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<p style="text-align: right;"><b>Page 6</b></p> <p>1 EXHIBIT: DESCRIPTION</p> <p>2 15 Public Service Company of New 218</p> <p>3 Mexico's Verified Notice of Filing</p> <p>4 of Fuel and Purchase Power Cost</p> <p>5 Adjustment Clause Factor Reset for</p> <p>6 16 Subpoena 231</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;"><b>Page 8</b></p> <p>1 A. It is a two-unit coal-fired power plant.</p> <p>2 <b>Q. Okay. And what is its capacity?</b></p> <p>3 A. A total of 1600 megawatts. It's a</p> <p>4 supercritical unit.</p> <p>5 <b>Q. What does that mean, that something is a</b></p> <p>6 <b>supercritical unit?</b></p> <p>7 A. Supercritical is a unit that has elevated</p> <p>8 steam temperatures and pressures. It's more</p> <p>9 efficient.</p> <p>10 <b>Q. Okay. Jumping ahead, is the San Juan</b></p> <p>11 <b>generating station or any unit of that a</b></p> <p>12 <b>supercritical unit?</b></p> <p>13 A. No, sir, it is not.</p> <p>14 <b>Q. Okay. Would you please summarize your</b></p> <p>15 <b>educational background for us?</b></p> <p>16 A. Yes. I have a bachelor's degree in</p> <p>17 general science from New York State.</p> <p>18 I have my master's degree in business from</p> <p>19 the University of Phoenix.</p> <p>20 And I've got a law degree from Concorde</p> <p>21 University in Los Angeles.</p> <p>22 <b>Q. And when did you receive each of those</b></p> <p>23 <b>degrees?</b></p> <p>24 A. Bachelor's degree was about 1995.</p> <p>25 The master's degree was around the year</p>
<p style="text-align: right;"><b>Page 7</b></p> <p>1 THE VIDEOGRAPHER: We are on the record</p> <p>2 with Gregory Smith at approximately 9:53 a.m.</p> <p>3 GREGORY SMITH,</p> <p>4 after having been first duly sworn under oath,</p> <p>5 was questioned and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. BOYD:</p> <p>8 <b>Q. Mr. Smith, good morning.</b></p> <p>9 A. Good morning.</p> <p>10 <b>Q. We met yesterday, did we not?</b></p> <p>11 A. We did.</p> <p>12 <b>Q. All right. And for the record, would you</b></p> <p>13 <b>state your name and address?</b></p> <p>14 A. Yes. My name is Gregory Dean Smith. I</p> <p>15 reside at 8316 Peabody Road, Freeburg, Illinois.</p> <p>16 <b>Q. Okay. And are you here pursuant to a</b></p> <p>17 <b>subpoena?</b></p> <p>18 A. Yes, I am.</p> <p>19 <b>Q. What is your current employment?</b></p> <p>20 A. I currently work at Prairie State</p> <p>21 Generating Company in southern Illinois.</p> <p>22 <b>Q. What is your position there?</b></p> <p>23 A. I'm the operations manager at the power</p> <p>24 plant.</p> <p>25 <b>Q. What type of power plant is that?</b></p>	<p style="text-align: right;"><b>Page 9</b></p> <p>1 2000.</p> <p>2 And the law degree was around the year</p> <p>3 2005.</p> <p>4 <b>Q. Okay. And have you had any additional</b></p> <p>5 <b>occupational-type training in the course of your</b></p> <p>6 <b>career related to the jobs you've held as -- in the</b></p> <p>7 <b>management of coal-fired power plants?</b></p> <p>8 A. Absolutely. Probably the most recent, I'm</p> <p>9 a graduate of the Idaho -- University of Idaho's</p> <p>10 utility executive course.</p> <p>11 <b>Q. And when was that?</b></p> <p>12 A. That was in the summer of 2011.</p> <p>13 <b>Q. And was that something that PNM sent you</b></p> <p>14 <b>to?</b></p> <p>15 A. Yes, sir. PNM sent me to that course.</p> <p>16 <b>Q. Okay. And they paid for it?</b></p> <p>17 A. That is correct.</p> <p>18 <b>Q. Okay. Anything else? Any other formal</b></p> <p>19 <b>on-the-job training?</b></p> <p>20 A. Yes. I'm a graduate of the Navy's</p> <p>21 propulsion and engineering school.</p> <p>22 <b>Q. What is that?</b></p> <p>23 A. That's essentially an entry-level</p> <p>24 introduction to steam-powered plant propulsion.</p> <p>25 <b>Q. When did you attend that?</b></p>

**3 (Pages 6 to 9)**

**Page 10**

1 A. In 1981.

2 **Q. How long did that last? How long of a**  
 3 **course is that?**

4 A. That was approximately a three-month  
 5 course.

6 **Q. And was that while you were in the**  
 7 **military service?**

8 A. Yes, sir, it was.

9 **Q. All right. And I take it you were in the**  
 10 **Navy?**

11 A. That is correct.

12 **Q. All right. How long were you in the Navy?**

13 A. I was in the Navy a total of 12 years.

14 **Q. Okay. And what rank did you hold?**

15 A. When I left the Navy I was a machinist  
 16 mate first class.

17 **Q. Okay. And were you honorably discharged?**

18 A. Yes, sir, I was.

19 **Q. Okay. Now, would you please summarize**  
 20 **your employment history?**

21 **And let's start with the Navy.**

22 A. Okay. I was in the Navy for approximately  
 23 12 years.

24 **Q. Starting when?**

25 A. From 1980 through 1992.

**Page 11**

1 When I got out of the Navy I joined the  
 2 electric utility industry, a short temporary job at  
 3 Arizona Public Service as the temporary operator.

4 Then I got a permanent job at Tucson  
 5 Electric Power. I held that for approximately one  
 6 year before being offered a job -- a permanent job  
 7 back at Arizona Public Service.

8 **Q. And what was the nature of that permanent**  
 9 **job and when did you take it?**

10 A. That was an auxiliary operator, and I took  
 11 that in 1994.

12 **Q. Auxiliary operator?**

13 A. Auxiliary operator.

14 And that involved both operation of  
 15 equipment and the maintenance of equipment.

16 **Q. Let me stop you there.**

17 **With respect to that job as auxiliary**  
 18 **operator, regarding the operation and maintenance of**  
 19 **equipment, what kind of equipment are you -- were**  
 20 **you operating and maintaining?**

21 A. Yes. I worked at the Saguaro Power Plant.  
 22 That was two steam electric units which were  
 23 basically fired by natural gas.

24 And there were two combustion turbines  
 25 which were natural gas-fired generators. A total of

**Page 12**

1 four generating units.

2 **Q. Okay. And what was the name of that**  
 3 **plant?**

4 A. Saguaro, S-A-G-U-A-R-O, named after the  
 5 large cactus down in southern Arizona.

6 **Q. The cactus. Right. Okay.**  
 7 **And then you held that job from when to**  
 8 **when?**

9 A. I was with the company for a total of  
 10 about 13 years. I held that particular job -- I was  
 11 at that plant for a total of seven years.

12 During that time I received three  
 13 promotions.

14 **Q. Okay. And what was the nature of those**  
 15 **promotions? Can you summarize them?**

16 A. I gained better knowledge of the operation  
 17 of the plant and was given supervisory  
 18 responsibilities for both the operation and  
 19 maintenance of the power plant.

20 **Q. Okay. And what was your title when you**  
 21 **left?**

22 A. I was a production supervisor when I left.

23 **Q. I take it that means production of**  
 24 **electrical power?**

25 A. Yes, sir, it does.

**Page 13**

1 **Q. Okay. And so you left there when?**

2 A. Still with the Arizona Public Service  
 3 Company, and I got a position at the Red Hawk power  
 4 plant as a shift supervisor.

5 **Q. And what type of power plant is that and**  
 6 **where is it located?**

7 A. The Red Hawk power plant is a  
 8 four-combustion turbine two-steam generator combined  
 9 cycle unit. It's just south of the Palo Verde  
 10 nuclear plant outside of Phoenix, Arizona.

11 **Q. Okay. And is that gas fired? Coal fired?**

12 A. Yes, sir. Those are gas-fired combined  
 13 cycles.

14 **Q. Okay. And how long did you hold that**  
 15 **position?**

16 A. I was in that position about one year. I  
 17 was promoted to a production supervisor position.

18 **Q. After one year?**

19 A. Yes, sir.

20 **Q. And as production supervisor, what were**  
 21 **your job responsibilities?**

22 A. I was promoted to production supervisor  
 23 for the construction of additional power plants.  
 24 The Red Hawk plant was a brand-new plant. And at  
 25 that time, Arizona Public Service Company was in an

**Page 14**

1 expansion mode. They were building an additional  
 2 large unit at the west Phoenix plant and also a  
 3 brand-new power plant outside Las Vegas.  
 4 My duties were to assist in the  
 5 construction and commissioning of the new unit at  
 6 the west Phoenix power plant and to start from  
 7 scratch and build a power plant as the production  
 8 supervisor at the new plant in -- outside of  
 9 Las Vegas.  
 10 **Q. Okay. Are these gas-fired plants?**  
 11 A. Yes, sir, they are.  
 12 **Q. And how long did you hold that position?**  
 13 A. I held that position for about a year and  
 14 a half. I was promoted to a plant manager.  
 15 **Q. You were -- were you promoted to plant**  
 16 **manager of one of the plants that you had worked on?**  
 17 A. No, sir. They had a plant manager  
 18 position open in Yuma, Arizona, at the Yucca power  
 19 plant, and I became the plant manager there.  
 20 **Q. And what year was that?**  
 21 A. That was getting close to the end of 2003,  
 22 beginning of 2004.  
 23 **Q. Okay. And what type of plant is that?**  
 24 A. The Yucca power plant consists of one  
 25 large gas-powered steam generator and a total of six

**Page 15**

1 combustion turbines, both gas-fired and oil-fired  
 2 generators.  
 3 **Q. Okay. And how long did you hold that**  
 4 **position?**  
 5 A. I held that position for approximately two  
 6 years.  
 7 **Q. So that would take us to what, 2006?**  
 8 A. 2006, yes, sir.  
 9 **Q. Okay. And then -- then where did you go?**  
 10 A. At that time, Arizona Public Service  
 11 Company anticipated building additional coal  
 12 generation. And I've been -- went well in that  
 13 organization, and they wanted me to develop more  
 14 coal experience.  
 15 So I went to the Cholla power plant as the  
 16 operations manager.  
 17 **Q. And where is the Cholla power plant?**  
 18 A. The Cholla power plant is in northern  
 19 Arizona outside of a small town called Joseph City.  
 20 **Q. Okay. And what is its capacity?**  
 21 A. The total capacity, it's a four-unit coal  
 22 plant. And total capacity of the four units is  
 23 approximately a thousand megawatts.  
 24 **Q. And as -- what was your title, again?**  
 25 A. I was operations manager at the Cholla

**Page 16**

1 power plant.  
 2 **Q. And what were your responsibilities as**  
 3 **operations manager?**  
 4 A. Essentially in charge of all of the  
 5 operators that operate the equipment in the plant,  
 6 the dispatch of the unit, the generation of power.  
 7 **Q. So that I can envision what an operations**  
 8 **manager does, are you sitting in an office? Are you**  
 9 **down on the floor? Are you -- what are you doing**  
 10 **day to day as an operations manager?**  
 11 A. It's a pretty broad job. It involves the  
 12 scheduling of operators, the hiring and promotion  
 13 and discipline of operators.  
 14 It involves analyzing the technical issues  
 15 in the plant and directing the maintenance staff  
 16 towards what's the most important priorities to  
 17 ensure reliability.  
 18 It's analyzing past data and performance  
 19 information and seeking opportunities for  
 20 improvement.  
 21 So it's both office and fieldwork.  
 22 **Q. Okay. And when you use the term**  
 23 **operators, you're talking about people?**  
 24 A. People that are physically turning  
 25 switches, turning valves, or sitting in front of

**Page 17**

1 computers controlling equipment from the computer  
 2 screens.  
 3 **Q. Okay. So it's all the people?**  
 4 A. Yes, sir.  
 5 **Q. All right. How long did you hold that**  
 6 **position as operations manager?**  
 7 A. I was in that position approximately two  
 8 and a half years.  
 9 **Q. And that's taking us to when?**  
 10 A. That takes us to June 16, 2008.  
 11 **Q. Then where did you go?**  
 12 A. At that time Public Service Company of  
 13 New Mexico hired me.  
 14 **Q. And how did that come about, if you can**  
 15 **describe it just in general terms.**  
 16 A. Yes. I got a phone call from a recruiter  
 17 looking to recruit someone to run their operations  
 18 department at San Juan generating station.  
 19 **Q. Okay. And I take it you accepted that**  
 20 **position?**  
 21 A. Yes, sir, I did.  
 22 **Q. Okay. And when was that?**  
 23 A. June 16, 2008.  
 24 **Q. That's when you accepted it?**  
 25 A. Yeah. That's when I began work at PNM.

**5 (Pages 14 to 17)**

**Page 18**

1       **Q. Okay. Okay.**  
 2           **And what were your duties -- or let me ask**  
 3 **it this way, so we don't spend a lot of time.**  
 4           **Were your duties as operations manager at**  
 5 **San Juan similar to the duties that you had had as**  
 6 **operations manager for the Arizona Public Service**  
 7 **Company at the Cholla plant?**  
 8       A. Essentially, yes, very similar duties:  
 9 Analyzing equipment, reliability, in charge of the  
 10 operators that actually start and stop equipment.  
 11       From a high level the duties are the same.  
 12       **Q. Okay. Were there any -- did you have any**  
 13 **discussions with PNM's representatives regarding any**  
 14 **critical issues at the plant that they wanted you to**  
 15 **be able to address, or was it just somebody had left**  
 16 **and they were bringing you on and go to work?**  
 17       A. Well, actually, the reason why PNM was  
 18 interested in having me come work with them, they  
 19 were having some performance issues. They had  
 20 essentially wrecked some large pieces of equipment  
 21 on Unit 4.  
 22       The performance of the plant had really  
 23 taken a dive, and they were interested in having me  
 24 be part of their team to help turn the performance  
 25 around.

**Page 19**

1       **Q. What was the equipment that had been**  
 2 **wrecked?**  
 3       A. The boiler feed pumps for Unit 4 had been  
 4 ran dry.  
 5       The deaerating tank, which is a large tank  
 6 that feeds water to the feed pumps, had been ran  
 7 dry.  
 8       The alarm had been disabled and  
 9 essentially caused the wreck of the two feed pumps.  
 10       The unit had been down for several months  
 11 in that spring.  
 12       **Q. And when you came there, was it back**  
 13 **online?**  
 14       A. Yes, it was.  
 15       **Q. Okay. And so what -- what was it that PNM**  
 16 **told you they wanted you to do, or you to**  
 17 **accomplish, with respect to the operation of the**  
 18 **San Juan power plant?**  
 19       **How were you going to fit in to helping**  
 20 **PNM?**  
 21       A. Generally, I was given very broad, vague  
 22 orders, to a degree, to go out and improve the  
 23 reliability, to make sure that we didn't have any  
 24 major equipment damage in the future, to improve the  
 25 overall performance of the plant.

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1       **Q. Okay. And that was, again, in what year?**  
 2       A. That was in 2008.  
 3       **Q. Okay. And how long did you hold the title**  
 4 **of operations manager at San Juan?**  
 5       A. Technically, I held the title of  
 6 operations manager for approximately 12 to 13  
 7 months. But my duties changed, and I started  
 8 performing in a different capacity about nine months  
 9 into the job.  
 10       **Q. And what was the nature of that different**  
 11 **capacity?**  
 12       A. About nine months into the job the plant  
 13 manager had left unexpectedly. They asked me to  
 14 take over the role of temporary plant manager while  
 15 they sought to permanently fill that position.  
 16       **Q. Okay. And that was, what, in 2009?**  
 17       A. Yes, the spring of 2009.  
 18       **Q. Okay. And what were the circumstances of**  
 19 **the previous manager leaving?**  
 20       A. I'm not sure, exactly.  
 21       **Q. Okay. Well, if you're not -- if I ask you**  
 22 **a question and you're not sure about it just please**  
 23 **say so.**  
 24       A. I will. Thank you.  
 25       **Q. Okay.**

**Page 21**

1                   **So did you get a title to go along with**  
 2 **the change in duties?**  
 3       A. Eventually, I ended up getting a title of  
 4 performance manager. And essentially, my duties  
 5 were to assist the new plant manager in performing  
 6 his roles and getting him up to speed on the  
 7 different issues with the plant.  
 8       **Q. Okay. And so I take it they did find a**  
 9 **replacement for the manager who had left.**  
 10       A. Yes, they did.  
 11       **Q. Okay. Who was it that they found to**  
 12 **replace him?**  
 13       A. His name was Jim Nichols.  
 14       **Q. Okay. And how long did he stay in that**  
 15 **job?**  
 16       A. He stayed approximately one year, slightly  
 17 over.  
 18       **Q. Okay. And what were the circumstances of**  
 19 **his leaving, if you know?**  
 20       A. What I do know is just prior to his  
 21 departure, PNM had promoted me to the plant manager  
 22 of their Afton generating station, in Las Cruces.  
 23 And I had been down in Las Cruces about a week when  
 24 that plant manager, Jim Nichols, left. I know he  
 25 was pretty upset about me leaving San Juan. I

**Page 22**

1 supported him quite a bit.  
 2 **Q. Okay. And I see I've skipped a step here.**  
 3 **You went down to be plant manager of a**  
 4 **different plant?**  
 5 A. Yes, sir.  
 6 **Q. Okay. And that was near Las Cruces?**  
 7 A. Yes, sir.  
 8 **Q. And what's the name of that plant?**  
 9 A. That's the Afton generating station,  
 10 A-F-T-O-N.  
 11 **Q. And what type of plant is that?**  
 12 A. That's a combined cycle combustion turbine  
 13 coupled to a steam turbine.  
 14 **Q. And that's gas fired?**  
 15 A. Yes, sir.  
 16 **Q. Okay. And would you -- how long did you**  
 17 **hold that position?**  
 18 A. About one week, sir.  
 19 **Q. About one week. Okay.**  
 20 **And what happened to bring that job to a**  
 21 **conclusion?**  
 22 **I think we know from your prior testimony,**  
 23 **but would you just explain it to us briefly?**  
 24 A. Yes. I'm sitting in my new office down at  
 25 Afton, and I get a phone call from the vice

**Page 23**

1 president of generation, informing me that the plant  
 2 manager of San Juan generating station had left, and  
 3 he wanted me to take over San Juan generating  
 4 station. That there was an owners' meeting in two  
 5 days, and I needed to be there.  
 6 **Q. Okay. And who was that that called you?**  
 7 A. The vice president of generation at that  
 8 time was Patrick Themig.  
 9 **Q. Patrick --**  
 10 A. T-H-E-M-I-G. I may have the spelling off  
 11 a little.  
 12 **Q. And he's still with the company?**  
 13 A. No, sir, he's not.  
 14 **Q. Do you know where he is now?**  
 15 A. I believe he's in southern Illinois. I  
 16 briefly keep in contact with him from time to time.  
 17 **Q. Is he still in the electric power**  
 18 **business?**  
 19 A. I believe so.  
 20 **Q. Okay. Do you know where he works?**  
 21 A. No, sir, I don't.  
 22 **Q. Okay. All right.**  
 23 **So you went back to the San Juan**  
 24 **generating station?**  
 25 A. Yes, sir.

