

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION
OF PUBLIC SERVICE COMPANY OF NEW
MEXICO FOR APPROVAL TO ABANDON
SAN JUAN GENERATING STATION UNITS
2 AND 3, ISSUANCE OF CERTIFICATES OF
PUBLIC CONVENIENCE AND NECESSITY
FOR REPLACEMENT POWER RESOURCES,
ISSUANCE OF ACCOUNTING ORDERS AND
DETERMINATION OF RELATED RATE-
MAKING PRINCIPLES AND TREATMENT**

Case No. 13-00390-UT

**PUBLIC SERVICE COMPANY OF
NEW MEXICO, Applicant**

**DIRECT TESTIMONY OF RONALD L. LEHR
IN OPPOSITION TO STIPULATION**

**On Behalf of
New Energy Economy**

November 25, 2014

INTRODUCTION AND QUALIFICATIONS

1 **Q. Please state your name and occupation, summarize your work experience**
2 **and educational background.**

3 A. My name is Ronald L. Lehr. I am an Attorney and consultant. I have represented
4 clients on electric utility matters since 1974. Clients have included the State of Colorado, energy
5 firms, electric utilities, non-profit and advocacy groups, foundations, the National Renewable
6 Energy Laboratory, and others on a wide range of matters. I served as commissioner and
7 chairman of the Colorado Public Utilities Commission and as commissioner and President of the
8 Denver Board of Water Commissioners, the water utility for Denver and surrounding areas. I
9 have a bachelor of arts degree from the Dartmouth College and a juris doctor degree from the
10 University of Colorado.

11 **Q. On whose behalf are you testifying in this case?**

12 A. I am testifying on behalf of New Energy Economy (NEE).

13 **Q. Have you previously testified before the New Mexico Public Regulatory Commission**
14 **(the commission)?**

15 A. I previously filed rebuttal testimony in this proceeding, which I incorporate here by this
16 reference as if it were repeated here completely.

17 **Q. Please summarize the primary purpose of your testimony.**

18 A. The purpose of my testimony is to reiterate the necessity for the commission to order
19 PNM to test the resources it seeks to add to its portfolio against the market for such
20 resources, so New Mexico consumers can be assured that the resources to replace retired
21 SJGS plants are the most cost effective resources currently available. No other
22 mechanism short of a well-run request for proposals, bids from independent third parties,

1 and a carefully executed bid evaluation process can provide that assurance to consumers.
2 Because a public regulation commission's fundamental duty is to make sure that
3 consumers' interests are met and that the most cost effective resources are obtained, this
4 commission should require that the resources proposed in this docket are tested against
5 competitive resources in a well regulated open bidding process.

6 In this docket, PNM proposes to acquire "replacement power" required due to
7 closure of SJGS Units 2 and 3. The docket represents a clash of interests between
8 consumers and the utility that the commission will decide. Consumers want to pay as
9 little as possible for a safer and more diverse generation portfolio, consistent with a
10 reasonable utility return. PNM, in settling on replacement power it proposes here, has
11 proposed to acquire, own, earn its authorized equity return resources that will require
12 significant investments and that carry significant fuel and decommissioning risks.

13 Since regulation offers them the chance to earn an equity return on such large
14 capital investments, the settlement results PNM has proffered here for commission
15 consideration are not surprising. But, the commission should ask: have all the potential
16 resources available been given full consideration? Are there generation resources
17 available in the competitive market that could provide lower cost power with lower risk
18 profiles than the resources proposed in the settlement? If there were such resources,
19 should this commission order PNM to pursue them?

20 My testimony argues that the accepted power industry mechanism for assessing
21 validity and cost of resource options should be a carefully monitored, transparent RFP,
22 bid evaluations under the scrutiny of an independent evaluator, and acquisitions that are

1 consistent with thorough, commission-approved, integrated planning. In my experience,
2 competitive market acquisition of generation resources that meets these standards has
3 proven itself to provide least cost power for consumers.

4 **Q. What are the issues that you address in response to testimony that has been filed in**
5 **support of the stipulation and settlement?**

6 A. The issues relate to the rebuttal testimony I filed previously that contained the following
7 propositions:

- 8 1. Competitive acquisition of new renewable energy can lead to least cost generation
9 resources.
- 10 2. Renewables can be integrated into utility operations reliably at significant levels without
11 large costs.
- 12 3. Care must be taken to adequately regulate utility monopsony incentives.
- 13 4. The commission should order PNM's stipulated resources against all other resources
14 available in the current market for new generation resources.

