enforcement actions and measures are considered to be fines or penalties. “As a result, Joint Applicants assert Avangrid provided different sets of materials based on its interpretation of the question and which items were “enforcement actions and enforcement measures.” Joint Applicants assert that items the Certification identifies as not having been provided in violation of discovery obligations were not the result of “enforcement actions or measures.” The Joint Applicants urge that Avangrid was not intentionally non-responsive and should not face monetary sanctions.

42. Joint Applicants further argue discovery sanctions are warranted only if a motion to compel has been granted and a party refuses to comply, which is not the case as Avangrid



provided the information requested by the Hearing Examiner and NEE as the scope of those requests became clearer.

### **COMMISSION RESPONSE**

43. The Commission finds that the HE's findings of discovery violations by Joint Applicants and conclusion that sanctions were appropriate is supported by the record set forth in the Certification and is consistent with New Mexico law governing the imposition of sanctions for discovery sanctions.

44. The Certification notes: "The NEE Motion asks that the Joint Applicants be ordered to "reimburse Mariel Nanasi, attorney for New Energy Economy, for the time expended on NEE's six efforts to resolve discovery disputes including the bringing of this Motion, paid for by shareholder funds (not to be reimbursed by ratepayers)."

45. However, the HE's June 14, 2021 Order required: "Responsive testimony, including the amount of and support for any recovery of attorney fees as a sanction, shall be filed by July 16, 2021."

46. The June 14 Order further required: "The issue of whether to order sanctions and/or administrative penalties and the amount thereof shall be litigated through examination of the above testimony at the hearings scheduled to start on August 11. The issue will be resolved in the recommendation to be issued by the Hearing Examiner after the hearing and the subsequent decision issued by the Commission.

47. However, the case record reflects that NEE failed to file the requisite testimony in support its request for attorney fees as required by the June 14 Order. The Certification concedes: "The issue of the appropriate sanction is made more difficult due to the failure of NEE to provide any testimony on this issue."

48. R. 1-037(A) provides that “the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.” However, while the Certification recommends that NEE be awarded attorney fees, this recommendation must be rejected due to NEE’s failure to obey the June 14 Order requiring it to provide testimony concerning the amount and reasonableness of such fees, which failure deprives the Commission of a requisite evidentiary basis on which to make a determination of both the amount and reasonableness of the attorney fees requested as a sanction. The June 14 Order specifically required the filing of testimony on this point, set a deadline for the filing of that testimony, and provided that the issue of administrative penalties and the amount thereof would be litigated through examination of that testimony at the hearings scheduled to start on August 11, 2021. NEE’s failure to submit the testimony on these points as required by the June 14 Order, constitutes waiver of its request for the reimbursement of its attorney fees.

49. NEE’s failure to support its request for attorney fees does not affect the Commission’s finding that sanctions against Joint Applicants were warranted based on the violations of the HE’s orders with regard to discovery proceedings. While an award of attorney fees is only one of the sanctions available under R. 1-037, other sanctions that may be appropriate in the courts, such as striking claims and defenses, are not necessarily appropriate in administrative regulatory proceedings, where the Commission handles matters of public import, rather than private disputes, and the interest in decisions on the merits take even greater precedence.

50. While these other sanctions may not be appropriate, some form of sanction is still appropriate based on the HE’s finding of Joint Applicants’ violations of the HE’s orders and the

impact on those violations on the development of evidence and impact on the procedural posture of the case.

51. The HE's June 14 Order placed the Joint Applicants on notice that administrative penalties under NMSA 1978, §62-12-4 may be assessed. §62-12-4 provides: "Any person or corporation which violates any provision of the Public Utility Act [Chapter 62, Articles 1 to 6 and 8 to 13 NMSA 1978] *or which fails, or omits or neglects to obey, observe or comply with any lawful order or any part of provision thereof, of the commission* is subject to a penalty of not less than one hundred dollars (\$100) nor more than one hundred thousand dollars (\$100,000) for each offense." (emphasis added)

52. Accordingly, sanctions pursuant to §62-12-4 are appropriate in this matter. While §62-12-4 provides for fines ranging from \$100.00 to \$100,000.00, the amount of the sanction should bear some relation and be proportionate to the impact of the violation on the proceedings. In this instance, a penalty of ten thousand dollars (\$10,000.00) is appropriate based on the disruption of the proceedings and the additional time and effort that was required for pleadings, testimony, hearing and orders addressing the Joint Applicants' failure to obey orders related to discovery.