**Page 24**

1 **Q. And you went to the meeting with the**  
 2 **owners?**  
 3 A. Yes, sir.  
 4 **Q. Okay. And was there any particular topic**  
 5 **during the meeting of the owners that related to**  
 6 **your job duties?**  
 7 A. Yes. In very basic terms, 2010 was a very  
 8 rough year for San Juan. San Juan ended the year  
 9 with an equivalent availability factor of  
 10 73 percent.  
 11 **Q. Okay. Would you, for the record, please**  
 12 **explain what you mean by the equivalent availability**  
 13 **factor and why 73 percent EAF is a problem in your**  
 14 **industry?**  
 15 A. Sure. Equivalent availability factor is a  
 16 measure of how available equipment is to be able to  
 17 run. If it was totally available 365 days a year  
 18 24/7, it would have 100 percent availability factor.  
 19 If it was available nine months out of the  
 20 year and not for three months, then the equivalent  
 21 availability factor would be about 75 percent.  
 22 So it's an industry term used to indicate  
 23 how available a power generation plant and a unit is  
 24 available to run.  
 25 **Q. Okay.**

**Page 25**

1 A. 73 percent is problematic for a couple of  
 2 reasons. But within the industry, very well-ran  
 3 coal plants achieve an equivalent availability  
 4 factor that's in the mid to lower '90s.  
 5 The reason that a low equivalent  
 6 availability factor is problematic, too, for the  
 7 customer and for the utility, is that typically your  
 8 coal plants are your cheapest form of generation,  
 9 and they're very capital intensive. A lot of rate  
 10 base is tied up in the power plants. And if they're  
 11 not available to run, then oftentimes they must go  
 12 to the next more higher-priced form of generation to  
 13 replace that power.  
 14 **Q. Okay. Does any plant operate at**  
 15 **100 percent? I mean that's not expected, is it?**  
 16 A. Not for coal plants.  
 17 **Q. Okay. All right.**  
 18 **And what are the usual and customary --**  
 19 **the reasons that you have become familiar with --**  
 20 **that may cause a drop in EAF to a problematic level?**  
 21 **Or let me withdraw that question.**  
 22 **What are the reasons that a plant does not**  
 23 **typically operate at 100 percent on a given year?**  
 24 A. Sure. There could be any number of --  
 25 lots of reasons. Large coal-fired plants are very

**7 (Pages 22 to 25)**

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1 complicated. There's a lot of critical systems that  
 2 interact with one another, and any one of those  
 3 systems could have a mechanical failure or an  
 4 electrical failure or any number of types of  
 5 failures that could cause the plant to not be able  
 6 to run and generate electricity.  
 7 A very large number of things can break  
 8 down in a coal plant.  
 9 **Q. Okay. Are there -- are coal plants**  
 10 **sometimes routinely taken off line for maintenance?**  
 11 A. Absolutely.  
 12 **Q. All right. And what's the purpose of that**  
 13 **and how often does it occur?**  
 14 A. I would use the analogy of your car. You  
 15 can't work on your car while you're driving it down  
 16 the road. Every once in a while you have to come in  
 17 for a pit stop and take the unit off and tear things  
 18 apart and replace parts and analyze them and put  
 19 them back together so that you can have reliability  
 20 moving forward.  
 21 **Q. Okay. And is there a term for that**  
 22 **process?**  
 23 A. Yes. It's a -- a scheduled outage is what  
 24 we call it when the plant is taken down on purpose  
 25 to work on equipment.

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1 **Q. I used to be involved representing labor**  
 2 **unions from time to time, and I heard the phrase**  
 3 **turnaround.**  
 4 **Is that -- is that -- turnaround at the**  
 5 **San Juan plant or the Four Corners plant, is that**  
 6 **what that is, a turnaround?**  
 7 A. Turnaround can be used in several  
 8 contexts. But in relation to an outage, a  
 9 turnaround is you want a quick turnaround so that  
 10 the unit is taken off line, you fix all that you can  
 11 fix and turn it around and get it back up and  
 12 running again.  
 13 **Q. Okay. And that's part of -- is that the**  
 14 **same thing as you were just describing, or is that a**  
 15 **broader term?**  
 16 A. I would characterize turnaround as a  
 17 component of the outage that's one of the critical  
 18 drivers to achieving a goal of the outages; get it  
 19 back online as soon as you can.  
 20 **Q. Okay. And how often are plants typically**  
 21 **shut down for maintenance, for regular maintenance,**  
 22 **coal plants?**  
 23 A. There's no proven recipe for that, so to  
 24 speak. It varies based on the condition of the  
 25 equipment, based on the unique characteristics of

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1 the plant, based on any number of things.  
 2 Again, I use the analogy of your car. You  
 3 get so many miles on the transmission or the engine  
 4 before you have to take it down and replace it.  
 5 Different makes and manufacturers have  
 6 different requirements and when you do maintenance  
 7 on equipment.  
 8 **Q. Okay. When an EAF rate is determined,**  
 9 **that rate depends both on scheduled outages and**  
 10 **unscheduled outages, correct?**  
 11 A. That is correct.  
 12 **Q. Okay. I think we're -- I'm going to ask**  
 13 **you some more about this in a minute.**  
 14 **But right now we're coming to -- I think**  
 15 **we are back at the meeting of the owners and the**  
 16 **issues that came up regarding the performance --**  
 17 **regarding the San Juan power plant, if any, and**  
 18 **whatever role you were going to have in addressing**  
 19 **those issues.**  
 20 **And what were those issues that came up at**  
 21 **that meeting?**  
 22 A. There are several issues that drove the  
 23 availability factor of the entire plant down that  
 24 year. There is a steam turbine, that didn't have  
 25 the drains properly aligned, that caused some water

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1 hammer in piping, and it caused the Unit 3 to be off  
 2 for over a month.  
 3 There was some issues relative to steam  
 4 piping in the top parts of the boilers, so Units 1  
 5 and 2, that fatigued to the point where the Unit 2  
 6 piping ruptured and blew parts of the insulation in  
 7 the top of the boiler in different directions.  
 8 There was some damage recovery from that.  
 9 And from that, we became concerned that a  
 10 similar event could happen on Unit 1, so we took  
 11 Unit 1 down and did some work on it.  
 12 In terms of the owners' meeting, the gist  
 13 of the meeting was -- and the meetings throughout  
 14 that year -- is: How are we going to fix what's  
 15 been broken and how do we assure reliability going  
 16 forward?  
 17 **Q. Okay. And were they concerned that those**  
 18 **issues had not been addressed?**  
 19 A. Yes, sir.  
 20 **Q. Okay. And had you been concerned before**  
 21 **that meeting that those issues were not being**  
 22 **addressed?**  
 23 A. Yes, sir.  
 24 **Q. Okay. And do you have an opinion, sitting**  
 25 **here today, why those issues had not been addressed**



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1 **and why those -- the -- well, why those issues had**  
 2 **arisen?**  
 3 A. For the most part, the reliability of the  
 4 plant had suffered due to a lack of funding.  
 5 **Q. Okay. And funding in what sense? Funding**  
 6 **of what?**  
 7 A. Well, funding of the maintenance budget so  
 8 that equipment could be maintained in a reliable  
 9 manner.  
 10 **Q. And again, this was what year?**  
 11 A. That was in 2010.  
 12 **Q. Okay. And was there a discussion at that**  
 13 **meeting as to what was going to be done about that**  
 14 **to improve the situation?**  
 15 A. Yes, sir, there was.  
 16 **Q. Okay. What was the nature of that**  
 17 **discussion?**  
 18 A. Well, we identified many different things  
 19 that we could do to improve the plant:  
 20 Address prior failures.  
 21 Also, to develop a better predictive  
 22 maintenance program so that we could predict  
 23 failures before they occur.  
 24 And also, too, to develop best practices  
 25 throughout the industry with process and procedure,

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1 the way of organizing maintenance to ensure that the  
 2 equipment gained a higher state of reliability.  
 3 **Q. And was this something at that meeting**  
 4 **that -- were you just sitting there and listening or**  
 5 **were you an advocate and a participant in that**  
 6 **meeting?**  
 7 A. No, sir. The owners -- they call them an  
 8 E&O meeting. It stands for engineering and  
 9 operations.  
 10 I was the facilitator and the leader of  
 11 those meetings.  
 12 **Q. Okay. Including that first meeting you**  
 13 **went to?**  
 14 A. Yes, sir.  
 15 **Q. Okay. And was this something that you**  
 16 **advocated for?**  
 17 **Well, let me just ask you the open-ended**  
 18 **question.**  
 19 **What did you tell the owners was necessary**  
 20 **if they wanted to improve plant performance?**  
 21 A. In that first meeting a large part of my  
 22 role was listening and advocating for support, and I  
 23 heard the owners' concerns. And they were very  
 24 concerned about reliability and they were willing to  
 25 support us in an effort to improve the reliability

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1 of the plant.  
 2 **Q. Okay. Was there a reason discussed at**  
 3 **that meeting as to why they -- there had been**  
 4 **inadequate support before then for maintenance?**  
 5 A. In the years prior there was significant  
 6 environmental upgrades at the plant. And the  
 7 dollars devoted towards environmental upgrades were  
 8 in competition with the dollars devoted towards  
 9 maintenance.  
 10 **Q. Okay. And how often did meetings of that**  
 11 **type -- I'm sorry.**  
 12 **Again, what was the name of the meeting,**  
 13 **that type of meeting?**  
 14 A. It's the San Juan owners' E&O meeting,  
 15 which stands for engineering and operation.  
 16 **Q. Okay. How often did those meetings take**  
 17 **place?**  
 18 A. Typically, those meetings took place on a  
 19 quarterly basis. If there's more urgent issues they  
 20 could be called at any point in time. In more  
 21 recent years they've been called on a monthly basis.  
 22 **Q. Okay. And was that one a quarterly**  
 23 **meeting or was it...**  
 24 A. That was a quarterly meeting.  
 25 **Q. Okay. So after that -- well, strike that.**

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1 **At the time of that meeting you were --**  
 2 **what was your title?**  
 3 A. Plant manager day two.  
 4 **Q. Plant manager day two?**  
 5 A. That's it.  
 6 **Q. Okay. And how long did you hold the**  
 7 **position of plant manager?**  
 8 A. I was in that position for just over three  
 9 years. The title changed about halfway through  
 10 that, but the roles and responsibilities remained  
 11 about the same.  
 12 **Q. What was your -- how did the title -- what**  
 13 **had it changed from to?**  
 14 A. Initially, it was plant manager. And then  
 15 later on the title changed to director of plant  
 16 management.  
 17 **Q. Okay. What did -- what were the reasons**  
 18 **for the change in title, as you understood them?**  
 19 A. My understanding was that they wanted to  
 20 compensate better for the work that was being  
 21 delivered. And with their HR system, they needed to  
 22 have a change in title to be able to do that.  
 23 **Q. In other words, to increase your salary?**  
 24 A. Yes, sir.  
 25 **Q. Okay. And was that accompanied by any**

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1 **expression on the part of management as to what kind**  
 2 **of a job you were doing?**  
 3 A. Well, expression with compensation. I  
 4 continued to get very good pay raises and other  
 5 compensation.  
 6 **Q. Okay. But did anybody -- so -- all right.**  
 7 **Strike that. Let's do it -- let me ask it this way.**  
 8 **What were you making before the change in**  
 9 **title and what were you making after the change in**  
 10 **title, if you can remember, approximately.**  
 11 A. I believe I started at \$170,000 per year  
 12 for base salary. And I believe that I was at the  
 13 upper limit of that compensation range for the plant  
 14 manager position.  
 15 After becoming the director I was making  
 16 \$180,000 a year in base salary.  
 17 **Q. Okay. And did you -- at that time was it**  
 18 **the practice of the company to give its executives**  
 19 **or its employees, in general, any sort of profit**  
 20 **sharing or incentive pay?**  
 21 A. Yes. There's an incentive program for  
 22 performance tied to goals. And there was also a  
 23 stock sharing program and stock awards for  
 24 performance.  
 25 **Q. Okay. And did you receive incentive**

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1 **bonuses --**  
 2 A. Yes, I did.  
 3 **Q. -- during the course of your career there?**  
 4 A. And every year I was there.  
 5 **Q. Okay. And what was the magnitude of the**  
 6 **incentive bonuses that you received?**  
 7 A. Oh, jeez. I don't recall. I can give you  
 8 a range.  
 9 **Q. Sure.**  
 10 A. Probably the lower limit was around  
 11 \$30,000 a year at the beginning of the year.  
 12 **Q. Uh-huh.**  
 13 A. I believe towards the end of my employment  
 14 with PNM it was upwards of 70,000.  
 15 **Q. Okay. And what were those incentive**  
 16 **bonuses tied to? What was the nature of the**  
 17 **performance that had been achieved that resulted in**  
 18 **those incentive payments?**  
 19 A. The nature of the performance? First of  
 20 all, before a bonus can be even awarded, the company  
 21 had to meet financial targets. The company had to  
 22 be profitable before they can pay people for doing a  
 23 good job.  
 24 And then secondly, the compensation was  
 25 tied upon performance goals and safety and

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1 reliability.  
 2 **Q. Okay. And can you quantify or**  
 3 **characterize the degree to which you met the goals**  
 4 **that had been set for you in the years that you were**  
 5 **there, in the three years that you were there?**  
 6 A. Yes, sir. At 2010, the year that I took  
 7 over the plant, the equivalent availability factor  
 8 was at 73 percent. By September 30th of 2012 the  
 9 reliability achieved 87.2 percent.  
 10 **Q. Did you receive any comments from**  
 11 **management about whether they valued your role in**  
 12 **achieving that?**  
 13 A. Yes, sir. At about that same time frame,  
 14 when I achieved that 87 percent availability, the  
 15 company approached me and told me that I was  
 16 critical to the continued support of the company  
 17 goals, and they offered me an incentive program to  
 18 stay with the company for another year and a half,  
 19 and they gave me a year's worth of salary on top of  
 20 my regular salary to do so.  
 21 **Q. Okay. And when was that?**  
 22 A. That was the fall of 2012.  
 23 **Q. Okay.**  
 24 A. Excuse me. Let me back that up. I think  
 25 that was the fall of 2011.

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1 **Q. Okay. So it was a program designed to**  
 2 **keep you there for some period of time moving**  
 3 **forward?**  
 4 A. Yes, sir.  
 5 **Q. Okay. And that was for, what, would you**  
 6 **say a year and a half or...**  
 7 A. Yeah. The -- it was an actual signed  
 8 contract. It was for an 18-month period.  
 9 **Q. Okay. Okay.**  
 10 **Would you explain for the record, please,**  
 11 **in general terms, how you were able to achieve -- or**  
 12 **strike that.**  
 13 **Let me ask the question this way.**  
 14 **First of all, with respect to the**  
 15 **improvement in the EAF that was achieved during your**  
 16 **managership, do you believe that you're entitled to**  
 17 **credit for that to some degree?**  
 18 A. Absolutely.  
 19 **Q. Okay. And what was it that you did that**  
 20 **you believe contributed to that and accomplished**  
 21 **that increase, that improvement in the EAF?**  
 22 A. You don't turn the performance in a large  
 23 coal plant around in three easy steps. But I can  
 24 tell you that what I did to improve the performance  
 25 of San Juan falls into a couple of different

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1 categories.

2 One, you look behind you and see what had

3 failed in the past. You fix what's been broken.

4 To that extent, things like boiler tube

5 leaks had been a large cause of forced outages. I

6 did a lot of work there.

7 The second category is developing a

8 predictive maintenance system: Analyzing and using

9 technology to determine when equipment may break at

10 some point in the future, and then being proactive

11 in taking steps to repair it or fix it or replace it

12 before it even breaks down.

13 And then lastly, the category of process

14 improvement in using industry best practices on how

15 you conduct your preventative maintenance -- oil

16 changes, so to speak -- or applying processes so

17 that operators make good decisions with procedures,

18 a number of process-related things in industry, best

19 practices to improve overall reliability.

20 **Q. Okay. Now with respect to the predictive**

21 **maintenance system, is that something that is**

22 **generally practiced in the industry?**

23 A. Absolutely.

24 **Q. Okay. Is that one element of best**

25 **practices?**

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1 A. It is.

2 **Q. Okay. And had it not been practiced in**

3 **the past there?**

4 A. It's measured by how many -- we call them

5 PMs, preventative maintenances -- how often do they

6 get done? Are they done on schedule? And what is

7 the size of the backlog of work that should be

8 getting done which isn't. That's a relative measure

9 of how effective your preventative maintenance

10 program is.

11 At San Juan the backlog was pretty huge,

12 and the compliance with preventative maintenance was

13 not as good as it should have been.

14 **Q. Okay. And in your opinion, what was the**

15 **relationship of that situation to the low EAF when**

16 **it was back in the 70s?**

17 A. Well, if you don't change the oil in your

18 car it's going to break down, not unlike power

19 plants. If you don't do the required preventative

20 maintenance then you end up with corrective

21 maintenance, fixing it after it broke.

22 **Q. Okay. And what is -- what's the -- this**

23 **may seem obvious. But what's the problem with just**

24 **fixing it when it breaks?**

25 A. You can't determine exactly when it's

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1 going to break. It may very well break on a hot

2 summer afternoon when the peak load is very high.

3 And if it breaks, then you can't deliver the

4 low-cost coal energy. You have to go to much more

5 expensive alternative forms of generation.

6 **Q. Okay. And what does that mean? Explain**

7 **how that happens.**

8 **The unit breaks down and it's a hot summer**

9 **day and PNM has to get power from somewhere.**

10 **Where do they go to get the power?**

11 A. When a San Juan unit or any unit breaks

12 down that's running and generating power, at that

13 very moment in time there are people in PNM that

14 look at how much electrical load there is in the

15 system and what the difference is that needs to be

16 made up.

17 They look at existing generation and the

18 cost of that existing generation versus the price of

19 generation that's available on the market, and they

20 select the lowest cost form of generation that is

21 available --

22 **Q. Okay.**

23 A. -- within transmission constraints.

24 **Q. So basically they go elsewhere for it?**

25 A. Yes, sir.

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1 **Q. Either within the system -- the PNM system**

2 **or outside the PNM system?**

3 A. That is correct.

4 **Q. Okay. When you took your position as**

5 **manager of the San Juan generating station, how old**

6 **were those plants?**

7 A. Let's see. When I took my position as

8 plant manager, that was in 2010. Unit 1 had been

9 brought on in 1973 -- excuse me -- Unit 2 in 1973.

10 Unit 1 in 1976, followed by Unit 3 in 1979, and

11 Unit 4 in 1982.

12 **Q. Okay. So they were -- and you came on in**

13 **what year again?**

14 A. I became the plant manager in 2010.

15 **Q. Okay. So the -- so Unit 1 was then how**

16 **old? 37 years?**

17 A. That sounds right.

18 **Q. Okay. And then grading up from that to**

19 **newer and newer.**

20 **What is the average -- what is the**

21 **expected life of a coal plant like those plants?**

22 A. I've been a part of 13 different power

23 plants in my career. And typically, they're built

24 with a 30-year life.