15 **Q: Why is a market test necessary for the resources proposed in this docket?**

16 A: The utility has an incentive to favor generation it owns and on which it can earn an equity
17 return, rather than resources provided by third parties, on which it does not earn an equity return.
18 Unless required by this commission to do so, the utility will try to ignore potential for acquiring
19 least cost resources from third parties through power purchase agreements in favor of acquiring
20 resources it owns, puts in rate base, and on which it earns a return. Unless it is required to test its
21 settlement resources against competitive market resources, PNM will not be able to pass the test
22 of having considered all alternatives fully. This means that New Mexico consumers cannot be

1 assured that the most cost effective resources that might be available in the market have been
2 fully explored.

3 **Q: Does PNM support the notion of testing resources they want to acquire against**
4 **competitive market outcomes?**

5 A: Yes. In at least two examples in their testimony in support of the settlement, PNM witnesses
6 testify that competitive market results should be relied on by this commission to show that the
7 best resources have been chosen. In the testimony of Mr. Darnell, for example, he justifies cost
8 savings from the SIP over those found in the FIP, and specifically SCR costs that EPA had
9 questioned, in the following terms:

10 Although EPA determined that the estimates presented by PNM were, in EPA's opinion,
11 overstated, PNM's estimates were confirmed when *PNM issued a Request for Proposals*
12 for the SCR work *and received competitive bids*. PNM, with the help of expert
13 consultants, *designed a competitive process to result in the lowest reasonable cost to*
14 *engineer, procure and construct the SCR*. (Darnell, P. 16, lines 20-22, emphasis added)

15 We are simply asking: if a competitive process led to lowest reasonable costs for the SCR, why
16 wouldn't a competitive process lead to the lowest cost for all generation resources? If PNM uses
17 competitive process to justify its SCR costs, why should the commission not require it to use
18 competitive process to justify its generation resources' costs?

19 Again In Mr. O'Connell's testimony, at page 9, he states "significant" updates from prior
20 testimony include: "In March 2014, PNM [] completed its analysis of bids received in January
21 2014 in response to an all-source renewable RFP and incorporated an updated price for solar PV
22 into its modeling. ..."

23

1 Again we ask: if competitive market valuation is presented by PNM witness O’Connell to
2 justify solar market value, why should this commission not require competitive market valuation
3 for all the generation resources at issue in this docket, by testing those resources in a well-run
4 competitive procurement process? If this process is persuasive when argued by the company to
5 justify values for SCR construction costs and for putting solar into rates, why can it not be used
6 to test the value of the generation resources that the company is proposing in this docket? The
7 company’s own testimony shows market valuation to be a valid approach. The commission
8 should order it used to validate generation resources to be acquired in this docket.

9 **Q: Has PNM used integrated resource planning to justify its acquisition of generation**
10 **resources in the settlement?**

11 A: No, it has not. Mr. Darnell asserts that:

12 “Utilizing an integrated resource planning (“IRP”) approach, Mr. O’Connell has
13 performed analyses to determine the most cost-effective resources to maintain service
14 reliability, given the retirement of SJGS Units 2 and 3. As shown by his testimony, the
15 addition of 132 MW of additional capacity from SJGS Unit 4 and 134 MW from PVNGS
16 Unit 3 contribute to the most cost-effective supply portfolio to replace the capacity lost
17 due to the retirement of SJGS Units 2 and 3.” (Darnell, page 25, lines 2-8)

18
19 An “integrated resource planning approach” should consider all potential resources.
20 Since PNM has not tested the competitive market for new generation resources, not all
21 potential resources have been considered. There is no evidence presented that a wide
22 variety of assumptions and alternatives were tested in support of the settlement resources
23 presented for approval here or that in assessing what was the most “cost effective”
24 approach PNM did anything other than “back into” its preferred result. And most
25 importantly, there has been no competitive market process that has revealed the actual

1 prices and capabilities of third party suppliers' potential resources. Without a much more
2 in depth investigation of alternatives, such as might result from an integrated resource
3 plan that is approved by this commission and a competitive market test for the best
4 resources, the company's claimed "approach" to a integrated planning outcome falls short
5 of meeting basic public interest requirements.¹

6 **Q: Is there any other evidence presented by company witnesses that PNM believes testing**
7 **the competitive market for new resources is required?**

8 A: Yes. Mr. Ortiz testifies that:

9 Paragraphs 31 and 32 provide for the issuance by PNM of RFPs—one in 2015 for up to
10 50 MW of additional renewable energy resources and one in 2018 for both conventional
11 supply-side resources and renewable energy resources. If the 2015 RFP identifies
12 resources that are cost-effective as system resources, PNM will file for Commission
13 approval to acquire those resources. If PNM determines that no resources were identified
14 as cost-effective for inclusion by 2017, it will file a report supporting its conclusion with
15 the Commission. (Ortiz, page 20, lines 5-11.)

