



new energy economy

Addressing the Climate Challenge
With Bold Solutions

For Immediate Release

Contact: Mariel Nanasi (505) 469-4060
Executive Director, New Energy Economy
mariel@seedsbeneaththesnow.com

April 2nd, 2021

PNM/Avangrid Merger Not A Benefit for New Mexican Ratepayers

Santa Fe, NM - On November 23, 2020, Public Service Company of New Mexico (“PNM”) and Avangrid, Inc. (“Avangrid”) applied to “merge” their companies with the New Mexico Public Regulation Commission (“PRC”). Avangrid is a publicly traded worldwide energy conglomerate with approximately \$36 billion in assets and operations in 24 U.S. states. Iberdrola, (located in Spain), owns 81.5% of Avangrid’s stock. **New Energy Economy, along with most of the other intervenors, if not all, are opposing the merger because it is NOT in the public interest. Today we filed expert testimony detailing our objections to the merger agreement.**

On October 20, 2020 PNM and Avangrid entered into an Agreement and Plan of Merger (the “Merger Agreement”). PNM and Avangrid, known as Joint Applicants, must prove in Case No. 20-00222-UT that their merger is “in the public interest.” In determining whether to approve a utility acquisition the PRC must consider:

- 1) whether the acquisition is beneficial to utility customers;
- 2) whether the Commission’s jurisdiction will be preserved;
- 3) whether the quality of utility service will be diminished; and
- 4) whether the acquisition will result in the improper subsidization of non-utility activities.

New Energy Economy contends that the merger is not in the public interest because:

- **As part of the Merger Agreement Avangrid has required that PNM file for “abandonment”¹ of its 13% share in the Four Corners Power Plant (FCPP) and securitize the remaining undepreciated investments.** The purpose of the ETA is to *transition* New Mexico’s dependence on climate-altering coal to renewables, but PNM’s proposed abandonment and “sale” of its ownership interest in the FCPP to Navajo Energy Transitional Company (NTEC)² will not result in shut-down or closure of the FCPP and will allow NTEC and the other remaining owners of that plant to continue operating that plant until at

¹ “Abandonment” in this context does not mean closure. It means that FCPP will no longer be used to “serve rate base,” also known as, NM ratepayers.

² PNM’s “sale” plan is to pay NTEC \$75M to assume its shares and associated (coal contract) obligations, and for NTEC to pay PNM one dollar.

least 2031, if not longer. **The PNM “sale” to NTEC is contrary to both the letter and spirit of the ETA and cannot be in the public interest.**³

- **PNM’s decisions related to investment in the Four Corners Power Plant were imprudent and full cost recovery of \$300 million would negate any and all possible benefits of the proposed acquisition.** In 2013-2014, PNM’s decision to reinvest in their ownership share at FCPP extended the life of one of the largest polluting coal plants in the southwest. PNM invested approximately a billion dollars of OUR money, including the execution of a fifteen-year “take or pay” coal supply contract for 200 MW from the coal-generating power Plant, investment in pollution controls and “APS’ System Health Process” which kept the poorly performing plant functioning. Instead of conducting a contemporaneous financial analysis, PNM used a stale 18-month-old analysis to justify their investment. Hearing Examiners referred to the analysis as stale, and further, as “flawed” because it omitted the cost of (needed) expensive capital expenditures.

The Hearing Examiners and the PRC initially found that PNM invested in and extended the life of the FCPP without a current financial analysis and comparison of FCPP with other energy alternatives and the investment was found to be **imprudent**. After “lobbying” (as described by PRC Commissioner Lyons) by PNM, PRC Commissioners Lyons and Jones joined Lovejoy and voted to scrub the previous Order of the “imprudence” finding and exacted further rate reductions. In that final order they kicked the can down the road, ruling: “The issue of PNM’s prudence in continuing its participation in FCPP shall be deferred until PNM’s next rate case.” Four years later, despite the Commission’s promise, ratepayers have not seen justice for the **imprudence of PNM’s investment in FCPP**. In the meantime, we continue to pay for high-cost polluting coal at FCPP. Despite the early imprudent finding and the promise to have a prudence review, PNM seeks, pursuant to the ETA, all \$300M for PNM’s undepreciated investments in FCPP.

Our Supreme Court has held that failure to conduct an alternative analysis is a “fundamental flaw” because “[t]he goal of the consideration of alternatives is, of course, to reasonably protect ratepayers from wasteful expenditure. *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm’n*, 2019-NMSC-012, 444 P.3d 460, ¶32, 40, **The Court concluded that ratepayers should be held harmless from the impacts of a utility’s imprudent decisions. A merger that requires securitization of \$300M in undepreciated investments at FCPP infringes on that right.**

- **No meaningful economic benefits for ratepayers.** The Joint Applicants have proposed trickling down \$24.6 million of “rate credits” to PNM’s customers over 36 months, which equals, according to Joint Applicants, approximately. \$0.59 per month for 3 years, for a maximum of \$21 per average residential customer. Compare this to three very important metrics:

1) PNM Resources stockholders will receive in excess of \$200 million just for holding PNMR stock certificates. Avangrid has agreed to pay PNM Resources stockholders \$50.30 per share upon closing of the merger deal set for January 2022. PNM Resources is the parent company of PNM (and is the entity which is actually traded on the New York Stock Exchange). That windfall produces no customer benefit whatsoever, but merely enriches those shareholders.