25 **Q. 30-year?**

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1 A. 30 years. And that typically coincides  
 2 with the length of depreciation that a plant has.  
 3 **Q. Okay. So do plants often last longer than**  
 4 **30 years?**  
 5 A. Absolutely.  
 6 **Q. Okay. And would you explain how it is**  
 7 **that a plant with a 30-year life and a predic- --**  
 8 **and a depreciation life of 30 years carries on for**  
 9 **years after that?**  
 10 **How is that possible? How does that**  
 11 **happen?**  
 12 A. Sure. In the initial design of a plant,  
 13 it's designed for 30 years. And that's basically  
 14 engineering design that predicts the life of the  
 15 unit based on any number of assumptions: How it's  
 16 operated, for example.  
 17 But the life of a plant can go well beyond  
 18 that based upon the amount of investment and how  
 19 it's ran, it's continually maintained and upgraded,  
 20 how it's taken care of.  
 21 So any number of factors can drive the  
 22 life of the plant well beyond its 30-year original  
 23 life.  
 24 **Q. Okay. And do plants -- forgive me. But**  
 25 **when I think about these plants, I use your -- your**

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1 **analogy of automobiles. And I know that when I have**  
 2 **an automobile that goes over a certain number of**  
 3 **miles it becomes more and more expensive to**  
 4 **maintain.**  
 5 **Is that also true of aging power plants?**  
 6 A. That is true, yes.  
 7 **Q. Okay. You've mentioned -- I want to go**  
 8 **back for a moment.**  
 9 **You mentioned some events that had**  
 10 **occurred at Units 2 and 3 which sounded pretty --**  
 11 **well, some explosions and/or failures, let's put it**  
 12 **that way.**  
 13 **Was anyone hurt during those?**  
 14 A. No, sir.  
 15 **Q. Okay. Would you -- strike that.**  
 16 **Going back to where I was.**  
 17 **So when you received these increases, the**  
 18 **change in the upgrade in your title and your pay**  
 19 **increases and your performance compensation, did PNM**  
 20 **or -- other than the fact that they were giving you**  
 21 **these raises and -- and increasing your title or the**  
 22 **status -- your status at the plant, did anyone at**  
 23 **PNM actually talk to you about your performance?**  
 24 **And I know you said that they said you**  
 25 **were critical and they wanted you to stay there, and**

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1 **they had you sign a contract.**  
 2 **But did anyone actually sit down and say,**  
 3 **You're doing a great job, or words to that effect,**  
 4 **other than simply offering you these increased**  
 5 **compensations?**  
 6 A. Not specifically. There were annual  
 7 performance reviews which were, to a degree, a  
 8 paperwork drill.  
 9 **Q. Uh-huh.**  
 10 A. I continued to get support, not only in  
 11 being compensated, but support in what I was doing  
 12 to turn the performance of the plant around. And if  
 13 anything, that was very motivating, to get that  
 14 support not only from PNM and the corporate offices,  
 15 but from all the owners in supporting me in what I  
 16 needed to do to turn the plant around.  
 17 **Q. Okay. And how did you do on your annual**  
 18 **performance reviews?**  
 19 A. About average.  
 20 **Q. Yeah. Is there an understanding as to**  
 21 **performance reviews in the -- within PNM as to how**  
 22 **many people get above average on their performance**  
 23 **reviews?**  
 24 A. There's talk of a bell curve. For the  
 25 most part employees that worked for me, even though

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1 they did an outstanding job in many respects, never  
 2 got above average. How can you tell someone they  
 3 are above average when you have a plant that has so  
 4 far to go in meeting its goals --  
 5 **Q. Okay.**  
 6 A. -- was the mindset.  
 7 **Q. Would you take a moment now and summarize**  
 8 **for the record how a coal plant like the San Juan**  
 9 **generating station works? How does it make**  
 10 **electricity?**  
 11 A. Sure. It starts with mining the fuel,  
 12 which is an underground mine. It's specialized  
 13 equipment that gathers the coal together in large  
 14 chunks.  
 15 It's brought out of the mine and put into  
 16 large trucks. The trucks drive a couple of miles to  
 17 the plant, where the coal is crushed into a smaller  
 18 size, probably the size of gravel, put into a pile,  
 19 where it's then loaded onto a conveyer.  
 20 The conveyer then brings the coal into the  
 21 plant and distributes it into large silos, not  
 22 unlike a farm corn silo. And those silos are  
 23 essentially the gas tanks of the units, where you  
 24 store the fuel.  
 25 At the bottom of the silos is a

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1 pulverizer, or mill, that grinds the coal up. And  
 2 it's essentially like a large record player table  
 3 that spins. And it's got large metal tires that  
 4 spin around and crush the coal.  
 5 From there, hot air is blown in. And the  
 6 coal that's received -- or is ground up to be almost  
 7 like a baby powder consistency is brought in with  
 8 the air, and it's transported via pipes into the  
 9 boiler.  
 10 And in the boiler, the ground-up coal and  
 11 the air mix, and there's a large fireball inside the  
 12 boiler. We're talking a boiler that's wider than a  
 13 school bus and 10 stories tall, so a huge fireball  
 14 inside.  
 15 And so that's where the chemical energy in  
 16 the coal is converted into heat.  
 17 The heat, then, is absorbed in the boiler.  
 18 The boiler has got hundreds, if not a thousand  
 19 tubes, surrounding the fireball. And the heat is  
 20 absorbed into the tubes. And the tubes, then, have  
 21 water in them which turn into steam.  
 22 And in a very basic sense, then, the steam  
 23 is then taken to a turbine, which is not unlike a  
 24 pinwheel, spins the turbine around, which then turns  
 25 the generator, which generates the electricity.

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1 **Q. And in this process, what are the -- what**  
 2 **are the types of things that typically go wrong and**  
 3 **cause a drop in where you would like to have your**  
 4 **EAF?**  
 5 A. Things that can go wrong that cause the  
 6 plant to break down, there's lots of pumps in the  
 7 plant to pump different fluids, the water, the  
 8 steam.  
 9 There's also fans in the plant to push the  
 10 air.  
 11 The pulverizers, or mills that grind up  
 12 the coal, those are pretty high maintenance. Those  
 13 are something that you've really got to stay after,  
 14 to keep those available.  
 15 And then coal has a lot of ash in it, so  
 16 it takes quite a bit to remove the ash after it's  
 17 been burnt into coal. Ash falls into the bottom of  
 18 the boiler that's kind of a popcorn-like  
 19 consistency. You call that bottom ash. That has to  
 20 be removed.  
 21 Then other ash, we call it fly ash,  
 22 because it can become entrained in the air, that  
 23 goes to the back of the plant, the back of the  
 24 units. The ash removal systems are very high  
 25 maintenance that can break down and cause the loss

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1 of generation.  
 2 **Q. Okay. And does the -- does a coal plant**  
 3 **generate waste?**  
 4 A. Yes, it does.  
 5 **Q. Okay. And what is the nature of that**  
 6 **waste, and what do you do with it? What happens to**  
 7 **it?**  
 8 A. Well, there's several forms of waste.  
 9 It's byproducts of the combustion.  
 10 The fly ash that I mentioned a moment ago  
 11 that's entrained in the flue gas going to the back  
 12 of the units, that's captured and then hauled off in  
 13 large trucks back towards the mine.  
 14 There's bottom ash, which is -- has a  
 15 pretty thick consistency. And that falls into the  
 16 water in the bottom of the boiler. That has to be  
 17 hauled away.  
 18 **Q. What's the water in the bottom of the**  
 19 **boiler? What's that? Why is there water in the**  
 20 **bottom of the boiler?**  
 21 A. Yes, that's a great question.  
 22 **Q. Thank you.**  
 23 **(Discussion off the record.)**  
 24 A. When the coal is burnt, the ash that's  
 25 heavier -- these are little rocks or things that's

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1 dirt -- the heavier parts of dirt -- fall to the  
 2 bottom of the boiler.  
 3 And you've got to remove them, but you  
 4 don't want all of the rest of the combustion  
 5 byproducts to come out the bottom of the boiler. So  
 6 there's a layer of water, a small pool, if you will,  
 7 where the ash falls. And the ash goes through the  
 8 water and then it's collected in the bottom and goes  
 9 through -- we call it a clinker grinder. It's not  
 10 unlike the garbage disposal in your house.  
 11 It takes that bottom ash, mixes it into a  
 12 slurry, and pumps it towards the back of the plant.  
 13 **Q. (By Mr. Boyd) Okay. When you say mixes**  
 14 **it into a slurry, in other words, it picks up water**  
 15 **and ends up being wet?**  
 16 A. That is correct.  
 17 So the ash and water mixture is pumped to  
 18 the back of the plant, where we have dewatering bins  
 19 which take out as much water as possible.  
 20 The ash is still somewhat moist, and  
 21 that's loaded into trucks and hauled to the mine.  
 22 **Q. Okay. And what happens to it in the mine,**  
 23 **at the mine?**  
 24 A. During my tenure, at one point in time the  
 25 mine had been an open pit mine, and they were

Page 50

1 putting it back into the open pit.

2 **Q. Okay. And you say at one point during**

3 **your tenure.**

4 **Was there a different system for it at**

5 **some other point in your tenure?**

6 A. No, sir. I'm not sure what they have done

7 after I left.

8 **Q. Okay. All right.**

9 **And are there -- are there some sort of**

10 **ponds outside the plant that play a role in the**

11 **disposal of waste?**

12 A. Yes.

13 **Q. Would you explain what those are?**

14 A. Well, when we talk about waste from the

15 plant, ash, the bottom ash and the fly ash, are

16 things that are in the water but then come out of

17 the water.

18 The other part is water that has dissolved

19 solids in it. Not unlike when you mix salt in a

20 glass of water and you stir it up, you can't see the

21 salt anymore.

22 That water, that has a lot of dissolved

23 solids in it, is pumped out to the evaporation ponds

24 just west of the plant.

25 From there, the water evaporates out and

Page 51

1 leaves behind the salt, so to speak, in the

2 evaporation area.

3 **Q. And is that -- is the salts just ash but**

4 **finer, or is it something different than what ends**

5 **up in the bottom?**

6 A. Sure. It's some ash that had been

7 dissolved in the water. And again, ash is

8 essentially dirt, so there's lots of constituents in

9 the ash. The chlorides, any number of things that

10 can dissolve into the water.

11 **Q. Okay. And so it goes out into these**

12 **ponds. Then what happens? The water evaporates and**

13 **leaves this.**

14 **What happens to what is left?**

15 A. Over a course of many years the pond

16 eventually fills up, where there's no liquid

17 capacity left. And it was our intention to

18 eventually cap the ponds so that the salts or

19 residual left in the pond couldn't become airborne

20 when it's windy.

21 **Q. And who cares? Why do you care whether it**

22 **becomes airborne?**

23 A. Well, we have pretty strict limits on

24 fugitive dust at the plant, so we don't want

25 anything being entrained in the air and leaving as

Page 52

1 an emission source.

2 **Q. Okay. And those emissions can be or**

3 **are -- they can be hazardous, is that correct, other**

4 **than simply contributing dust in the air?**

5 MR. BUTLER: I will object as to form.

6 Go ahead.

7 MR. BOYD: Okay.

8 **Q. (By Mr. Boyd) Go ahead.**

9 A. Hazardous, I guess, is probably up for

10 debate. But I do know that we have emissions

11 requirements, and we maintain fugitive ash emissions

12 to be within compliance.

13 **Q. Okay. I would now like to turn to the**

14 **circumstances -- hang on just a second.**

15 **The ash that goes back to the mine, that's**

16 **trucked back to the mine, is that wet when it goes**

17 **back to the mine?**

18 A. Yes, it is.

19 **Q. Okay. Do you have any way of quantifying**

20 **how much water is retained in the ash?**

21 A. The engineering of a plant has fairly

22 complex water balance diagrams. From an engineering

23 standpoint, we track every water -- drop of water,

24 from the time that it's taken out of the river and

25 put in our lake, and from in the lake to all the

Page 53

1 different systems in the plant.

2 So that information is something that I

3 don't have with me, but is something that I've seen.

4 **Q. Okay. What does it feel like? What does**

5 **the stuff feel like? Does it feel wet? Does it**

6 **feel damp? Does it feel just a little cool or...**

7 A. Well, I can't say that I've ever felt it.

8 But the bottom ash is somewhat claylike. I mean,

9 you could bunch it up on the table and it wouldn't

10 necessarily run out a puddle of water.

11 The fly ash, we add water to it to keep it

12 wet enough so that when it's in the back of the

13 truck going to the mine it doesn't blow out fly ash

14 into the air and become an emission.

15 **Q. Okay. Is it muddy? Is that --**

16 A. If it's muddy, the operator has added too

17 much water, and I will be having a talk with him.

18 On the other hand, if he hasn't added

19 enough water, then I would be having a talk with him

20 about that too.

21 **Q. Okay. Who was your -- who did you answer**

22 **to when you were the manager of the San Juan**

23 **generating station?**

24 A. I reported to the vice president of

25 generation, and that was two individuals over the

**Page 54**

1 course of time.

2 **Q. Who were those individuals?**

3 A. During the first part of my role as a

4 plant manager it was Patrick Themig.

5 **Q. Patrick?**

6 A. Patrick Themig. I mentioned him a little

7 earlier.

8 **Q. Right.**

9 A. And then in the fall of 2012, Chris Olson

10 became the vice president of generation.

11 **Q. Okay.**

12 A. You also asked who did I answer to.

13 I also answered to the other eight owners.

14 **Q. Okay. And did they have equivalent people**

15 **in the -- in the role of Chris Olson?**

16 A. Yes, sir.

17 **Q. Individuals that you reported to?**

18 A. That's correct.

19 **Q. Okay. And was your reporting to them any**

20 **different than your reporting -- the way you**

21 **reported to PNM, to Mr. Olson?**

22 A. Yes. Yes, absolutely.

23 **Q. Okay. In what way?**

24 A. The other owners was more of a customer

25 relationship.

**Page 55**

1 And certainly it was a customer

2 relationship with the vice president of generation

3 at PNM, although the vice president at PNM had

4 hiring authority and firing authority.

5 **Q. Okay. And that was Olson?**

6 A. Yes, sir. And Themig.

7 **Q. And Themig?**

8 A. Yes, sir.

9 **Q. In the -- would you explain, to the best**

10 **of your understanding, what was the relationship**

11 **among the owners and what -- what was PNM's role**

12 **within that group of owners?**

13 A. Okay. PNM is the operating agent for

14 San Juan generating station. Essentially, they were

15 the majority owner of the plant, and they operated

16 and maintained and was the operating agent for the

17 plant.

18 And that was essentially my role. I was

19 the top employee at the plant with that task and

20 that role and responsibility.

21 **Q. Okay. So you may have -- when you say you**

22 **reported to the other owners, how did that -- how**

23 **did you report to them?**

24 A. Any number of ways.

25 Sometimes they had questions, where I'd

**Page 56**

1 get phone calls or e-mails.

2 I would report to them during quarterly or

3 monthly meetings, as required.

4 Any time they came to the plant I treated

5 them as a boss and took care of their needs.

6 **Q. Okay. In terms of day-to-day reporting, I**

7 **take it as -- since PNM was the operator of the**

8 **plant, you reported to Olson.**

9 **Is that a correct assumption?**

10 A. That is correct.

11 **Q. Okay. Did there come a time when you left**

12 **PNM?**

13 A. Yes, sir.

14 **Q. All right. Would you summarize the**

15 **circumstances?**

16 **I want to start from when you first**

17 **learned that you were going to be leaving.**

18 **And when was that?**

19 A. That was the afternoon of May 2, 2013.

20 **Q. Okay. And what happened on the afternoon**

21 **of May 2, 2013?**

22 A. I was called to a meeting with Chris Olson

23 and another individual and -- a pretty short

24 meeting. They announced that I was -- Chris told me

25 I was going to be terminated.

**Page 57**

1 **Q. Okay. And who was the other individual?**

2 A. That was human resources, Anna Ortiz.

3 **Q. Okay. And did they tell you why you were**

4 **being terminated?**

5 A. Yes. It was the -- I was in violation of

6 the doing-the-right-thing policy.

7 **Q. Okay. And what was it that you had done**

8 **or had supposedly done that violated the doing-the-**

9 **right-thing policy?**

10 A. They referenced it -- the reason behind it

11 was for two meetings that occurred at the plant in

12 the weeks prior to my termination.

13 **Q. Okay. And what were those meetings? What**

14 **had happened at those meetings that was in any way**

15 **remarkable?**

16 A. The first meeting was a regularly

17 scheduled staff meeting. Actually, both meetings

18 were a staff meeting.

19 One was regularly scheduled, and one had

20 been called at the request of human resources.

21 **Q. Okay. And what happened at those**

22 **meetings?**

23 A. It was --

24 **Q. What were they about and what occurred**

25 **there, if anything, that was out of the ordinary, if**

**Page 58**

1 **there was anything out of the ordinary.**  
 2 A. Well, they were business meetings,  
 3 reporting -- or focusing on business topics.  
 4 The first meeting was a request from HR to  
 5 establish a dedicated breastfeeding lounge in the  
 6 power plant, a room dedicated for that purpose.  
 7 **Q. This was for -- when you brought in your**  
 8 **infant -- brought infants in or for breast pumping?**  
 9 A. It was for employees that had infants at  
 10 home, where they wanted to gather the milk to take  
 11 home to their children.  
 12 **Q. Okay. Okay.**  
 13 **And what was -- what happened during the**  
 14 **meeting and what was the outcome of that meeting?**  
 15 A. Some of my managers had been in power  
 16 plants for years, and thought the request was fairly  
 17 odd.  
 18 I hadn't heard of that before. We'd had  
 19 some tough union issues, and we were wondering if  
 20 that was the right thing to do. So we had a very  
 21 open and frank discussion on the issues surrounding  
 22 it.  
 23 The issues of, Where would the room be?  
 24 And could that be the room's sole purpose? What  
 25 would be required in the room? Could it have

**Page 59**

1 windows? And if so, blinds? And would it need a  
 2 refrigerator? Would it need a place for a person to  
 3 relax while they took care of that?  
 4 What would be the policy for supervision,  
 5 and how often could they go there, an employee go  
 6 there? And how would supervision control it?  
 7 Establishment of a phone.  
 8 It was critical that the room wasn't  
 9 labeled for its purpose, so that it wasn't common  
 10 knowledge among employees, but only those that  
 11 needed it.  
 12 There was also questions about, could  
 13 people bring their children in? And certainly, in  
 14 an industrial coal plant, we decided that was  
 15 probably not the best.  
 16 At the end of the meeting we concluded  
 17 that that was the right thing to do, and we needed  
 18 to go ahead and establish a breastfeeding lounge at  
 19 the coal plant.  
 20 **Q. Okay. And who -- who attended that**  
 21 **meeting?**  
 22 A. That was my management staff. That  
 23 consists of myself; a production manager, Tim  
 24 Driver; operations manager, Kenny Smith; maintenance  
 25 manager, Bill Belshe.

**Page 60**

1 Others in attendance was my engineering  
 2 manager, Hank Adair; my compliance manager, Rick  
 3 Saver; and of course human resources, our HR  
 4 supervisor at the plant, Mary Gordy.  
 5 **Q. Okay. And did -- were some of those**  
 6 **people union representatives?**  
 7 A. No, sir.  
 8 And if I may, I forgot.  
 9 Ernie Rodarte was our compliance manager  
 10 and director, and he was with us.  
 11 No, no one in attendance was a union  
 12 representative or an hourly employee. This was  
 13 strictly a management meeting, a closed door.  
 14 A typical management meeting, you have to  
 15 be able to discuss tough issues and get things out  
 16 on the table.  
 17 **Q. Okay. And the -- was there a consensus**  
 18 **that you should establish this room?**  
 19 A. Yes, sir, there was.  
 20 **Q. Okay. And I take it you, as plant**  
 21 **manager, supported the consensus?**  
 22 A. Absolutely.  
 23 **Q. Okay. Was that it? Was that the meeting?**  
 24 **Is that a fair summary of the meeting?**  
 25 A. That's what went on, yes.

**Page 61**

1 **Q. Okay. And then what was the second**  
 2 **meeting?**  
 3 A. The second meeting, human resources, Mary  
 4 Gordy, had asked for the meeting. And in that  
 5 meeting she had asked if we could take an employee  
 6 who was pregnant and give them time off work for the  
 7 entire duration of their pregnancy, and until they  
 8 were comfortable with their child being taken care  
 9 of and they could come back to work.  
 10 Essentially, it was a request to give an  
 11 employee a medical-related leave.  
 12 **Q. For the duration of -- from the time that**  
 13 **she became pregnant or learned that she was pregnant**  
 14 **until she was comfortable with returning to work?**  
 15 A. Yes, sir.  
 16 **Q. Okay. And did the company have any policy**  
 17 **with respect to pregnancy leaves at the time?**  
 18 A. Well, no. Corporate didn't give us any  
 19 direction from that standpoint. Mary Gordy didn't  
 20 tell us about any policy along those lines either.  
 21 And that was her role, to help us make  
 22 sure that we were in compliance with the policy.  
 23 But internally, within the plant, we  
 24 needed to make sure that how we treated employees  
 25 with medical issues, that we had a consistent way of



**Page 62**

1 doing that.

2 So if anything, we had an unwritten policy

3 on how do we manage employees with medical issues.

4 **Q. Okay. Had you had to manage an employee**

5 **with a pregnancy issue in the past during your term**

6 **there?**

7 A. Yes. During my term there and throughout

8 my career, I worked with many employees that were

9 pregnant and had some time off work and came back.

10 **Q. Okay. And can you tell me what the**

11 **typical, in your view, appropriate response is to a**

12 **woman who gets pregnant and needs time off?**

13 A. Well, not only pregnancy, but any medical

14 issue. I'm not a doctor. It will be up to the

15 medical professionals to determine when an employee

16 can or can't work.

17 Oftentimes they'll give us restrictions on

18 what the employee is allowed to do: No lifting or

19 no working in a hazardous environment.

20 So we rely on medical professionals to

21 tell us what employees can or can't do.

22 To the degree possible, we make reasonable

23 accommodation. And when the time comes, if they

24 need to be off work, we honor that.

25 **Q. Okay. And when is that, typically? In**

**Page 63**

1 **your experience, when a woman is pregnant, typically**

2 **when does she go off work, clock off?**

3 A. Just in my experience, a month or two

4 before she's due.