16 Later in his testimony he addresses the same issue:

17 "Some parties have argued that additional renewable resources should be contained in
18 PNM's replacement portfolio, despite the fact that no such resources were identified in
19 PNM's resource modeling. To address these concerns, PNM has agreed to issue an RFP
20 in 2015 for up to 50 MW of renewable resources. PNM will then seek approval to add
21 any such resources that prove to be cost-effective additions to PNM's resource portfolio.
22 I note that any such additions will not affect the need for the resources identified in the
23 Stipulation, but rather will make PNM's resource portfolio more economic." (Ortiz
24 pages 50-51, lines 19-22 and 1-4)

25 We believe PNM's agreement to issue an RFP for renewable resources can and should be
26 logically extended to all the resources in this docket, specifically to test Mr. Ortiz' valuable

¹ In Mr. Gruenemeyer's direct testimony, at p. 13 – 16, he acknowledges the failure by PNM to issue an RFP for replacement capacity and energy from abandoning SJGS Units 2 and 3. Mr. Gruenemeyer agrees that "an industry accepted method of due diligence is to request proposals from others to see if there are lower cost alternatives...", at p. 16. Unfortunately, his portfolio analysis was limited to gas and market alternative only options, none with significant renewable penetration. Despite his lack of consideration of renewables ("I do not focus on Solar and Wind Generation alternatives," at p. 10), he concludes at p. 16 that PNM's portfolio is not the "lowest reasonable cost resource plan."

1 assertion: to see if a competitive market result could make the PNM resource portfolio more
2 economic than acquiring the resources that it has settled on in this proceeding. We question why
3 “. . .such additions will not affect the need for the resources identified in the Stipulation. . .”
4 since if such resources could be added *instead of* the stipulated resources and make the portfolio
5 more economic, it would be in the public interest to add them *instead of* the stipulated resources.
6 Unless the commission orders such a competitive market test of these resources, nobody will
7 know—not the commission, nor PNM, nor the stipulating or objecting parties, and certainly not
8 consumers, who could end up paying more than they should to acquire resources that are riskier
9 than they need to be.

10 **Q: Why should the commission require a competitive market test of the replacement**
11 **resources proposed in the settlement?**

12 A: As I testified in my rebuttal, the results of Colorado’s last round of bids for new electric
13 generation resources raise the question of whether New Mexico consumers could be better off if
14 the commission directed PNM to test the market for new resources of all kinds, to see if new,
15 large scale renewable energy bids could offer low cost clean power that would reduce system
16 average generation costs. **This was the result in Colorado. Could the result be similar in**
17 **New Mexico?** I again recommend that the commission order an RFP to be issued to test the
18 market for low cost renewable energy.

19 **Q: Simply issuing an RFP is unlikely to create all the potential that will be necessary to**
20 **attract significant numbers of bids to represent a good test of the current market, so what**
21 **else would you advise?**

1 A: In my rebuttal testimony, I discuss a number of steps that must be taken to make sure that a
2 market test will produce the desired consumer benefits, rather than outcomes that are determined
3 by utility manipulation of the process based on exercise of monopsony power. These steps
4 include:

- 5 1. Recognize and address monopsony incentives so bids and acquisitions serve consumers'
6 interests.
- 7 2. Link risk aware planning with resource acquisition.²
- 8 3. Emphasize transparency in bidding and bid evaluation and employ a third party bid
9 evaluator to encourage bidder confidence and achieve least cost results.

10 Q: Does that complete your direct testimony in Opposition to the Stipulation?

11 A: Yes.

² A good explanation of “risk aware planning” is “PRACTICING RISK-AWARE ELECTRICITY REGULATION: What Every State Regulator Needs to Know How State Regulatory Policies Can Recognize and Address the Risk in Electric Utility Resource Selection,” CERES Report, April, 2012. Authored by Ron Binz, Richard Sedano, Denise Furey, Dan Mullen. At: <http://www.ceres.org/resources/reports/practicing-risk-aware-electricity-regulation>