2) PNM’s senior management will receive a combined \$38 million in executive compensation if shareholders approve the company’s proposed merger with energy giant Avangrid. About \$12.5 million of that would go to three departing execs as a “golden parachute.” The rest is earnings and benefits the six managers are entitled to under their employment contracts because of goals they have achieved, and is compensation they would receive regardless of the merger. (About 480,000 of PNM’s 530,000 ratepayers are residential ratepayers. 480,000 residential ratepayers will receive in total \$24.6 million and six PNM Executives will receive \$38 million – a distribution that is hardly fair, just and reasonable, or in the public interest!

3) No agreement to a rate freeze. Often when there is a merger in the context of regulated monopoly, the applicants agree in advance to a rate freeze for a certain period of time. Not only have Joint Applicants refused to agree to a rate freeze, they have refused to state when they will file their next rate case and in what amount. It is incomprehensible that they haven’t penciled this out as part of their due diligence when evaluating the acquisition. Given their refusal to answer the question about future rate impacts, their \$24.6M “rate credit” is not only *de minimis* to begin but without knowing what rate increases are planned for the near future this alleged “benefit” is entirely unquantifiable.

4) The \$24.6M “rate credit” is completely arbitrary and is not commensurate with other recent decisions. PNM Resources owns a much smaller utility in Texas. Just this month, in March 2021, the Texas Public Utility Commission found that the “rate credit” that Joint Applicants offered was not in the public interest and suggested an increase. That amount, deemed inadequate in Texas, is three times the amount Joint applicants are offering to ratepayers in New Mexico.

- **No improved service for ratepayers.** The Joint Applicants talk about improved service to customers, but admit that after Avangrid purchased Central Maine Power it has been at the very bottom of customer satisfaction surveys among *all* utilities in the U.S. for three years in a row.

- **Avangrid’s political playbook may be even more nefarious than PNM’s.** Avangrid via Central Maine Power used its money and political influence to kill a pro-rooftop solar bill. Central Maine Power worked behind the scenes in 2017 to rig the debate over rooftop solar and net metering in its favor, including contributing to the Governor’s PAC.⁴

PNM’s PACs contribute heavily to our PRC,⁵ Legislature,⁶ and our Governor,⁷ and to the PAC that worked to sway voters to take away their vote for the PRC. Central Maine Power’s bid to kill the pro-solar bill was backed by “We Stand for Energy”, a front group run by the Washington, DC-based Edison Electric Institute (EEI), the industry association that represents the nation’s investor-owned electric utilities. Just like Avangrid created and used front groups in Maine to undermine rooftop and community solar, PNM (and Avangrid?) used a group called “Committee to Protect New Mexico Consumers” advocating for a constitutional amendment to undermine voting rights of NM citizens to vote for PRC Commissioners; PNM paid more than a quarter of a million dollars to produce and distribute mailers supporting a ballot question that would change the composition of the Public Regulation Commission.⁸

PNM’s current CEO used to be the head of Edison Electric Institute.⁹

⁴ <https://www.energyandpolicy.org/central-maine-power-solar-net-metering/>

⁵ In 2018, the company intervened in two Public Regulation Commission (PRC) races, spending \$440,000 to try to influence the outcome of those contests. <https://www.abqjournal.com/1193698/committee-tied-to-pnm-spends-heavily-in-primary.html>

⁶ PNM Resources, the utility’s parent company, bankrolled a separate dark money group in 2020 called the “Council for a Competitive New Mexico” that spent money in five state senate Democratic primary races last spring to boost powerful incumbents while attacking their opponents.

<https://nmindepth.com/2021/02/12/utilitys-admission-friday-likely-to-increase-suspicion-it-helped-bankroll-prc-reform-ballot-measure/>

⁷ Spending \$105,200.00 in contributions and PACs. “The Continuing Influence of the Oil and Gas Industry in New Mexico in 2020,” NM Ethics Watch, <http://nmethicswatch.org/wp-content/uploads/2021/02/NMEW-Oil-and-Gas-Follow-Up-Report-Updated-02122021.pdf>, p. 11. PNM would have to agree that its campaign contributions before passage of the ETA were significant. *See also*, “The New Mexico Oil and Gas Industry and Its Allies: Oceans of Oil, Oceans of Influence,” Common Cause New Mexico and New Mexico Ethics Watch, March 2020, <https://www.commoncause.org/new-mexico/resource/the-new-mexico-oil-and-gas-industry-and-its-allies-oceans-of-oil-oceans-of-influence/>, pp. 8, 13, 26.

⁸ “The Continuing Influence of the Oil and Gas Industry in New Mexico in 2020,” NM Ethics Watch, <http://nmethicswatch.org/wp-content/uploads/2021/02/NMEW-Oil-and-Gas-Follow-Up-Report-Updated-02122021.pdf>, p. 45.

⁹ <https://www.eei.org/resourcesandmedia/newsroom/Pages/Press%20Releases/Pat%20oVincentCollawn%20Elected%20EEI%20Chairman%20Chris%20Crane%20Greg%20Abel%20and%20Lynn%20Good%20Elected%20Vice%20Chairmen.aspx>