5 **Q. Okay. And -- and your HR representative**

6 **was asking for time off for the entire pregnancy and**

7 **some unspecified duration after that?**

8 A. That is correct.

9 **Q. Okay. And what was the decision that was**

10 **made with respect to that request?**

11 A. After a lot of discussion, analyzing the

12 risk and the issues, we came to the conclusion that

13 we wanted to be consistent with this employee, in

14 the same way that we've treated other employees.

15 That it would be based upon medical

16 advice, and what restrictions the employee would

17 currently have we would accommodate those.

18 That was essentially the decision. We

19 would accommodate whatever restrictions they may

20 have. And whenever the -- a point in time arose

21 that they needed to be off work for the pregnancy,

22 we would accommodate that as well.

23 **Q. Okay. In what way -- what happened --**

24 **strike that.**

25 **According to Mr. Olson and Ms. Ortiz, at**

**Page 64**

1 **the meeting in Albuquerque when they fired you, or**

2 **informed you that you had been fired, what was it**

3 **about those meetings that caused you to be fired?**

4 A. Well, if I may, a clarification.

5 I was fired at a meeting at the plant.

6 They came up to the plant.

7 **Q. Oh, okay. Sorry.**

8 A. There was a meeting prior to that, that

9 gave me insights behind why they terminated me.

10 **Q. Why -- yes. And I'm going to get to that**

11 **in just a moment.**

12 **So what did they say were the reasons for**

13 **terminating you?**

14 A. That I was in violation of doing-the-

15 right-thing policy. That -- words to the effect

16 that I hadn't fulfilled my duties as a senior

17 manager.

18 **Q. Okay. And did they explain why and what**

19 **it had to do with these two meetings?**

20 A. Not really. It was basically what was on

21 the written paper.

22 I would say no.

23 **Q. Okay. What was on the written paper?**

24 A. That I was in violation of the doing-the-

25 right-thing policy and failed in my duties as a

**Page 65**

1 leader.

2 **Q. And there was no explanation for that from**

3 **them, other than what you've just given us here now?**

4 A. To my recollection, that is correct. And

5 that's all that I can remember at this point, yes.

6 **Q. Okay. Was there any -- did they point to**

7 **anything that had occurred at these meetings that**

8 **they felt violated their do-the-right-thing policy?**

9 A. Not in that meeting, no, sir.

10 **Q. Okay. At any time?**

11 A. Yes. In the week prior, there was a

12 meeting in Albuquerque. They took exception to one

13 of the managers in my meeting. He was concerned

14 about the liability of a pregnant employee on plant

15 site delivering the child while on plant site.

16 And he had words to the effect of, What if

17 the employee gives birth to the baby in the parking

18 lot?

19 **Q. Okay. And did they explain what it was**

20 **that you had done wrong in connection with that**

21 **other person having said that at a meeting?**

22 A. My understanding is they expected me to

23 put a stop to any inquiry like that.

24 **Q. Okay.**

25 A. Or the use of any language that may be

**Page 66**

1 taken inappropriately.

2 **Q. So did you understand the implication to**

3 **be that you should have disciplined him for having**

4 **said that?**

5 A. I understood -- and it didn't come out of

6 context from me in the meeting.

7 I understood that the manager was

8 inquiring about liability.

9 Did he phrase it properly? Probably not.

10 He probably could have polished it and sugar-coated

11 it a little bit more.

12 And I understood it as a valid inquiry

13 towards liability. It didn't stand out to me.

14 In the power plant, it's a culture that's

15 been around for many years, people talk very openly

16 and frankly.

17 So it didn't jump out at me as an issue

18 until the investigation meeting in Albuquerque,

19 where they brought it up.

20 **Q. Okay. And what was it, if anything? Was**

21 **there anything else about the meeting about**

22 **pregnancy that was brought to your attention as a**

23 **problem?**

24 A. Yes. I don't recall it from the meeting,

25 but they alleged that one of the managers used

**Page 67**

1 inappropriate language.

2 **Q. And that a manager had used inappropriate**

3 **language at that meeting about pregnancy?**

4 A. Yes, sir.

5 **Q. Okay. And what was the language that he**

6 **used?**

7 A. He used a three-letter word that began

8 with the letter T.

9 **Q. Okay. And in reference to what?**

10 A. The frontal female anatomy.

11 **Q. So in other words, he -- I know you're**

12 **somewhat reticent. I can tell that you're somewhat**

13 **reticent about using this language.**

14 **But are you -- is it your testimony that**

15 **he used the word "tit" for the word "breast"?**

16 A. That's what I was told that came out in

17 the meeting. I don't recall that.

18 **Q. Okay. And somehow the fact that he said**

19 **that contributed to your termination?**

20 A. Yes, sir.

21 **Q. Okay. Was there anything else that you**

22 **learned that you understood or that you were told**

23 **had contributed to your termination?**

24 A. No, sir.

25 **Q. Okay. Before you were terminated, did you**

**Page 68**

1 **receive any verbal or written warnings about any**

2 **failures on your part?**

3 A. No, sir. In my entire five years at PNM I

4 never received warnings in -- verbally -- or that I

5 had ever done anything that was wrong or

6 inappropriate.

7 **Q. Okay. And what is PNM's customary custom**

8 **and practice with respect to correcting employee**

9 **misbehavior, if it has one?**

10 A. Well, the basics of leadership is if an

11 employee is not performing properly or engaging in

12 behaviors that aren't correct, you pull them aside

13 and warn them only to the degree that it takes to

14 change the behavior.

15 **Q. Okay. And had you -- is that -- is that**

16 **something that you had learned from management at**

17 **PNM?**

18 A. Leadership throughout my career, sir.

19 **Q. Okay. And you never received any**

20 **indication -- or strike that.**

21 **Did you receive any indication at PNM that**

22 **its approach to managing its employees was any**

23 **different?**

24 A. No, sir.

25 **Q. Okay. You have filed a lawsuit, have you**

**Page 69**

1 **not?**

2 A. Yes, sir.

3 MR. BUTLER: John, can we take, like a

4 three-minute break? It's been an hour. I know

5 we're short on time. But...

6 MR. BOYD: Yeah, that's fine. Let's take

7 a break. Well, let's take a 10-minute break.

8 MR. BUTLER: This is a good time, I think,

9 isn't it?

10 MR. BOYD: It is.

11 THE VIDEOGRAPHER: We are now going off

12 the record.

13 The time is approximately 11:15 a.m.

14 Watch your microphones when you stand up,

15 please.

16 (A recess was taken from 11:15 a.m. to

17 11:27 a.m.)

18 THE VIDEOGRAPHER: We are now going back

19 on the record.

20 The time is now approximately 11:27 a.m.

21 **Q. (By Mr. Boyd) Mr. Smith, before I hand**

22 **you Exhibit 1, your attorney has informed me that**

23 **you wanted to make a minor correction to your**

24 **testimony.**

25 **What is that correction you want to make?**

**18 (Pages 66 to 69)**

**Page 70**

1 A. Well, actually, it's just a bit of  
2 clarification.

3 **Q. Okay.**

4 A. During the meeting where the events of my  
5 termination took place, they were asking me  
6 questions.

7 At that point in time I understood the  
8 inappropriate language was used in the meeting where  
9 there was discussion about the dedicated breast  
10 feeding lounge.

11 **Q. Okay.**

12 A. I don't know if I got that confused.

13 **Q. Okay. And so if I understand correctly,**  
14 **someone at that meeting supposedly or did use the**  
15 **T-I-T word in relation to the female breast.**  
16 **Is that correct?**

17 A. I don't recall that happening. But that's  
18 what Mr. Olson and Ms. Ortiz alleged to, that  
19 they -- they said it happened.

20 **Q. They told you it happened?**

21 A. Yes.

22 **Q. And again, did you recall that it had**  
23 **happened?**

24 A. No, sir.

25 **Q. Okay. Okay.**

**Page 71**

1 **And did they ever explain to you what your**  
2 **failing was that had either allowed that to happen**  
3 **or that you had failed to discipline someone for**  
4 **uttering that word?**

5 **What it was that you had done that somehow**  
6 **merited your termination because somebody else at**  
7 **the meeting used that word?**

8 A. My understanding, it was that the meeting  
9 occurred, and I was the senior leader at that  
10 meeting, and I should have done something to stop it  
11 or correct it or make it go away.

12 I was the senior leader, and I'm  
13 responsible for my meetings.  
14 (Exhibit marked, 1.)

15 **Q. (By Mr. Boyd) Okay. Now, I'm handing you**  
16 **what I've marked as Exhibit 1 to your deposition.**  
17 **And I have a number of copies of this**  
18 **here. There's probably not enough for everybody.**  
19 **But would you please identify Exhibit 1 to**  
20 **your deposition, if you recognize it?**

21 A. Yes. This is my complaint against PNM for  
22 violation of the New Mexico Fraud Against Taxpayers  
23 Act.

24 **Q. Okay. And you were fired, again, on**  
25 **May 2nd, 2013.**

**Page 72**

1 A. That is correct.

2 **Q. Is that correct?**

3 **And you filed this complaint on April 11,**  
4 **2014, according to its caption.**  
5 **Is that correct?**

6 A. Yes, sir.

7 **Q. Okay. And would you just quickly**  
8 **summarize the factual -- the factual basis for this**  
9 **complaint? I don't want you to go through**  
10 **everything, but just state for the record generally**  
11 **what your allegation is in this complaint, and then**  
12 **I'll go into the details.**

13 A. Generally, my allegation in this complaint  
14 is that I had acted to inform PNM that their intent  
15 and actions relative to how San Juan generating  
16 station was being maintained and their intent to  
17 seek recovery of fuel costs through the fuel clause  
18 was inappropriate, and it brought up safety  
19 concerns, and that was the true reason that I was  
20 terminated from PNM.

21 **Q. Okay. All right. And let's -- so your**  
22 **allegation is that the use of the word -- allowing**  
23 **or permitting or somehow being involved in or**  
24 **responsible for the use of the T-word in**  
25 **substitution for the female, the word breast, at**

**Page 73**

1 **this meeting was actually a pretext?**

2 A. Yes, sir.

3 **Q. Okay. And you testified just now that you**  
4 **felt that the real reason was because of issues that**  
5 **you had raised about the maintenance of the plant,**  
6 **the fuel, the -- PNM's use of the fuel clause and**  
7 **other issues was the real reason?**

8 A. That is correct.

9 **Q. All right. Did you have any contacts with**  
10 **senior PNM management that led you to believe that**  
11 **that was the case?**

12 A. Yes, sir, there were.

13 **Q. All right. What was the nature of that**  
14 **contact?**

15 **And I want to start with the first one.**

16 A. Okay. The first contact was with --  
17 meeting with Mr. Ron Talbot, our chief operating  
18 officer, and myself.

19 And in basic terms he wanted significant  
20 budget reductions from the San Juan maintenance  
21 budget to help the company meet earnings forecasts.

22 **Q. And is that what he said to you?**

23 A. Yes, sir.

24 **Q. Those words, or words to that effect?**

25 A. Words to the effect, We are going to have

**Page 74**

1 a cool summer, and that would mean less revenue, and  
 2 we needed to make up the difference by cutting the  
 3 budget so that we can meet our earnings forecast.  
 4 That was the objective.  
 5 **Q. Okay. For the record, again, I think you**  
 6 **mentioned his title. But what was Mr. Talbot's**  
 7 **title at the time?**  
 8 A. He was chief operating officer.  
 9 **Q. And -- and how long had he worked for the**  
 10 **company when you had this conversation with him?**  
 11 A. Approximately 9, 10 months.  
 12 **Q. Okay. Do you know where he came from?**  
 13 A. Yes. He said he came from Indianapolis;  
 14 Indianapolis Power and Light, I believe.  
 15 **Q. Okay. And did he arrange the meeting?**  
 16 A. Yes, he did.  
 17 **Q. All right. This conversation, did it**  
 18 **happen face to face?**  
 19 A. Yes, sir, it did.  
 20 **Q. And when did it happen?**  
 21 A. I would have to look at my complaint to  
 22 get the exact date.  
 23 **Q. Go ahead. If you need to refresh your**  
 24 **recollection with your complaint, just go ahead and**  
 25 **look at it.**

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1 A. It happened in November.  
 2 **Q. Of?**  
 3 A. 2012.  
 4 **Q. And where did it take place?**  
 5 A. I remember that. Let's see. November 14,  
 6 2012.  
 7 **Q. Okay.**  
 8 A. It took place at the Flying Star Cafe,  
 9 which is located just west of the PNM corporate  
 10 headquarters.  
 11 **Q. Okay. And that's on Silver, here in**  
 12 **Albuquerque?**  
 13 A. I believe that's the street, yes.  
 14 **Q. Okay. And how was the meeting arranged?**  
 15 A. Mr. Talbot and I had been in EPA  
 16 negotiations the day before, and then he asked me to  
 17 meet him for breakfast at the Flying Star Cafe the  
 18 next morning.  
 19 **Q. So in other words, you had been in a**  
 20 **meeting that was also here in Albuquerque?**  
 21 A. Yes, sir.  
 22 **Q. Okay. With the EPA.**  
 23 **And what was the nature of that meeting?**  
 24 **What was that meeting about?**  
 25 A. That was a discussion with the EPA in how

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1 to comply with the federal implementation plan.  
 2 **Q. And what was the federal implementation**  
 3 **plan, for the record?**  
 4 A. To install SNCRs on all four units at  
 5 San Juan.  
 6 **Q. What's an SNCR?**  
 7 A. Excuse me. I got that backwards. I put  
 8 an N in where I shouldn't have.  
 9 SCR.  
 10 **Q. Okay.**  
 11 A. An SCR is selective catalytic reduction.  
 12 And later on, I need to talk about SNCR, which is  
 13 different.  
 14 **Q. Okay. So it was about the installation of**  
 15 **SCRs in -- at the San Juan plant?**  
 16 A. That is correct.  
 17 **Q. Okay. And just very briefly, what does an**  
 18 **SCR do?**  
 19 A. SCR is a very large box at the plant after  
 20 the boiler, where the flue gas removes nitrous oxide  
 21 out of the flue gas before it goes out the stack.  
 22 **Q. Okay. The flue gas is something that**  
 23 **comes out of, essentially, this furnace and goes**  
 24 **through -- goes out the stack.**  
 25 A. That's correct.

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1 **Q. Correct?**  
 2 **And this is something that takes**  
 3 **pollutants out of that?**  
 4 A. That is correct.  
 5 **Q. Okay. At that meeting, or at about the**  
 6 **time of that meeting, did Mr. Talbot ask you to meet**  
 7 **with him, to meet him for breakfast or to meet him**  
 8 **at the Flying Star?**  
 9 A. The previous day, November 13th, we were  
 10 working the EPA discussions. He asked me to meet  
 11 him at the Flying Star Cafe the next morning, wanted  
 12 to talk with me.  
 13 **Q. Okay. Did he tell you what he wanted to**  
 14 **talk to you about?**  
 15 A. Not until we got to the meeting.  
 16 **Q. And about what time of day was that?**  
 17 A. I believe that was the 7:00/8:00 time  
 18 frame.  
 19 **Q. Okay. And did you meet him at the Flying**  
 20 **Star?**  
 21 A. Yes, sir, I did.  
 22 **Q. All right. And can you tell me, please,**  
 23 **what transpired between you and Mr. Talbot at the**  
 24 **Flying Star?**  
 25 A. Yes. Mr. Talbot indicated we need to make

**20 (Pages 74 to 77)**

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1 significant budget cuts at San Juan, in the order of  
 2 \$19 million in the O&M budget, only the O&M budget.  
 3 That the forecast for the summer of 2013 was showing  
 4 that it was going to be a light load, and that would  
 5 mean less revenue, and that we needed to cut  
 6 expenses in order to meet earnings projections.  
 7 **Q. Okay. I know this may seem obvious to**  
 8 **you. But did you have an understanding as to why**  
 9 **cutting the O&M budget at the San Juan plant would**  
 10 **boost PNM's earnings?**  
 11 A. Absolutely. If you don't have an expense,  
 12 then revenue can become profit.  
 13 **Q. It goes straight to the bottom line,**  
 14 **doesn't it?**  
 15 A. That's my understanding.  
 16 **Q. Okay. And why -- explain for the record**  
 17 **why PNM was expected to have a, quote, light load,**  
 18 **unquote, in the summer of -- this would have been**  
 19 **the summer of 2013, correct?**  
 20 A. Yes, sir.  
 21 **Q. All right. Why was it expected to have a**  
 22 **light load in the summer of 2013?**  
 23 A. Essentially, long-range weather forecast  
 24 had indicated that the temperatures would be cooler  
 25 for the summer. And summertime temperatures have a

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1 direct correlation with the electrical load.  
 2 Essentially, people run their air conditioners more.  
 3 And then with the less load, then the meters aren't  
 4 spinning as fast, and that means less revenue.  
 5 **Q. And, therefore, less profit?**  
 6 A. Yes, sir.  
 7 **Q. Okay. And when you said that Mr. Talbot**  
 8 **said that they needed to find some -- cut the**  
 9 **operation and maintenance budget by \$19 million to**  
 10 **meet -- meet revenue projections, those are**  
 11 **projections to whom, as you understood it?**  
 12 A. To shareholders.  
 13 **Q. Okay.**  
 14 A. PNM shareholders.  
 15 **Q. Okay.**  
 16 A. Investors.  
 17 **Q. Okay. To Wall Street?**  
 18 A. Yes, sir.  
 19 **Q. Okay. What was your response?**  
 20 **Well, first of all, what was your reaction**  
 21 **when you -- when he said this to you?**  
 22 A. Any time my boss asks me to do something I  
 23 have a duty to let him know the risks involved.  
 24 So my response to cutting \$19 million out  
 25 of the budget was, Do you realize what that's going

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1 to do to the reliability of the plant, and that we  
 2 would have to lower our projections for the  
 3 reliability of the plant in the coming year if we  
 4 weren't going to maintain it as projected?  
 5 **Q. Okay. And did you say those words or**  
 6 **words like that to him?**  
 7 A. Absolutely.  
 8 **Q. All right. And what was his response to**  
 9 **that?**  
 10 A. That the projections for reliability need  
 11 to remain unchanged. That we needed to reduce the  
 12 budget.  
 13 **Q. Okay. And in other words, his position**  
 14 **didn't change?**  
 15 A. No, sir.  
 16 **Q. Okay. Now, you said that he reiterated**  
 17 **that you needed to cut the budget. But he also said**  
 18 **that the projections regarding reliability needed to**  
 19 **remain the same.**  
 20 A. Yes, sir.  
 21 **Q. What was your reaction to his -- to that**  
 22 **demand, or that direction, I should say.**  
 23 A. I told him I would go to the budget,  
 24 identify those things that were the least risky that  
 25 needed to be chopped from the budget in order to

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1 meet his directive, and that I would return to him  
 2 and show him those things that would need to be  
 3 chopped in the budget so he would truly understand  
 4 the risks.  
 5 **Q. Okay. How -- in your opinion, how would**  
 6 **it be possible to cut the O&M budget by \$19 million**  
 7 **and keep the projections for reliability the same?**  
 8 **How is it possible to honestly do that?**  
 9 A. Well, that's the issue, sir. In my 30  
 10 years of experience of running and maintaining  
 11 plants and ensuring reliability, that was not  
 12 possible.  
 13 **Q. Okay. So inside yourself, how were you**  
 14 **reacting to this?**  
 15 A. I was very disappointed. I didn't think  
 16 it was right, especially for the employees of the  
 17 plant. Because their compensation, their goals, are  
 18 tied to what we project as a corporation, what the  
 19 plant's reliability should be.  
 20 So even though the employees knew that we  
 21 weren't repairing things and investing in the  
 22 maintenance of the plant, I still had to hold them  
 23 accountable for meeting the higher standard of  
 24 goals.  
 25 **Q. So in other words, you were being asked to**

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1 state that the expected reliability of the plant  
 2 would be at a certain level and that you were not  
 3 going to meet that, or you were predictably not  
 4 going to be able to meet that?  
 5 A. That is correct.  
 6 **Q. And the result, the effect on the**  
 7 **employees, your employees at that plant -- and let**  
 8 **me digress for a moment.**  
 9 **How many of them are there?**  
 10 A. Approximately 400 at that point in time.  
 11 **Q. Okay. And the reduction in that budget**  
 12 **would mean a reduction in their -- would inevitably**  
 13 **result in a reduction of their pay.**  
 14 **Is that correct?**  
 15 A. That is correct.  
 16 **Q. Okay. And your pay?**  
 17 A. Yes, sir.  
 18 **Q. Okay. Would you explain, please, what the**  
 19 **significance of -- is of projection -- what you**  
 20 **referred to as projections for reliability?**  
 21 **Who are those projections delivered to and**  
 22 **what is -- what is their significance?**  
 23 A. Sure. The projections for reliability are  
 24 used in many different areas.  
 25 All of the owners use those reliability

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1 projections for deciding how they're going to meet  
 2 their summer peak loads and off-season loads; how  
 3 they will manage all of their resources to account  
 4 for any shortcomings or do any hedging in the  
 5 market.  
 6 Also, too, the unit load projections, or  
 7 reliability projections, are used for things like  
 8 establishing the base rate and the fuel clause and  
 9 for, again, within PNM, hedging future projections  
 10 for reliability relative to buying -- purchase power  
 11 ahead of the market when it's a lower cost.  
 12 **Q. Okay. Did you have any discussion with**  
 13 **him about this issue of maintaining the projections**  
 14 **of reliability at this artificial level and what the**  
 15 **significance of that was at the time or at any time?**  
 16 A. Oh, yes. During that breakfast meeting we  
 17 had discussions along those lines.  
 18 There was a point, too, and I'd have to  
 19 refer, if you could give me a moment.  
 20 **Q. Please do. Please refer -- if you need to**  
 21 **refresh your recollection you can refer to your**  
 22 **complaint at any time.**  
 23 A. During that particular meeting on  
 24 November 14th. It was a relatively short meeting.  
 25 And so...