**IT IS THEREFORE ORDERED:**

A. The Certification of Stipulation, including the Statement of the Case, Discussion, Findings of Fact and Conclusions of Law, and Decretal Paragraphs recommended by the Hearing Examiner, with the exception of Decretal Paragraph G, is well taken and should be ADOPTED, APPROVED, and ACCEPTED, as the Order of the Commission and is incorporated herein by reference as part of this Order except to the extent expressly modified by this order.

B. Finding of Fact and Conclusion of Law 4 and 5 shall be combined and revised to read: “4. The June 4 Stipulation cannot be approved, because based the Signatories testimony and statement of positions, they are no longer in agreement on the terms that should be approved by the Commission and, regardless of whether the signatories remain in agreement on the original terms of the June 4 Stipulation, because the potential harms resulting from the Proposed Transaction outweigh its benefits.”

C. Finding of Fact and Conclusion of Law 6 shall read: The Modified Stipulation proposed as by the HE in Appendix 2 as an alternative basis for the Commission’s approval is rejected.

D. As a sanction for the discovery violations discussed herein, the Joint Applicants are assessed a penalty of ten thousand dollars (\$10,000.00), which sum shall be payable to the Commission within thirty (30) days of the filing of this Order.

E. Any other pending motions or exceptions not expressly addressed, including the exceptions of LAC/M-S-R, are deemed resolved consistent with this order.

F. This Order is effective immediately.

G. Copies of this Order shall be served on all persons listed on the attached Certificate of Service, via e-mail to those whose e-mail addresses are known, and otherwise via regular mail.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 8th day of  
December, 2021.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*/s/ Cynthia B. Hall, electronically signed*  
**CYNTHIA B. HALL, COMMISSIONER DISTRICT 1**

*/s/ Jefferson L. Byrd, electronically signed*  
**JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2**

*/s/ Joseph M. Maestas, electronically signed*  
**JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3**

*/s/ Theresa Becenti-Aguilar, electronically signed*  
**THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4**

*/s/ Stephen Fischmann, electronically signed*  
**STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5**



**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE JOINT APPLICATION OF )  
IBERDROLA, S.A., AVANGRID, INC., AVANGRID )  
NETWORKS, INC., NM GREEN HOLDINGS, INC., )  
PUBLIC SERVICE COMPANY OF NEW MEXICO )  
AND PNM RESOURCES, INC. FOR APPROVAL OF )  
THE MERGER OF NM GREEN HOLDINGS, INC. )  
WITH PNM RESOURCES INC.; APPROVAL OF A )  
GENERAL DIVERSIFICATION PLAN; AND ALL )  
OTHER AUTHORIZATIONS AND APPROVALS )  
REQUIRED TO CONSUMMATE AND IMPLEMENT )  
THIS TRANSACTION )**

**Case No. 20-00222-UT**

**IBERDROLA, S.A., AVANGRID, INC., AVANGRID )  
NETWORKS, INC., NM GREEN HOLDINGS, INC., )  
PUBLIC SERVICE COMPANY OF NEW MEXICO )  
AND PNM RESOURCES, INC., JOINT )  
APPLICANTS. )**

**CERTIFICATE OF SERVICE**

**I CERTIFY** that on this date I sent via email to the parties listed below a true and correct copy of the Commission's **Order on Certification of Stipulation**.

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**DATED** December 9, 2021

**NEW MEXICO PUBLIC REGULATION COMMISSION**

*Ana C. Kippenbrock*

**Ana C. Kippenbrock, Law Clerk**