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1 **Q. How long did it last? I mean, as an**  
 2 **estimate.**  
 3 A. It was during breakfast, and I believe we  
 4 both had oatmeal, so it didn't take long to consume  
 5 it. 20 minutes.  
 6 **Q. Okay. And did you -- did you push back on**  
 7 **this proposal?**  
 8 A. Absolutely.  
 9 **Q. And I know you've already touched on it.**  
 10 **But would you tell -- tell me, for the record.**  
 11 **What did you say to Talbot about the**  
 12 **implications of what he was telling you to do?**  
 13 A. I told him that we had worked so hard for  
 14 the last three years in turning that plant around,  
 15 that it wasn't right to cut the performance -- to  
 16 cut the budget to the plant.  
 17 And he's a power plant guy. He knew that  
 18 the maintenance would result in loss of reliability.  
 19 But to hold the employees and tell the owners that  
 20 we were still going to meet the reliability  
 21 projections, that wasn't right.  
 22 And that was about the conclusion of our  
 23 meeting, and we both left the cafe. And he was  
 24 clearly agitated.  
 25 **Q. How do you know he was agitated?**

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1 A. Very short and curt. His eyebrows seemed  
 2 to drop a little bit. But then we left the cafe,  
 3 and he was walking quickly back to corporate  
 4 headquarters. And he went a block, a block and a  
 5 half, and he realized that he forgot his car at the  
 6 cafe parking lot.  
 7 **Q. He went back to get it?**  
 8 A. Yes, sir.  
 9 **Q. I take it he wasn't -- was he walking back**  
 10 **to corp- -- were you also going back to corporate**  
 11 **headquarters?**  
 12 A. Yes. I parked at corporate and walked to  
 13 the cafe.  
 14 **Q. Okay. Was he walking with you or...**  
 15 A. Yeah. We were --  
 16 **Q. Okay.**  
 17 A. I was trying to keep up with him to try to  
 18 continue to make my motion that it wasn't the right  
 19 thing to do.  
 20 **Q. Okay. Did the issue of the fuel clause**  
 21 **come up in your conversation with him?**  
 22 A. I don't think it did at this particular  
 23 conversation.  
 24 **Q. Okay. Did you have any subsequent**  
 25 **conversations with Mr. Talbot?**

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1 A. Yes, I did. I did come back to him with  
 2 my list of items that I would need to chop out of  
 3 the budget to meet the direction of chopping  
 4 19 million out of the budget.  
 5 And at the time, he talked about the cost  
 6 would end up not impacting the company, because the  
 7 higher generation cost would be passed through into  
 8 the fuel clause.  
 9 And at that point in time I was -- I  
 10 didn't think that was the right thing to do either.  
 11 **Q. All right. Let's talk about that for a**  
 12 **minute.**  
 13 **What did you -- what did you understand**  
 14 **him to mean when he said it's a -- in effect, it's**  
 15 **okay. The higher cost will be passed through**  
 16 **through the fuel clause?**  
 17 A. That means when San Juan generating  
 18 station, the low-cost electric provider doesn't run  
 19 because the reliability is down, to meet --  
 20 **Q. It sounds -- sometimes it sounds like you**  
 21 **say liability, but you're saying reliability,**  
 22 **correct?**  
 23 A. Reliability, right.  
 24 **Q. Right.**  
 25 A. Right.

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1 If we don't maintain it, the plant doesn't  
 2 run as much. When it doesn't run, then the power  
 3 has to come from somewhere to meet the customers'  
 4 needs.  
 5 And that power, then, comes from a  
 6 higher-priced source. And that higher-priced  
 7 source, through the fuel clause, is passed on to  
 8 customers.  
 9 **Q. Okay. And what does this -- this term**  
 10 **that we've been using, the fuel clause, how does**  
 11 **that work?**  
 12 A. Yes. I'm sorry. I think the official  
 13 terminology for it is the fuel and purchase power  
 14 cost adjustment clause, through the PRC.  
 15 I, by no means, am an expert in the fuel  
 16 clause. But my understanding of it is, a set base  
 17 is set on what we would project the cost of fuel  
 18 would be for customer electric rates.  
 19 And if there is a fluctuation in the  
 20 market, or for some unforeseen circumstance the  
 21 price of the fuel rises to generate the electricity,  
 22 that cost can be passed on to the customer.  
 23 Now, it's supposed to work the other way  
 24 too. If things should go really smooth and the cost  
 25 is actually less than the projected base, then that

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1 cost should be refunded to the customer.  
 2 **Q. Okay. And so how -- is the fuel clause**  
 3 **implicated when a -- something like the San Juan**  
 4 **generating station goes off line because of**  
 5 **maintenance problems?**  
 6 A. That is correct.  
 7 **Q. Okay. And does that mean that -- and I**  
 8 **know you've already said this, but I want to make**  
 9 **sure it's clear -- that PNM may have to go, or often**  
 10 **does have to go, out into the marketplace to acquire**  
 11 **power from some other producer and pay whatever the**  
 12 **market is bearing at that particular time?**  
 13 A. That's correct to a degree.  
 14 It can look at its own existing resources  
 15 or the market, and we go for the lowest cost  
 16 provider of power.  
 17 **Q. Okay. What was your next conversation**  
 18 **with Mr. Talbot after your Flying Star meeting, and**  
 19 **when did it occur?**  
 20 A. Will you give me a moment to...  
 21 **Q. Sure. Take your time.**  
 22 A. I don't have the exact time of the  
 23 meeting. I did have discussions over the telephone  
 24 from the power plant to corporate. That's when I  
 25 discussed the risks that we would be taking in

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1 chopping the budget.  
 2 It was in the weeks after that meeting on  
 3 November 14th.  
 4 **Q. And these were conversations with whom?**  
 5 A. That was between me and Mr. Talbot.  
 6 **Q. Okay. And was it during those**  
 7 **conversations that the issue of the fuel clause came**  
 8 **up?**  
 9 A. That is correct.  
 10 **Q. All right. And was it Mr. Talbot who**  
 11 **raised -- who first mentioned the relationship of**  
 12 **the fuel clause to the cut in the maintenance**  
 13 **budget?**  
 14 A. Yeah. I'd -- I had forgotten about the  
 15 fuel clause, to be honest with you.  
 16 I brought up that if we're not running  
 17 it's going to increase the costs to the company.  
 18 And that's when he corrected me and  
 19 educated me that it's not an issue for the earnings  
 20 on the company, because we have the fuel clause.  
 21 **Q. Okay. And what was your response to that?**  
 22 A. Well, I knew about fuel clauses and have  
 23 been educated with them. And my experience at the  
 24 University of Idaho and real life, that from a  
 25 utility standpoint and society, fuel clauses can be

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1 good things.

2 But on the same hand -- token, too, you've

3 got to be careful they're not abused. And I believe

4 that this was a case where this was an improper use

5 of the fuel clause.

6 **Q. Okay. And so you learned about the fuel**

7 **clause, what they were and how they operated at this**

8 **course you took at the University of Iowa?**

9 A. Yes, sir. And in my experience with

10 Arizona Public Service Company, we worked on fuel

11 clauses there too. Of course I was management at

12 APS, and it's a utility industry topic with much

13 discussion.

14 **Q. Okay. Okay.**

15 **By the way, as to this University of Iowa**

16 **course, again, PNM sent to you that, correct?**

17 A. Yes, sir.

18 **Q. All right. And who are the people that**

19 **tend to go to that course?**

20 A. The people that I rubbed elbows with in

21 that course were vice presidents and directors such

22 as myself. There were some chief operating officers

23 there.

24 It's a course designed to groom and

25 educate and enlighten people for future advancement

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1 in the industry.

2 **Q. In the power industry?**

3 A. In the utility industry.

4 **Q. The utility. We call it -- you call it**

5 **the utility industry?**

6 A. Yes.

7 **Q. Okay. All right. And when Mr. Talbot**

8 **made this comment to you about being able to make it**

9 **up, make up any losses through the fuel clause, what**

10 **did you say in response to him?**

11 A. That I did not think that was right. It

12 was an inappropriate use of the fuel clause.

13 **Q. And why not? Why wasn't it a proper use**

14 **of the fuel clause?**

15 A. Because the additional costs weren't

16 prudently incurred.

17 I -- when I worked at the Cholla power

18 plant in Arizona there was a fuel clause with the

19 Arizona Public Service Company. And under that fuel

20 clause they had a prudency review. And they came

21 into the plant and wanted to discuss everything we

22 did that impacted the reliability of that plant.

23 I thought the same thing would happen

24 here.

25 **Q. Okay. Now, did -- from your understanding**

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1 **of corporate compensation, did Mr. Talbot personally**

2 **have a motive to cut back on maintenance and**

3 **maintain corporate profits as predicted to Wall**

4 **Street?**

5 MR. ORTIZ: Objection to form and

6 foundation.

7 A. Do I answer?

8 **Q. (By Mr. Boyd) Yes, please do.**

9 A. It's my understanding, yes, his own

10 personal compensation is closely tied to corporate

11 profitability.

12 **Q. And was that true of all executives in the**

13 **company or all employees?**

14 **And if so, how did the system work?**

15 A. The system worked where the higher you

16 were in the organization it's perceived the greater

17 impact that you would have on meeting goals and

18 corporate profitability.

19 So the higher you are in the organization,

20 the greater the compensation package is for meeting

21 those goals of profitability.

22 And I know that for a couple of reasons.

23 My own employees, the supervisors, they had some

24 skin in the game, so to speak, that if we met goals

25 that they would see a nice check towards the end of

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1 the year.

2 We were working on making a small

3 compensation package for hourly employees, so that

4 they could become aligned with corporate goals.

5 And the higher -- the managers that worked

6 for me, they had a compensation package that was a

7 little higher. I had something more than them. And

8 the higher we went in the organization -- if you

9 look on publicly available information, it discuss

10 compensation packages for chief operating officers

11 and CEOs and --

12 **Q. At PNM?**

13 A. I believe I have seen that in the past,

14 yes.

15 **Q. Okay. And do those compensation goals**

16 **relate both to performance and profit?**

17 A. Yes. As I might have mentioned earlier in

18 my testimony, you don't get compensation unless the

19 company is profitable. It needs to make its

20 earnings requirements to be able to trigger the

21 compensation.

22 **Q. Okay. And is there -- is there -- I guess**

23 **what I don't understand -- I understand that the guy**

24 **who works on the boilers or whatever or keeps the**

25 **pipes clean, he may get compensated if the**



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1 performance of the unit is at or above its predicted  
 2 performance level.  
 3 **Is that correct?**  
 4 A. Only if the company first meets financial  
 5 goals.  
 6 **Q. Okay.**  
 7 A. It makes sense. You've got to make some  
 8 money before you can pass it out to employees.  
 9 **Q. Right. So if the company meets its  
 10 financial goals and the performance of the  
 11 particular unit that some guy is working on with a  
 12 hammer or whatever he's doing, that guy gets  
 13 something extra at the end of the year?**  
 14 A. Yes. His goals are specific to the job  
 15 that he's doing.  
 16 My goals are specific to the job that I'm  
 17 doing. And then as it rises higher in the  
 18 organization, specific to the job that corporate is  
 19 doing.  
 20 **Q. Okay. And so at what point, if at all,  
 21 does it become significant that the -- that if it  
 22 does -- that the company has exceeded its projected  
 23 profit?**  
 24 A. Typically, performance metrics are  
 25 calculated after the first of the year, and then

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1 compensation is calculated. Within 90 days  
 2 compensation is made.  
 3 **Q. Okay. I guess what I'm trying to  
 4 understand, and which I don't understand -- and  
 5 forgive me for struggling with this -- is you have  
 6 got people who are responsible for a particular  
 7 plant performing well and meeting its performance  
 8 goals in the case of the San Juan generating  
 9 station.**  
 10 **That was you at the top, correct?**  
 11 A. Correct.  
 12 **Q. And then the guys at the bottom who are,  
 13 you know, pushing things around or banging on things  
 14 or welding things, or doing whatever their jobs  
 15 are --**  
 16 A. Uh-huh.  
 17 **Q. -- they also get compensated related to  
 18 that -- to the performance of that unit, provided  
 19 that the company meets its profit projection?**  
 20 A. That is correct.  
 21 **Q. Is that correct?**  
 22 A. That is correct.  
 23 **Q. Okay. And is there -- if -- if you meet  
 24 or exceed profit, is there -- strike that.**  
 25 **What is your understanding of how the**

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1 corporate executives get compensated? They are not  
 2 down there running the plant or banging on boilers  
 3 or doing whatever the guys are doing up in -- in  
 4 Four Corners.  
 5 **How are they compensated?**  
 6 A. Sure. That is a fair question. It is  
 7 based upon -- and I kind of broadly spoke.  
 8 It is based upon their areas of  
 9 responsibilities.  
 10 So Mr. Talbot, his compensation was not at  
 11 all tied to the performance of San Juan power plant.  
 12 His compensation was tied to more loftier goals of  
 13 the overall corporation.  
 14 **Q. Whether it meets its profit goals, for  
 15 example?**  
 16 A. Yeah. Or safety or -- yeah.  
 17 **Q. Okay. When you first met with Mr. Talbot,  
 18 had you, by that time, made projections, or had PNM  
 19 made projections as to the reliability of the  
 20 San Juan generating station for the year 2013?**  
 21 A. Yes, I had.  
 22 **Q. And what was that projection? Do you  
 23 recall what it was?**  
 24 A. Overall, the plant was going to achieve an  
 25 85 percent equivalent availability factor.

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1 **Q. Okay. And have you learned, since you  
 2 left the company, what the performance actually was  
 3 for the year 2013?**  
 4 A. Yes. 2013, reported in the public domain,  
 5 had achieved 75 percent equivalent availability.  
 6 **Q. And to what do you attribute that -- the  
 7 difference between what was projected and what was  
 8 achieved?**  
 9 A. There's a very direct correlation between  
 10 the maintenance of the plant and how well it runs.  
 11 **Q. Do you have any knowledge, sitting here  
 12 today, what the problems were that caused the plant  
 13 to perform at 75 percent instead of 85 percent?**  
 14 A. Yes, I do.  
 15 **Q. Okay. What are those?**  
 16 A. There were several things.  
 17 Pulverizer and mill availability. The  
 18 mills weren't performing well, and PNM reported that  
 19 as NOX derates, without mills in service. NOX --  
 20 there was -- the emissions would rise, so they had  
 21 to derate units due to mill availability.  
 22 There was also ash and clinkering issues  
 23 that were in the maintenance budget that caused the  
 24 unit reliability to suffer in 2013.  
 25 Also more specifically, a hot well pump on

1 Unit 1, it failed.  
 2 A primary air fan -- and I forget if it  
 3 was Unit 1 or Unit 2 -- it failed.  
 4 **Q. I'm sorry. Say that again.**  
 5 A. A primary air fan.  
 6 **Q. A primary air fan.**  
 7 **Okay.**  
 8 A. There were casing leaks that impacted the  
 9 unit reliability, the plant reliability.  
 10 Numerous ash handling issues, clinker  
 11 grinders, ash conveyance equipment, ash blowers,  
 12 nuva feeders.  
 13 There was superheater tube leaks on Unit 3  
 14 due to overheating.  
 15 There was a lot more, but that's all that  
 16 comes to mind right now.  
 17 **Q. Okay. Why do you -- how can you, sitting**  
 18 **here today, attribute those problems to the cut in**  
 19 **the maintenance budget?**  
 20 A. Because specifically, those were the types  
 21 of things that I had in the maintenance budget for  
 22 2013 that were cut out of the budget when I needed  
 23 to cut 19 million out of the budget.  
 24 **Q. Okay. And did you -- when you identified**  
 25 **these items as items that you were going to cut, did**

1 **Q. Okay. How -- if you know, how is it that**  
 2 **if the plant is suffering these problems and it's**  
 3 **operating at 75 percent instead of 85 percent, how**  
 4 **is it that the company is able to maintain its**  
 5 **profits?**  
 6 **It seems counterintuitive.**  
 7 A. Yeah. Actually, I don't think it is a  
 8 maintenance of profits; it's actually increasing  
 9 profits.  
 10 **Q. Okay. Well, what was PNM's -- do you know**  
 11 **from public records what PNM's profit was during the**  
 12 **year 2013, the fiscal year?**  
 13 A. Yes. I have looked at the PNM investor  
 14 website. And profitability continued to rise in  
 15 2013. I don't recall what that specific number is.  
 16 **Q. Okay. But it continued to go up?**  
 17 A. Yes, sir.  
 18 **Q. Did it exceed projections?**  
 19 A. I do recall that at the end of 2013 the  
 20 PNM board of directors chose to raise the dividend  
 21 by 12 percent.  
 22 **Q. Okay. And how is that -- how is that --**  
 23 **well, strike that.**  
 24 **Let me ask this question.**  
 25 **With the plant performing at 75 percent**

1 **you inform Mr. Talbot of the consequences of those**  
 2 **cuts?**  
 3 A. Yes, absolutely.  
 4 **Q. And how did you do that and when did you**  
 5 **do that?**  
 6 A. I did that in the weeks after the meeting  
 7 at the Flying Star Cafe. I told him I would come  
 8 back with a list of all the things that I would need  
 9 to cut to be able to reach that goal.  
 10 And over the phone and in the weeks  
 11 afterwards, I talked to him a couple of times  
 12 relative to those things that I will be cutting out  
 13 of the budget.  
 14 **Q. Okay. And what was his response?**  
 15 A. To cut the money, keep the goals.  
 16 **Q. Keep the --**  
 17 A. The goals.  
 18 **Q. Keep the goals. Cut the money, keep the**  
 19 **goals?**  
 20 A. Yes, sir.  
 21 **Q. Even though, as you saw it, as you**  
 22 **believed would be the case, you would never meet**  
 23 **that goal if you cut the budget in the way that you**  
 24 **were being told to?**  
 25 A. That is correct.

1 **instead of 85 percent, did that mean that the**  
 2 **employees at the plant didn't get a performance**  
 3 **bonus?**  
 4 A. I don't have knowledge if they did or they  
 5 did not. There was other goals tied to it, like  
 6 safety, and I'm not sure how they ended up there.  
 7 But certainly they did not achieve their  
 8 part of the compensation relative to plant  
 9 performance.  
 10 **Q. Okay. But the executives down here in**  
 11 **Albuquerque, with an increased dividend and what**  
 12 **that implies, is it a fair assumption, in your**  
 13 **opinion, that they did achieve their performance**  
 14 **bonuses?**  
 15 A. At the point that I left the company,  
 16 executive compensation was not tied to the  
 17 performance of San Juan. And from what I can tell  
 18 in the public record, the company had a very good  
 19 year. Typically, there is a straight-line  
 20 correlation between executive compensation and a  
 21 good year for the company.  
 22 **Q. Okay. And so 2013 was a good year for the**  
 23 **company?**  
 24 A. From what I understand.  
 25 **Q. Okay. What percentage of the power that**

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1 **PNM produces itself does the San Juan plant -- do**  
 2 **the four units at the San Juan plant represent?**  
 3 A. Approximately half.  
 4 **Q. Okay. Well, how is it -- and again, I'm**  
 5 **approaching this from a slightly different angle. I**  
 6 **know we've talked about this.**  
 7 **But how is it that the performance at that**  
 8 **plant can be at 75 percent instead of the projected**  
 9 **85 percent and PNM still have a good year, declare**  
 10 **an increased dividend and be profitable?**  
 11 A. Regardless of how the plant performs, if  
 12 higher and more expensive generation power has to be  
 13 produced, those costs are passed on to the customer,  
 14 not to PNM.  
 15 **Q. Okay. In your training -- strike that.**  
 16 **Is it an accepted principal of your**  
 17 **profession that if you cut maintenance activities,**  
 18 **plant performance is going to go down?**  
 19 A. Absolutely.  
 20 **Q. Okay. Is there any question about that?**  
 21 A. Not at all.  
 22 **Q. So -- excuse me. Give me just a minute**  
 23 **here and let me catch up to myself.**  
 24 **When you -- in your last conversation with**  
 25 **Mr. Talbot -- or strike that.**

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1 **Would you characterize, please, for the**  
 2 **record, the tenor of your conversations with**  
 3 **Mr. Talbot regarding the cuts in the maintenance**  
 4 **budget?**  
 5 A. The tenor? If you mean how do I  
 6 characterize those conversations, it became -- he's  
 7 the boss and I'm following orders, and I needed to  
 8 follow orders, chop the budget. And I followed  
 9 those orders.  
 10 **Q. Okay. And was there a point at which you**  
 11 **got the message to stop pushing back and just follow**  
 12 **orders?**  
 13 A. Yes. There was a time when Mr. Talbot  
 14 actually came up to the plant, and I had brought up  
 15 similar concerns that I had been voicing.  
 16 And he told me to just focus on running  
 17 the plant.  
 18 **Q. What did you take that to mean?**  
 19 A. Pardon me for being frank, but shut up and  
 20 do your job.  
 21 **Q. Okay. Okay.**  
 22 **Are there the -- when a utility owns a**  
 23 **plant like the San Juan generating station, the**  
 24 **utility spends money both on maintaining what it has**  
 25 **and also on capital improvements to the plant.**

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1 **Is that a fair statement?**  
 2 A. Yes. It's a combination of O&M budget and  
 3 capital budget.  
 4 **Q. Okay. Would you explain for the record,**  
 5 **please, the difference between what is on the O&M**  
 6 **budget -- and that's the one you were cutting here,**  
 7 **correct?**  
 8 A. That is correct.  
 9 **Q. -- and the capital budget.**  
 10 **What's the difference?**  
 11 A. Yes. In pretty basic terms, O&M is  
 12 operating and maintenance expenses. And these are  
 13 for routine expenses, projects that are relatively  
 14 small in nature, designed to continue to maintain  
 15 the equipment and preserve its longevity, or to just  
 16 continue to operate the plant for basic commodities.  
 17 Chemicals or employee wages fall under the O&M.  
 18 These are treated, from an accounting  
 19 standpoint, as an expense for the company.  
 20 **Q. Okay.**  
 21 A. On the other hand, the capital budget,  
 22 those are for larger dollar items. Typically at  
 23 San Juan, the trigger point for capital budget items  
 24 was \$50,000 or above. And other threshold items,  
 25 such as whether it was something that increased the

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1 life of the unit or the plant versus a routine  
 2 maintaining-type function.  
 3 **Q. Okay. And -- and can you give me**  
 4 **examples, from the smallest to the largest, of what**  
 5 **types of things would go into the capital budget?**  
 6 A. Oh, sure. A relatively small pump  
 7 replacement that pumps chemicals. Or a pump that  
 8 pumps limestone into the absorber, called a recycle  
 9 pump. If it wears out to the point where it needs  
 10 to be replaced, that may barely meet the threshold  
 11 for a capital replacement item of \$50,000. It's a  
 12 replacement of the pump.  
 13 On the extreme end of a capital project, I  
 14 point to the SCR project that the EPA had originally  
 15 required under the FIP. That one, under some of  
 16 PNM's projections, was close to a billion dollars.  
 17 **Q. A billion? That is with a B?**  
 18 A. Yes, sir.  
 19 **Q. Okay. And what -- do you understand what**  
 20 **I mean when I say the rate base?**  
 21 A. Yes, sir.  
 22 **Q. Okay. Can you tell me if there's a**  
 23 **relationship between either of these budgets and**  
 24 **PNM's rate base?**  
 25 A. Oh, absolutely.

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1 **Q. Okay. What is the relationship?**  
 2 A. The capital spending at San Juan would go  
 3 into PNM's rate base. And the rate base gets a rate  
 4 of return and gets regulatory relief upon it. It  
 5 goes -- it's directly tied to the electric rates  
 6 that the customer pays.  
 7 **Q. So if I take, as a hypothetical, the**  
 8 **\$50,000 pump, if that goes -- if the pump wears out**  
 9 **and that goes into -- it's \$50,000.01 or whatever,**  
 10 **and it goes into the capital budget, PNM is going to**  
 11 **lay out the \$50,000 for that and it's going to make**  
 12 **a profit on that that gets passed on to the**  
 13 **ratepayers.**  
 14 **Is that correct?**  
 15 A. A way to characterize it is, if PNM has to  
 16 buy a \$50,000 pump in its efforts to generate  
 17 electricity, it has to invest that money to make the  
 18 electricity.  
 19 So under a typical utility model, that  
 20 investment gets a rate of return.  
 21 **Q. Okay. So that is true of the \$50,000**  
 22 **pump.**  
 23 **And it's true, if they install it, of the**  
 24 **billion-dollar SCR project?**  
 25 A. Yes, sir.

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1 **Q. Okay. And everything in between?**  
 2 A. Correct.  
 3 **Q. PNM expects to be able to make a profit on**  
 4 **that capital investment, correct?**  
 5 A. That is correct.  
 6 **Q. And the profit that it makes comes from**  
 7 **the rates that it charges the ratepayers?**  
 8 A. That is correct.  
 9 **Q. And the receipts that it gets from the**  
 10 **ratepayers?**  
 11 A. You lost me.  
 12 **Q. The money that they pay.**  
 13 A. Sure.  
 14 **Q. I mean, they don't just get a bill. They**  
 15 **have to actually pay the bill.**  
 16 A. That's correct.  
 17 **Q. That's my only point, and I guess that**  
 18 **goes without saying.**  
 19 A. If I may, just a point of clarification.  
 20 I talked about an SCR project of upwards  
 21 of a billion dollars. And it's -- that's just a  
 22 rough number, to give you an idea of the extreme.  
 23 The EPA has a much lower number.  
 24 And then PNM worked hard to really zero in  
 25 those exact costs, and they were probably much less

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1 than a billion dollars.  
 2 But I wanted to make sure that you  
 3 understood that's just for -- to help you understand  
 4 the magnitude of the variation.  
 5 **Q. Right. You're not saying it would**  
 6 **actually cost a billion dollars. That was a figure**  
 7 **that was thrown out at some point?**  
 8 A. Yes, sir.  
 9 **Q. Okay. All right.**  
 10 **With respect to operation and maintenance**  
 11 **items, does PNM make a profit on those?**  
 12 A. No.  
 13 **Q. Okay. So if I understand this cor- -- I**  
 14 **want you to correct me if I am wrong about this.**  
 15 **If PNM cuts the O&M budget, in this case**  
 16 **by \$19 million, out of a total of how much?**  
 17 **What's the -- what was the total O&M**  
 18 **budget for the year 2013?**  
 19 A. The total O&M for 2013 prior to cuts was  
 20 \$108 million.  
 21 **Q. Okay.**  
 22 A. That does not include O&M related to A&G,  
 23 which is administrative and general, which is  
 24 employee loads and things.  
 25 **Q. Okay. Okay.**

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1 **So it was an approximately 15 percent cut,**  
 2 **if I'm doing the rough math?**  
 3 A. Yes. 15 percent in the total budget.  
 4 Discretionary money devoted towards  
 5 maintenance, that was a much larger amount.  
 6 Out of the 108 million, about 35 to  
 7 37 million was for operations. That's the --  
 8 typical to use for the scrubber, or the operator  
 9 pay. So the remainder of that would go into the  
 10 maintenance budget or the engineering budget.  
 11 So a \$19 million cut in the total budget  
 12 doesn't really account for -- a part of that budget  
 13 is just non-variable costs, anyways.  
 14 **Q. Paying the employees --**  
 15 A. Fixed costs.  
 16 **Q. -- and buying towels for the bathrooms and**  
 17 **whatever?**  
 18 A. Exactly.  
 19 **Q. Okay.**  
 20 A. So \$19 million in total was about half of  
 21 the total maintenance that I'd planned for San Juan  
 22 in 2013.  
 23 **Q. So this cut that Mr. Talbot required of**  
 24 **you actually was about half of your maintenance**  
 25 **budget?**

1 A. Yes, sir.  
 2 **Q. Okay.**  
 3 A. When I told you I had a list of risks, it  
 4 was a \$40 million list of risks.  
 5 **Q. Were there cuts to anything else?**  
 6 MR. BUTLER: Repeat that, please.  
 7 **Q. (By Mr. Boyd) I'm sorry.**  
 8 **Go ahead.**  
 9 A. When I told you I went back to Mr. Talbot  
 10 with a list of risks that we would be chopping, that  
 11 total list was about \$40 million in maintenance.  
 12 And I had to go about halfway up that list  
 13 to say, These are things I won't be doing to  
 14 maintain the plant next year if you're adamant that  
 15 I chop 19 million.  
 16 **Q. Okay. Did he understand that he was**  
 17 **requiring you to chop about half the maintenance**  
 18 **budget?**  
 19 A. Yes, sir.  
 20 **Q. Did you say that to him?**  
 21 A. I did.  
 22 **Q. And he -- I showed him my list, and this**  
 23 **is what I am going to chop.**  
 24 **We went line item.**  
 25 **Q. Okay.**

1 A. I had a duty to make sure he understood,  
 2 in no unclear terms, what we were doing.  
 3 **Q. Okay. Were there cuts to any other parts**  
 4 **of the budget?**  
 5 A. Yes. I looked for opportunity elsewhere.  
 6 I was going to do some improved procedures for  
 7 operations. That was a relatively low dollar item.  
 8 I believe that was around \$60,000.  
 9 I look for opportunity to reduce the  
 10 budget wherever I can.  
 11 But the fixed costs, I had no choice but  
 12 to keep the fixed costs.  
 13 **Q. Okay. So there was never -- there was**  
 14 **never any suggestion from Mr. Talbot that you might**  
 15 **look to the capital side of the budget for cuts, was**  
 16 **there? Or was there?**  
 17 A. That became a dilemma for me. The goal  
 18 for capital spending remained the same. I still had  
 19 to spend what was in the budget for capital.  
 20 Some of the O&M dollars that I cut, a  
 21 portion of that was for unit outage. The unit had  
 22 to be down to fix things, but we eliminated that  
 23 outage.  
 24 So now I had capital I had to spend to  
 25 meet our capital spending goals, but no outage to

1 spend the money at.  
 2 So we're looking. Can I repave the roads?  
 3 Can I do some improvements in the lake? Where can I  
 4 spend the capital budget?  
 5 **Q. And how much excess, in your opinion, was**  
 6 **in the capital budget?**  
 7 A. The figure that I recall was -- 10 million  
 8 was my target for capital spending, but that was in  
 9 PNM dollars. That was at PNM's side of the capital  
 10 spending.  
 11 The O&M had to be reduced across all the  
 12 owners, but it was the goal -- the 10 million in  
 13 capital from the PNM side -- which I had to focus  
 14 on.  
 15 **Q. Okay. So -- but you weren't allowed to**  
 16 **cut any money from the capital side?**  
 17 A. Right. My objective was to continue to  
 18 spend that capital.  
 19 **Q. Okay.**  
 20 A. And to be honest with you, by the time I  
 21 left, I wasn't doing a good job of that, and I don't  
 22 know how the plant ended up in trying to spend those  
 23 capital dollars.  
 24 **Q. And you were thinking of projects like**  
 25 **paving a road -- or what else came to your mind?**

1 A. We looked at doing vegetation improvements  
 2 by the lake.  
 3 Maybe some capital work in the switchyard,  
 4 replacing breakers that were on the schedule five  
 5 years out and bringing them in.  
 6 We were scrambling to try to find where to  
 7 spend that capital.  
 8 **Q. Okay. Well, let me ask you -- let me see**  
 9 **if I understand this correctly, and correct me if**  
 10 **I'm wrong.**  
 11 **If, let's say -- you gave as an example**  
 12 **that -- one of the examples you gave of a failure**  
 13 **that occurred was the hot well pump failed, and you**  
 14 **believed that that was as a result of lack of**  
 15 **maintenance.**  
 16 A. That's correct.  
 17 **Q. Okay. How much does a hot well pump cost?**  
 18 A. Oh, if we were going to replace it in its  
 19 entirety, just guessing, \$2- to \$300,000.  
 20 **Q. Okay. Well, if it fails, do you have to**  
 21 **replace it?**  
 22 A. No.  
 23 **Q. Okay. Okay.**  
 24 **So this doesn't mean necessarily that you**  
 25 **had to replace it when you say it failed?**

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1 A. Let me stand corrected on that.  
 2 It depends on how it fails and how much of  
 3 it failed.  
 4 If it failed and the entire casing was  
 5 eaten out and there's hardly anything left of it,  
 6 then I have to replace it in its entirety.  
 7 Now if it fails because it started  
 8 vibrating to the point where it seized up, I'm able  
 9 to just replace the bearings, remachine the  
 10 clearances on the casing for the collared wearing  
 11 rings, and I'm up and running again.  
 12 And that's what we intended to do with the  
 13 hot well pump on Unit 1 that failed, was to do some  
 14 bearing replacements on it.  
 15 You might recall that we developed a  
 16 predictive maintenance program, so we could identify  
 17 when things were going to fail. That was on the  
 18 list.  
 19 We were taking a risk by continuing to run  
 20 it without replacing the bearings.  
 21 **Q. And that was one of the things that -- did**  
 22 **you explain that to Mr. Talbot as an example?**  
 23 A. Yes, sir. Absolutely.  
 24 **Q. When you went over your list?**  
 25 A. That's correct.

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1 **Q. And his attitude was, Go ahead and do it?**  
 2 A. Take the risk.  
 3 **Q. Take the risk?**  
 4 A. Yes, sir.  
 5 **Q. Okay. So if the -- if you can't engage in**  
 6 **the predicted maintenance that you want to engage**  
 7 **in, and as a result parts of the plant fail and need**  
 8 **to be replaced, if it is over \$50,000 that's being**  
 9 **replaced, that goes onto the capital side of the**  
 10 **budget and PNM makes a profit on that.**  
 11 **Is that correct?**  
 12 A. Yes. You can maintain something and  
 13 continue to maintain it over time, or you can run it  
 14 to failure. And if you run it to complete failure,  
 15 then you have to replace it.  
 16 **Q. Okay.**  
 17 MR. BOYD: It is 12:30. Let's take a  
 18 break.  
 19 THE VIDEOGRAPHER: We are now going off  
 20 the record.  
 21 The time is now approximately 12:31 p.m.  
 22 (A recess was taken 12:31 p.m. to 1:13  
 23 p.m.)  
 24 THE VIDEOGRAPHER: We are now going back  
 25 on the record.

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1 The time is now approximately 1:13 p.m.  
 2 **Q. (By Mr. Boyd) Were you -- Mr. Smith, were**  
 3 **you privy to the negotiations that resulted in the**  
 4 **agreement of the tentative agreement to close**  
 5 **Units 2 and 3?**  
 6 A. Yes, I was.  
 7 **Q. Okay. In what way?**  
 8 A. I attended several of the meetings with  
 9 the EPA and the New Mexico Department of  
 10 Environmental Quality and senior members of the PNM  
 11 executive team. And we discussed options -- issues  
 12 related to that.  
 13 **Q. Okay. In -- when -- during the course of**  
 14 **your meetings with PNM executives, was there any**  
 15 **discussion of the relationship between closing**  
 16 **Units 2 and 3 and Palo Verde 3, if you know what I**  
 17 **mean by Palo Verde 3?**  
 18 A. I mean if you don't mind, explain that a  
 19 little.  
 20 What do you mean by Palo Verde 3?  
 21 **Q. I mean PNM's interest in Palo Verde, the**  
 22 **Palo Verde nuclear plant.**  
 23 **Was there any discussion during your**  
 24 **meetings with PNM senior management regarding the**  
 25 **relationship, if any, between the closure of Units 2**

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1 **and 3 of the San Juan generating station and the**  
 2 **status of Palo Verde 3 as either within or without**  
 3 **the rate base?**  
 4 A. I don't recall if it was at the exact time  
 5 of the EPA discussions, but it was generally in that  
 6 time frame. It was --  
 7 **Q. Let me stop you there.**  
 8 **What was that time frame, just generally?**  
 9 A. Late fall of 2012.  
 10 **Q. Okay.**  
 11 A. We discussed a variety of options relative  
 12 to shutting down of different units and  
 13 configurations. And at that time I understood it  
 14 was important to PNM, if we were going to shut down  
 15 units, to get Palo Verde 3 back in the rate base.  
 16 **Q. And why was that? What was your**  
 17 **understanding of why it was important to them,**  
 18 **important to PNM?**  
 19 A. Well, with the shutdown of some San Juan  
 20 units, that would be a significant erosion of the  
 21 rate base. And so Palo Verde 3 was a viable source  
 22 of generation.  
 23 **Q. Okay. When you say a significant erosion**  
 24 **of the rate base, for the record, would you explain**  
 25 **what you mean by that?**

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1 A. Well, it was unsure at the time if there  
 2 would be recovery of the stranded assets in the  
 3 units that were shut down.  
 4 **Q. You mean any recovery at all?**  
 5 A. Right. It was uncertain what, if any,  
 6 recovery would happen.  
 7 **Q. Okay.**  
 8 A. And also moving forward, coal plants are  
 9 very capital intensive on an ongoing basis. And so  
 10 Palo Verde has a very similar capital structure that  
 11 requires continual capital injection, which is  
 12 something that would prevent the erosion of the rate  
 13 base.  
 14 **Q. Well, why -- in other words, it costs**  
 15 **money all the time. You constantly have to improve**  
 16 **or replace or fund the nuclear generating station or**  
 17 **coal-fired power plant because of the nature of**  
 18 **those plants and the fact that they wear out and**  
 19 **that parts wear out and that they need to be**  
 20 **improved.**  
 21 **Is that a fair statement?**  
 22 A. That is correct.  
 23 **Q. Okay. And so if I understand what you're**  
 24 **saying correctly, as we -- as you just testified**  
 25 **earlier, PNM gets a return, an investor's return, on**

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1 **anything that it spends for capital, that's on the**  
 2 **capital side of the ledger.**  
 3 **Is that correct?**  
 4 A. That is correct.  
 5 **Q. Okay. And that there are ongoing returns**  
 6 **that arise from nuclear-generating or**  
 7 **coal-generating power plants because of the nature**  
 8 **of those plants?**  
 9 A. Yes. There's ongoing return on the  
 10 investment made on the ongoing capital investments  
 11 in those plants.  
 12 **Q. Okay. And so once again, forgive me if**  
 13 **I'm asking you to repeat yourself.**  
 14 **But what was PNM faced with in terms of**  
 15 **the return to its investors as a consequence of the**  
 16 **closure of Units 2 and 3?**  
 17 A. Could you say that again, please?  
 18 **Q. Yes. What were the consequences to PNM's**  
 19 **profits, if you will, and to -- therefore, to its**  
 20 **investors -- as a consequence of the closure of**  
 21 **Units 2 and 3?**  
 22 A. PNM's business model is dependent upon the  
 23 rate base, and their investor reports talk about  
 24 growing that rate base.  
 25 If you're shutting down their largest

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1 assets, San Juan generating station or a portion of  
 2 it, PNM stands to lose a portion of that rate base.  
 3 It's detrimental to their business model relative to  
 4 profitability.  
 5 **Q. Okay. So why was -- at that time, in late**  
 6 **2012 -- why, based on your understanding of what**  
 7 **occurred at those meetings and your understanding of**  
 8 **the business, why -- what was PNM stat- -- Palo**  
 9 **Verde 3's status at the time that made it capable of**  
 10 **being used as an additional capital asset or an**  
 11 **additional part of the rate base?**  
 12 A. Yes. The timing was good, in that Palo  
 13 Verde Unit 3 was not part of the rate base, and it  
 14 was being leased. And the lease was to expire at a  
 15 time that was ripe for part of San Juan being shut  
 16 down.  
 17 **Q. Okay. Who was it being leased to?**  
 18 A. I don't know.  
 19 **Q. Okay. And what does it mean when you say**  
 20 **moving it into rate base?**  
 21 A. My understanding is when you -- at  
 22 San Juan, when I made capital expenditures, those  
 23 were eventually moved into the rate base, which is  
 24 the amount of investment in the company that is  
 25 guaranteed -- I won't say guaranteed -- but deserves

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1 a rate of return under regulatory relief.  
 2 **Q. Okay. And was PNM -- was Palo Verde 3, at**  
 3 **that time in late 2012, not generating that sort of**  
 4 **return?**  
 5 A. No. My understanding is Palo Verde 3, at  
 6 that point in time, was not part of the rate base.  
 7 **Q. Okay. Okay. And -- okay.**  
 8 **Now you've given us some examples in the**  
 9 **course of your deposition about capital investments**  
 10 **ongoing capital investments, that can be made in,**  
 11 **for example, a coal-burning power plant: Replacing**  
 12 **pumps, replacing pipes, whatever it may be, correct?**  
 13 A. Correct.  
 14 **Q. Okay.**  
 15 MR. BOYD: Let's go off the record for a  
 16 minute.  
 17 THE VIDEOGRAPHER: We are now going off  
 18 the record.  
 19 The time is approximately 1:22 p.m.  
 20 MR. BOYD: Well, nevermind. sorry.  
 21 **Q. (By Mr. Boyd) What are -- when you left**  
 22 **PNM, what were some of the planned capital**  
 23 **improvements that were going to be made to Units 1**  
 24 **and 4 -- and/or 4?**  
 25 A. I don't recall off the top of my head.

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1 **Q. Okay. Was one of them a balanced -- a**  
 2 **so-called balanced draft system?**  
 3 A. That had been talked about. But at that  
 4 point in time, I don't recall it being -- meeting  
 5 the justification requirements.  
 6 **Q. Okay. Would you explain what a balanced**  
 7 **draft system does?**  
 8 A. Sure. If I made a reference back to -- I  
 9 talk about the boiler in the large box with the  
 10 fireball inside of it.  
 11 And of course you have to push air in with  
 12 the coal, so that you've got a coal and air mixture  
 13 for the fire.  
 14 And at that point in time, if you're  
 15 pushing air in, it -- it can make the boiler under a  
 16 positive pressure.  
 17 And that's exactly the case at San Juan  
 18 generating station. The boiler, and which the  
 19 ductwork downstream of the boiler, is operating at a  
 20 positive air pressure.  
 21 **Q. Now, let me interrupt you there.**  
 22 **That's the way it's supposed to work,**  
 23 **correct?**  
 24 A. That's the way it was designed.  
 25 **Q. Okay. That's what I meant. Thank you.**

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1 A. Yes.  
 2 Balanced draft is where you pull more air  
 3 out of the boiler than is being put in. So  
 4 essentially, the boiler and the ductwork downstream  
 5 of it operate at a slightly negative air pressure,  
 6 and there's advantages to that.  
 7 San Juan was designed with the positive  
 8 pressure. And when it's new -- and over the course  
 9 of many years, as leaks developed in the casing and  
 10 ductwork outside of the boiler, those leaks were  
 11 repaired. You have to repair those leaks under  
 12 positive furnace pressure because, otherwise, the  
 13 burnt fuel and gas would escape out those leaks.  
 14 You would essentially be putting burnt flue gas  
 15 outside around the unit before it's even being  
 16 treated by environmental equipment, and it's  
 17 hazardous to employees.  
 18 **Q. Okay. And it also -- maybe you've**  
 19 **mentioned this -- it would compromise the pressure**  
 20 **would it not, the leaks?**  
 21 A. Yes. The flue gas leaking out the boiler  
 22 casing or the ductwork does compromise the pressure,  
 23 yes.  
 24 **Q. Okay. And that's a -- is fixing those**  
 25 **leaks a routine part of maintenance of a power plant**

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1 like that one?  
 2 A. Absolutely.  
 3 **Q. Okay. And what is the relationship, if**  
 4 **any, between that system and those leaks, if any,**  
 5 **and balanced draft, if there is any relationship?**  
 6 A. Sure. In the 2014 budget, PNM planned to  
 7 spend roughly about 1.2 million on repairing leaks.  
 8 Under balance draft, it's in excess of  
 9 75 million. The balance draft would save PNM the  
 10 1.2 million in O&M costs each year, to prevent them  
 11 from having to fix those leaks.  
 12 **Q. Okay. So if I understand correctly,**  
 13 **you've got leaks that develop and you have positive**  
 14 **pressure that is inside the boiler and the related**  
 15 **pipng system.**  
 16 **And so if you have a leak, it pushes air**  
 17 **and fumes and whatever is in the pipe, or in the**  
 18 **boiler, out into the atmosphere of the plant.**  
 19 **Is that correct?**  
 20 A. That's correct.  
 21 **Q. Okay. And that if you have balanced**  
 22 **draft, what it does is to create a slight negative**  
 23 **pressure so that even if you have a leak, nothing is**  
 24 **going to go out; it's going to stay in because you**  
 25 **have this slight negative pressure?**

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1 A. That is correct.  
 2 **Q. Okay. And repairing the leaks. Is --**  
 3 **repairing the leaks at the rate of \$1.2 million per**  
 4 **year, is that on the capital side of the budget or**  
 5 **the O&M side of the budget?**  
 6 A. The leak repairs are the O&M side of the  
 7 budget.  
 8 **Q. Okay. And so that is an expenditure**  
 9 **that's normal maintenance, and it's -- that**  
 10 **expenditure is not something that is passed on to**  
 11 **the ratepayers in a source of profit.**  
 12 **Is that correct?**  
 13 **Or I shouldn't have said it that way. Let**  
 14 **me withdraw the question because I think I misspoke.**  
 15 **If it's on the O&M side of the budget,**  
 16 **that's not a capital expenditure to which -- as to**  
 17 **which PNM is entitled to make a profit?**  
 18 A. That is correct.  
 19 **Q. Okay. If PNM installs balanced draft,**  
 20 **what will that cost, or what is that projected to**  
 21 **cost? I think you said, but I want you to tell me**  
 22 **again if you don't mind.**  
 23 A. It's public record that the balanced draft  
 24 and the SNCR together are around \$150 million for  
 25 the two remaining units.



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1 And it's also of record that more than  
 2 half of that amount is balanced draft.  
 3 **Q. Okay.**  
 4 A. How much more, I don't know. It's at  
 5 least about 75 million.  
 6 **Q. Okay.**  
 7 A. And that is capital.  
 8 **Q. It's a capital expenditure as to which PNM**  
 9 **would be entitled to make a profit?**  
 10 A. That is correct.  
 11 **Q. Okay. Have -- as the manager of the**  
 12 **plant -- strike that.**  
 13 **If we forgot about the issue of which side**  
 14 **of the ledger these expenditures were on, and you**  
 15 **were just the manager of the plant trying to run the**  
 16 **plant as efficiently and effectively and**  
 17 **economically as you could, and you were spending**  
 18 **\$1.2 million a year on repairing leaks, or you could**  
 19 **fix that problem and just let the leaks stay there**  
 20 **and spend \$75 million or more on balanced draft,**  
 21 **which do you think would be the prudent thing to do?**  
 22 A. When I'm faced with a decision whether or  
 23 not to invest capital or continue to expend O&M, you  
 24 often look for a payback period.  
 25 And if the capital project would

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1 eliminate, or be in a payback of about three years,  
 2 then the capital project is considered justified.  
 3 So under a \$1.2 million a year O&M  
 4 expenditure, a capital project of 3.6 million would  
 5 justify the project.  
 6 **Q. Okay.**  
 7 A. It's not the only reason we justify  
 8 capital projects, but from a strict accounting  
 9 standpoint that's what we look towards.  
 10 **Q. Okay. So in this case it's not -- if it's**  
 11 **\$75 million instead of \$3.6 million, I take it your**  
 12 **conclusion would be what?**  
 13 A. That it's not justified under payback.  
 14 **Q. It's not even --**  
 15 A. The capital project is not justified under  
 16 the payback that we get from saving the O&M dollars.  
 17 **Q. It's not even close, is it?**  
 18 A. No, sir.  
 19 **Q. Just as a matter of curiosity, is there**  
 20 **any problem with leaving the leaks in place if you**  
 21 **have balanced draft, or does that just eliminate the**  
 22 **problem?**  
 23 A. No. It's -- it's critical that you  
 24 continue to fix the casing leaks and ductwork leaks,  
 25 the expansion joints. The air in leakage would

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1 cause problems with your sensors, to tell you how  
 2 much extra oxygen you have in the boiler so your  
 3 combustion is correct.  
 4 It can also cause cooling in areas of the  
 5 boiler you don't want to have cooled.  
 6 You will have tubes that are essentially  
 7 boiler tubes that are essentially quenched by the  
 8 cold air.  
 9 So casing leaks still need to be repaired.  
 10 The repair rate would be less because you don't have  
 11 ash blowing in.  
 12 **Q. Okay. So do you have an -- so is what**  
 13 **you've just described the repairs that you still**  
 14 **need to do, even if you have balanced draft? Are**  
 15 **those repairs, the costs of those repairs, part of**  
 16 **the 1.2 million you just quoted?**  
 17 A. Yes. If balance draft is installed there  
 18 will still need to be budget for casing leak  
 19 repairs, but it would be a much smaller magnitude.  
 20 **Q. Okay. Do you have any estimate of what**  
 21 **that magnitude would be?**  
 22 A. No, sir, I don't.  
 23 **Q. Okay. What happens to the productivity of**  
 24 **a plant if the quality of the coal deteriorates, and**  
 25 **why?**

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1 A. When you speak about productivity, I kind  
 2 of think of employee effectiveness. I think you're  
 3 talking about reliability.  
 4 Is that correct?  
 5 **Q. Okay. Yes, I am. That's what I'm talking**  
 6 **about.**  
 7 A. Okay. When coal quality changes or  
 8 degrades, it's more challenging for the plant to  
 9 run. It does create greater reliability issues.  
 10 **Q. Okay. And what is it that -- what is**  
 11 **the -- why? Why does that work that way?**  
 12 A. Maybe on the very basic terms, when we  
 13 talk about coal quality, that's typically described  
 14 in the amount of ash that's in the coal, and that  
 15 the coal heat content is not as much.  
 16 And a way to look at it is the amount of  
 17 ash in the coal is essentially like a lot of dirt in  
 18 the coal. And if you're pushing more dirt through  
 19 the mills, the pulverizers, you're pushing more dirt  
 20 through the bottom ash, more ash or dirt through the  
 21 other ash conveyance systems.  
 22 You get higher wear rates on either --  
 23 sanding boiler tubes is a way to look at it. You're  
 24 putting much more corrosive ash through pumps and  
 25 through pipes and through clinker grinders and ash

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1 conveyance.

2 **Q. Okay. And so overall, the effect of**

3 **deteriorating quality of the coal on a plant like**

4 **San Juan is what?**

5 A. Less reliability.

6 **Q. Okay. Do you need to burn more coal?**

7 A. Yes. If there's higher ash, that

8 typically means lower BTU content, so you have to

9 increase the amount of coal being burnt in the plant

10 to get the same amount of heat content for

11 generation.

12 **Q. Okay. And so is it fair to say, then,**

13 **that the plant operates less efficiently as the coal**

14 **quality goes down?**

15 A. Yes, it's less efficient.

16 **Q. Okay. Let's now actually go off the**

17 **record for a minute.**

18 THE VIDEOGRAPHER: We are now going off

19 the record.

20 It is roughly 1:36 p.m.

21 (A recess was taken from 1:36 p.m. to 1:39

22 p.m.)

23 THE VIDEOGRAPHER: We are now going back

24 on the record.

25 The time is approximately 1:39 p.m.

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1 Thank you.

2 **Q. (By Mr. Boyd) We've been talking about**

3 **the issue of the importance to PNM's business model**

4 **of capital investment.**

5 A. Yes, sir.

6 **Q. All right. And other than -- without**

7 **getting into detail about it, you would -- would you**

8 **agree that that statement, capital investment is**

9 **important to PNM's business model, is a true -- is a**

10 **correct statement?**

11 A. Yes, that is correct.

12 **Q. Okay. When you went off to the University**

13 **of Iowa to this program that PNM sent you to and**

14 **paid for, do you recall that?**

15 A. It was the University of Idaho.

16 **Q. I'm sorry. University of Idaho. It's**

17 **those I states, you know. I can never keep them**

18 **straight except for Illinois and Indiana. I know**

19 **where they are.**

20 **Was there a discussion, or were you -- as**

21 **part of the training, did it involve training with**

22 **respect to the issue of the future of solar and**

23 **other renewable energies to utilities like PNM?**

24 A. Yes, sir.

25 **Q. All right. And what were you trained**

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1 **there with respect to that issue, the issue of**

2 **whether or not utilities like PNM should or should**

3 **not or did or did not want to integrate more**

4 **renewables into their portfolio?**

5 A. Yes. My training at the University of

6 Idaho shows that solar power, solar voltaic,

7 especially, is problematic to the traditional

8 utility business model.

9 **Q. And why was that?**

10 A. The basis for that centers around the rate

11 base, and the purchase of solar voltaics is an

12 initial capital investment. But once they're

13 installed and generating power there's not an

14 ongoing stream of capital investment in the solar

15 panels.

16 Also, it tends to lower the base fuel rate

17 if the utility has a fuel clause.

18 **Q. Okay. And why does it lower the base fuel**

19 **rate if the utility has a fuel clause?**

20 A. In my limited understanding of fuel

21 clauses, a basic fuel rate is based upon what is --

22 would be prudent generation cost for fuel.

23 And if you look at the history in

24 New Mexico, that fuel base tends to continue to

25 increase over time due to higher costs of

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1 generation.

2 With solar power, the fuel costs are

3 essentially zero. So that would tend to pull down

4 the amount of fuel costs that the average customer

5 is paying for its electric bill for fuel costs.

6 **Q. Okay.**

7 **(Exhibit marked, 3.)**

8 **Q. (By Mr. Boyd) I'm handing you what I've**

9 **marked as Exhibit 3.**

10 **Can you identify that and testify as to**

11 **where that document comes from?**

12 A. Yes. I identify this as a document that

13 is included in the San Juan 2014 budget book that is

14 produced in October of 2013.

15 **Q. Is that part of Exhibit 2? If you want to**

16 **take a moment and look through it and confirm**

17 **whether it is or not, feel free.**

18 **We've tabbed the places where we've pulled**

19 **exhibits from there.**

20 A. Are they in order?

21 **Q. I think so, yes.**

22 **(The record was read as requested.)**

23 A. Yes, it appears that it is part of

24 Exhibit 2.

25 **Q. (By Mr. Boyd) And what does that chart**

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1 **show, or those charts?**  
 2 A. This is a line chart. It shows the  
 3 San Juan safety performance from 2007 through 2013.  
 4 It's compared to the Edison Electric Institute top  
 5 quartile.  
 6 **Q. Okay.**  
 7 A. And also a 2013 breakdown of the types of  
 8 San Juan injuries that were suffered at the plant in  
 9 2013.  
 10 **Q. Okay. Would you just generally summarize**  
 11 **what happened to the accident rate, or the safety**  
 12 **performance at the San Juan generating station,**  
 13 **during your managership?**  
 14 A. Yes. When I came on board, San Juan --  
 15 and became a manager, our accident rate was not in  
 16 these numbers. But I recall it, in the actual  
 17 number of injuries that we had each year at  
 18 San Juan. My first year we had 36 OSHA reportable  
 19 injuries at San Juan.  
 20 **Q. And what is an OSHA reportable injury?**  
 21 A. Well, there's specific criteria that meets  
 22 it. But in very basic terms, it means an injury  
 23 that's fairly significant, something that requires  
 24 medical attention or a prescription. It's not a  
 25 minor first aid injury.

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1 number one priority in their jobs, that making  
 2 megawatts takes second seat.  
 3 It involves a lot of training and emphasis  
 4 from management that we really mean safety is  
 5 number one.  
 6 It means ensuring that they have the  
 7 proper training to safely do their jobs.  
 8 It means teaching them things about the  
 9 mental state that people get in that can cause  
 10 injuries. Whether that is being frustrated or  
 11 rushing to try to get the job done, there's several  
 12 mental states that can lead to injuries.  
 13 It involves instituting programs like stop  
 14 work authority. Where an employee may see something  
 15 that appears to be unsafe he has the authority to  
 16 say, Wait a minute. Let's stop this job and see  
 17 what we can do to understand the safety elements of  
 18 it.  
 19 There's many things.  
 20 Ensuring that employees, before they begin  
 21 every job, stop and look at the hazards involved in  
 22 the job and make sure that they're taking the steps  
 23 to properly mitigate it.  
 24 **Q. Okay. And that was what you focused on as**  
 25 **manager?**

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1 **Q. Okay. And what happened to -- when you**  
 2 **left where was the injury -- where was the -- what**  
 3 **was the performance rate?**  
 4 A. We got the performance rate down to seven  
 5 OSHA reportable injuries at the time of my  
 6 departure.  
 7 **Q. So it was from how many down to seven?**  
 8 A. 36 down to 7.  
 9 **Q. Okay. And what is the top quartile, the**  
 10 **Edison Electric Institute top quartile? Where does**  
 11 **that fall?**  
 12 A. That's in the OSHA reportable rate. If  
 13 you applied it to the roughly 400 employees that  
 14 work at San Juan, that would be about three  
 15 employees.  
 16 **Q. Okay. And to what do you attribute what**  
 17 **appears to be your success in getting the injury**  
 18 **rate down, as far as it -- got it down after you**  
 19 **arrived?**  
 20 A. Improving safety performance is a  
 21 multipronged event. You have to take it from  
 22 several different angles.  
 23 One of the major parts is changing the  
 24 culture at the plant, and the culture in terms of  
 25 making sure employees know that safety is the

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1 A. Absolutely. That's my number one goal.  
 2 **Q. All right. Did you ever have any -- were**  
 3 **there ever any issues of funding that effort that**  
 4 **arose?**  
 5 A. Yes. In early 2013, 40 percent -- the  
 6 employees were missing 40 percent of their OSHA  
 7 required training. Things like scaffolding  
 8 inspection, respiratory use, ladder safety,  
 9 lockout/tagout systems.  
 10 They were missing 40 percent of their  
 11 training, and if we didn't take steps to give them  
 12 the skills and knowledge they needed to do their  
 13 jobs we were faced with more injuries.  
 14 It was supposed to be a corporate  
 15 supported program, and corporate was supposed to  
 16 supply the training. They kept falling short on  
 17 that. And at one point in time I asked my superiors  
 18 if I could contract out the training to get it done  
 19 so that people could get the safety training they  
 20 needed.  
 21 I was denied that request based upon  
 22 budgetary issues.  
 23 **Q. Okay. And who was that? Who denied the**  
 24 **request?**  
 25 A. That was Mr. Olson.

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<p>1 (Exhibit marked, 4.)</p> <p>2 <b>Q. (By Mr. Boyd) Okay. I'm handing you what</b></p> <p>3 <b>I've marked as Exhibit 4. Is that also an exhibit</b></p> <p>4 <b>from -- or a page from Exhibit 2?</b></p> <p>5 <b>And would you state the -- let's go back.</b></p> <p>6 <b>Let me digress for a moment.</b></p> <p>7 <b>Would you identify the title of those</b></p> <p>8 <b>charts, just the title at the top, so we know what</b></p> <p>9 <b>page we're looking at.</b></p> <p>10 A. Yes. The title of the chart is "San Juan</p> <p>11 Safety Performance Versus EDI Top Quartile</p> <p>12 Performance and 2013 San Juan Injuries Listed By</p> <p>13 Trade."</p> <p>14 <b>Q. And that's Exhibit 3 that you just</b></p> <p>15 <b>referred to.</b></p> <p>16 <b>And now I'll ask you to tell me the title</b></p> <p>17 <b>of Exhibit 4, for the record.</b></p> <p>18 A. The title of Exhibit 4 is "Core Quality</p> <p>19 Trend for 2013."</p> <p>20 <b>Q. Okay.</b></p> <p>21 A. And I recognize it as a document I've</p> <p>22 seen. And this doc- -- I've never seen the entire</p> <p>23 thing printed before.</p> <p>24 But once you -- the pie charts I</p> <p>25 recognize, and they're in here, so I'm confident</p>	<p>1 (Exhibit marked, 5.)</p> <p>2 <b>Q. (By Mr. Boyd) Okay. All right.</b></p> <p>3 <b>Now I'm going to hand you Exhibit 5, and</b></p> <p>4 <b>I'll ask you to state for the record whether that's</b></p> <p>5 <b>derived from Exhibit 2 and what its title is.</b></p> <p>6 A. Yes. I'm looking at Exhibit 5. It's</p> <p>7 titled "San Juan Station Reliability Discussion."</p> <p>8 And I do recognize it and see it here that</p> <p>9 it is contained also in Exhibit 2.</p> <p>10 <b>Q. All right. And what does that document</b></p> <p>11 <b>show with respect to the reliability of the San Juan</b></p> <p>12 <b>plant?</b></p> <p>13 A. This document has a narrative that speaks</p> <p>14 about reliability of San Juan from January 2011</p> <p>15 forward.</p> <p>16 It speaks of sulphur content and the fuel</p> <p>17 coal quality.</p> <p>18 It talks about ash content, sulphur</p> <p>19 content.</p> <p>20 And then at the bottom there's a graph</p> <p>21 that talks about the availability factor of all four</p> <p>22 units and the station, as well as the equivalent</p> <p>23 forced outage rate.</p> <p>24 <b>Q. Okay. And that's the EAF factor we talked</b></p> <p>25 <b>about earlier in the deposition.</b></p>
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<p>1 that all the -- what I'm looking at in Exhibit 4 is</p> <p>2 contained in Exhibit 2.</p> <p>3 <b>Q. All right. And what is -- what does that</b></p> <p>4 <b>chart show?</b></p> <p>5 A. The chart at the bottom refers to</p> <p>6 coal/sulphur content, and it refers to the amount of</p> <p>7 sulphur within the coal.</p> <p>8 <b>Q. And what is the trend of the sulphur</b></p> <p>9 <b>content in the coal as reflected in that chart?</b></p> <p>10 A. From my experience and knowledge this is a</p> <p>11 normal trend.</p> <p>12 <b>Q. A normal trend?</b></p> <p>13 A. Yes, sir.</p> <p>14 <b>Q. I.e., that the sulphur content goes up?</b></p> <p>15 A. Yes. Sulphur content varies.</p> <p>16 <b>Q. Okay.</b></p> <p>17 A. Heat content, BTU content, mercury</p> <p>18 content. There is variations in the coal.</p> <p>19 <b>Q. Okay. And what is the significance of</b></p> <p>20 <b>sulphur content? Is more sulphur content good or is</b></p> <p>21 <b>less sulphur content good or does it matter?</b></p> <p>22 A. We are required to maintain sulphur</p> <p>23 emissions within particular limits. So the higher</p> <p>24 the amount of sulphur going into the units the more</p> <p>25 we have to remove.</p>	<p>1 <b>Is that correct?</b></p> <p>2 A. The left-hand side of the graph is the EAF</p> <p>3 factor.</p> <p>4 We haven't discussed the equivalent forced</p> <p>5 outage rate yet.</p> <p>6 <b>Q. Okay. And do those -- the figures in</b></p> <p>7 <b>that -- well, strike that.</b></p> <p>8 <b>Does that show a forced outage rate?</b></p> <p>9 A. Yes, it does.</p> <p>10 <b>Q. Okay. And what has happened to the forced</b></p> <p>11 <b>outage rate over the period of time 2012 through --</b></p> <p>12 <b>how far does that go forward through? 2013?</b></p> <p>13 A. Yes. This is the budget book that was</p> <p>14 produced in October of 2013. So it appears to be --</p> <p>15 prior to that time is when they ended the numbers.</p> <p>16 But the forced outage rate in 2012 for the</p> <p>17 entire site was 8.7. In 2013 it nearly doubled at</p> <p>18 14.1 percent.</p> <p>19 <b>Q. Okay. And in your opinion, is that</b></p> <p>20 <b>increase related, if at all, to the maintenance</b></p> <p>21 <b>budget cuts that you've discussed earlier in your</b></p> <p>22 <b>deposition?</b></p> <p>23 A. Absolutely. There's a direct correlation.</p> <p>24 <b>Q. Okay.</b></p> <p>25 A. For the record, should we define what a</p>

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1 forced outage rate is?

2 **Q. Yes. Absolutely. Thank you.**

3 **I always like to be coached by the**

4 **witness.**

5 A. I'm sorry.

6 **Q. No, no, no. I'm glad you did. I meant**

7 **that sincerely.**

8 A. Equivalent forced outage rate is another

9 form of measuring reliability. As you recall, we

10 talked about equivalent availability factor, which

11 is how much the unit was available to run in the

12 entire time frame.

13 On the other hand, the equivalent forced

14 outage rate measures directly the amount of time

15 that the unit was unintentionally available to run.

16 Another way to look at the forced outage

17 rate is with the automobile. This is the number of

18 times that the unit broke down and left us stranded

19 on the side of the road.

20 **Q. Okay. Now when we talked earlier about**

21 **the availability rate, you talked about the figures**

22 **of 75 percent and 85 percent or thereabouts.**

23 **What's the difference between those**

24 **figures and the figures you just described, and what**

25 **is the relationship between the two, for the record?**

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1 A. The equivalent availability factor is

2 measured from the bottom up, so to speak. That's

3 the number of hours starting on January 1st through

4 the 31st that the unit was available to run. This

5 is the total number of megawatts that it could have

6 produced.

7 And again, if it was running 24/7, 365

8 days a year, it would reach an EAF of 100 percent.

9 On the other hand, the forced outage rate

10 is those times when it didn't run when you wanted it

11 to, and that starts from the top bottom -- from the

12 top going to the bottom.

13 So a forced outage rate of 10 percent

14 means that 10 percent of the time when you needed

15 the unit it was broken and couldn't run.

16 **Q. Okay.**

17 A. One other point of clarification on the

18 availability factor.

19 **Q. Okay.**

20 A. That also includes the number of planned

21 outages. So if the unit's in a planned outage, you

22 intended to take it down and fix it, that does cause

23 a detrimental hit on the availability factor of EAF.

24 **Q. But it's not unplanned?**

25 A. If it's planned, either way.

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1 **Q. If it's planned?**

2 A. Yes.

3 **Q. It doesn't go in the category you were**

4 **just talking about earlier, which is the -- what is**

5 **it, the unplanned outage?**

6 A. The forced outage rate?

7 **Q. The forced outage rate.**

8 A. Right.

9 **Q. Right. It doesn't go there.**

10 **The planned outage, that's -- in other**

11 **words, a planned outage is the opposite of a forced**

12 **outage?**

13 A. Correct. Maybe a little clarification

14 there.

15 If the unit could run all year 100 percent

16 it would be 100 percent.

17 If I had a planned outage, take it down

18 and fix it because I wanted to, it took up

19 10 percent of that, now I'm looking at a 90 percent

20 availability factor.

21 And if I had a forced outage rate, where

22 it broke down and I didn't want it to, I'll have

23 another 10 percent. Now my EAF is 80 percent. The

24 forced outage rate is 10 and the planned outages

25 were 10.

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1 **Q. Okay. And do you know what the industry**

2 **standard is for forced outages?**

3 A. Below a 5 percent forced outage rate is

4 considered a well-ran coal plant.

5 **Q. Okay. And above that?**

6 A. Between 5 and 10 percent. Probably some

7 of the coal plants run in that direction. If you

8 get close to 10 percent you've got problems at that

9 coal plant.

10 **Q. What if you're at 15 percent?**

11 A. You've definitely got problems at that

12 coal plant. It's not a very reliable plant.

13 (Exhibit marked, 6.)

14 **Q. (By Mr. Boyd) I'm handing you what I've**

15 **marked as Exhibit 6.**

16 **Would you tell me whether that's part of**

17 **Exhibit 2, and read the title into the record?**

18 A. Yes. Exhibit 6 is titled "Unit 1

19 Reliability Review, Data from January 2012 through

20 August of 2013."

21 And I'm confirming here that it is --

22 Exhibit 6 is a part of Exhibit 2.

23 **Q. Okay. And what does that document show?**

24 A. Really, to get the best overview of this,

25 you would want to look at the bottom of it, which is

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1 a large pie chart.  
 2 And it documents all of the lost  
 3 generation for the unit for that time period.  
 4 And in other words, it's got several  
 5 slices of pie, and each pie represents a particular  
 6 reason why the unit was not running and the reason  
 7 for that.  
 8 The narrative at the top of the exhibit  
 9 identifies the top five reasons why the unit was not  
 10 running during this time frame.  
 11 **Q. Now, are those -- do those reflect**  
 12 **unplanned outages or all outages?**  
 13 A. This reflects unplanned outages or forced  
 14 outages.  
 15 **Q. Okay. And again, does that document**  
 16 **corroborate what you -- what you've testified to**  
 17 **about the impact of the approximately 50 percent**  
 18 **budget cut in your discretionary maintenance budget?**  
 19 A. Absolutely. The things that caused lost  
 20 generation during this time frame, especially in  
 21 2013, are a direct correlation to the things that I  
 22 had in the budget that needed to be maintained but  
 23 then were subsequently chopped from the budget.  
 24 **Q. Can you give me an example from that sheet**  
 25 **of one of those? I don't want you to go through the**

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1 **whole thing, but just give me an example.**  
 2 A. Yes. The number two cause of lost  
 3 generation for this unit was the hot well pump. The  
 4 hot well pump went down, and it took a significant  
 5 amount of time to repair it.  
 6 And so again, if we would have replaced  
 7 the bearings at the opportunity that we had during  
 8 other forced outages, that would not have been a  
 9 cause of lost generation.  
 10 **Q. Okay. Is that -- what you just said -- I**  
 11 **want to understand what you just said.**  
 12 **If there's a forced outage, is that an**  
 13 **opportunity to perform preventative maintenance on**  
 14 **equipment that you believe needs it?**  
 15 A. That is an opportunity to go out and fix  
 16 everything that you have money to fix.  
 17 **Q. Okay. And in this case, were there forced**  
 18 **outages that could have been used to repair the hot**  
 19 **well -- as an opportunity to repair the hot -- or to**  
 20 **maintain -- perform preventative maintenance on the**  
 21 **hot well pump?**  
 22 A. This document doesn't tell you the timing  
 23 of the outages.  
 24 **Q. I'm asking you if you know.**  
 25 A. I do not know.

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1 **Q. Okay. That's the -- that's a good answer.**  
 2 **Just tell me what you know.**  
 3 **(Exhibit marked, .)**  
 4 **Q. (By Mr. Boyd) Can you tell me what**  
 5 **Exhibit 7 is?**  
 6 A. Yes. Exhibit 7 is titled "The Unit 4  
 7 Reliability Review, Data from January of '12 through  
 8 August of '13."  
 9 And I recognize it as a document that's  
 10 contained in Exhibit 2.  
 11 **Q. Okay. And what does that document show?**  
 12 A. This document shows the same type of  
 13 format of lost megawatts that we looked at on Unit 1  
 14 relative to what broke on the unit during this time  
 15 frame.  
 16 **Q. Okay. And with respect to Exhibits 6 and**  
 17 **7, do you -- in your opinion, do these accurately**  
 18 **reflect the lost megawatts associated with those two**  
 19 **units, or the mechanisms for them?**  
 20 A. I assume they are accurate. I don't know  
 21 for sure. This is a PNM-produced document.  
 22 From what my experience tells me, these  
 23 are the types of mechanisms that I predicted would  
 24 cause the loss of megawatts in my 2013 budget.  
 25 **Q. Okay.**

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1 **Thank you.**  
 2 MR. ORTIZ: Excuse me. Could -- a  
 3 clarification question.  
 4 What is the PNM-produced document?  
 5 MR. BOYD: This whole thing. Everything  
 6 in it.  
 7 (Discussion off the record.)  
 8 **Q. (By Mr. Boyd) Who -- to your knowledge,**  
 9 **who produces this document, this 800-page document**  
 10 **that's in front of you?**  
 11 MR. BUTLER: Exhibit 2.  
 12 A. Exhibit 2 is a document available on the  
 13 MSR website.  
 14 **Q. (By Mr. Boyd) What is the MSR website?**  
 15 A. MSR is an acronym for one of the owners of  
 16 San Juan, Modesto, Sacramento, and Redding. They  
 17 are a public power agency located in California.  
 18 They're a percentage owner in Unit 4.  
 19 This document was on their website. It is  
 20 a two-part document.  
 21 The first part of the document -- the  
 22 first several hundred pages, maybe the first 172  
 23 pages, I don't recall -- is information that is  
 24 produced by MSR.  
 25 **Q. Okay. And then what follows from that?**

<p style="text-align: right;"><b>Page 150</b></p> <p>1 A. The latter part of the document is the 2 San Juan budget book for 2014 that is produced in 3 October of 2013. 4 It is a budget book that I actually had 5 drafted during my time. I recognize the format. 6 It's produced to enlighten the owners on 7 what the plan is for the units and talk about 8 reliability and update them on all the issues 9 associated with the units. 10 <b>Q. Okay.</b> 11 <b>(Exhibit marked, 7.)</b> 12 <b>Q. (By Mr. Boyd) I'm going to jump ahead for</b> 13 <b>a minute here and ask you to identify Exhibit 11,</b> 14 <b>which is two pages.</b> 15 A. Yes. Exhibit 11 is titled "San Juan 16 Generating Station 2014 Budget, Public Service 17 Company of New Mexico." 18 And then the second page of Exhibit 11 is 19 the introduction and overview. I recognize these 20 two pages as pages that I formatted and constructed 21 during my first year as plant manager in 2010. 22 <b>Q. Okay. And who -- what entity prepares</b> 23 <b>those documents?</b> 24 A. The San Juan plant management team. 25 <b>Q. And who do they work for?</b></p>	<p style="text-align: right;"><b>Page 152</b></p> <p>1 had a handout of Exhibit 11? 2 MR. BOYD: No, you haven't. That came up 3 serendipitously. 4 MR. THRONE: Okay. 5 (Exhibit marked, 8.) 6 <b>Q. (By Mr. Boyd) I'm handing you what I've</b> 7 <b>marked as Exhibit 8.</b> 8 <b>Can you tell me what that shows?</b> 9 <b>First of all, what's the title and where</b> 10 <b>does it come from?</b> 11 A. Yes. Exhibit 8, entitled "Budget," and it 12 says "Overall Budget." 13 This is a part of Exhibit 2. I recognize 14 it. 15 This speaks to overall plant total O&amp;M. 16 It's called plant controllable. And when you say 17 plant controllable, that's excluding A&amp;G. 18 The information that I garner from looking 19 at this graph is that plant O&amp;M on the base budget, 20 excluding outages, is fairly stable, at or near -- 21 well, slightly above, slightly below -- \$80 million 22 through 2016 and 2017 for the next several years. 23 So essentially, the O&amp;M budget, outside of 24 outages, is fairly stable at about \$80 million for 25 the four units that are in operation at the plant.</p>
<p style="text-align: right;"><b>Page 151</b></p> <p>1 A. They report to PNM. 2 <b>Q. And whose logo is on the front of that?</b> 3 A. PNM. 4 <b>Q. Okay. Is that a PNM document?</b> 5 A. It's produced by PNM. 6 <b>Q. Okay.</b> 7 A. It's a public document. 8 <b>Q. I understand it's a public document.</b> 9 <b>But PNM created that document.</b> 10 <b>Is that correct?</b> 11 A. That is correct. 12 <b>Q. Okay. Thank you.</b> 13 A. And a point of clarification. This is a 14 2014. 15 I talk about recognizing it because I did 16 the initial ones in 2010, 2011, and 2012. 17 <b>Q. Okay. And all of the exhibits that we</b> 18 <b>have been going through now come from the portion of</b> 19 <b>Exhibit 3 that was created by PNM?</b> 20 A. A portion of Exhibit 2. 21 <b>Q. I'm sorry. Of Exhibit 2 that was created</b> 22 <b>by PNM.</b> 23 <b>Is that correct?</b> 24 A. That is correct. 25 MR. THRONE: Am I correct that we have not</p>	<p style="text-align: right;"><b>Page 153</b></p> <p>1 <b>Q. Okay. Okay.</b> 2 <b>Does this reflect that at some point -- if</b> 3 <b>you read the top of that, can you see that the</b> 4 <b>maintenance budget for Units 2 and 3 stops being</b> 5 <b>included there at some point?</b> 6 A. Well, yes. 7 <b>Q. And what year is that?</b> 8 A. My understanding is that Units 2 and 3 9 will cease operations at the end of the year in 10 2017. 11 At that point in time it will be just 12 Units 1 and 4 in operation. 13 From the average about \$80 million budget 14 that the plant expended for four-unit operation at 15 that point in time, it looks like the plant is 16 projecting about 65 million to run two units. 80 17 million to run four units, 65 million to run two 18 units. 19 <b>Q. Okay. Is that -- is that a surprise to</b> 20 <b>you, or is that expected?</b> 21 A. It is not a surprise to me, based upon the 22 selection of units that are going to run. 23 <b>Q. Okay. Why do you say that?</b> 24 A. By continuing -- shutting down Units 2 and 25 3 and continuing to run Units 1 and 4, you're not</p>

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1 taking advantage of any of the scales of economy in  
 2 the plant. One and two -- this is an example.  
 3 Those are fourths. Those are units that are fairly  
 4 exchangeable, similar size.  
 5 Units 3 and 4, they're a different type of  
 6 unit. They're much larger, a different design.  
 7 They have systems that support each other. Air  
 8 compressors supply both Unit 1, an set of air  
 9 compressors supply Units 3 and 4.  
 10 So if you shut down Units 2 and 3, you  
 11 still have to have air compressors running on  
 12 Unit 1. You still have to have air compressors  
 13 running for Unit 4.  
 14 So you're not taking advantage of any of  
 15 those scales of economies.  
 16 **Q. Okay. I understand.**  
 17 **(Exhibit marked, 9.)**  
 18 **Q. (By Mr. Boyd) I'm going to hand you what**  
 19 **I've marked as Exhibit 9 and ask you if you can**  
 20 **identify that.**  
 21 A. Yes. Looking at Exhibit 9, I do recognize  
 22 that as a document -- pages contained in Exhibit 2.  
 23 It doesn't have a specific title, but it  
 24 starts out with the first three words "Additional  
 25 diabasic acid."

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1 It's also entitled Page Number 25, in the  
 2 bottom right-hand corner.  
 3 I recognize this document. It talks about  
 4 the use of diabasic acid in controlling sulphur in  
 5 the first paragraph.  
 6 It talks about the use of activated carbon  
 7 for controlling mercury in the second paragraph.  
 8 And then it talks about urea costs, which  
 9 are the injection of ammonia for the SNCR past the  
 10 shutdown of Units 2 and 3.  
 11 Looking at the numbers, it's a period of  
 12 time from 2016 through 2020, and it talks about  
 13 capacity factor. This is -- the capacity factor is  
 14 the amount of generation that that unit is expected  
 15 to produce.  
 16 And the thing that stands out relative to  
 17 these numbers is Unit 1 is not expected to produce  
 18 more than 80 percent of its capacity going forward.  
 19 **Q. And why is that significant?**  
 20 A. Well, as I have testified earlier, a  
 21 well-run coal plant has numbers in the low to mid  
 22 90s.  
 23 Unit 1, if its expected capacity factor is  
 24 80 or below in the future, you're not getting all  
 25 that you can out of that unit for the money that

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1 you've invested in it.  
 2 **Q. Okay. Is -- is the 80 percent a**  
 3 **reflection of the age and condition of the plant as**  
 4 **of now, or the expected way in which it's going to**  
 5 **be maintained going forward, or both?**  
 6 A. As we discussed earlier, you can extend  
 7 the life of the plant quite a bit by continuing to  
 8 maintain it and upgrade equipment as needed.  
 9 I understand the life of San Juan is  
 10 predicted to be to 2053. And if they plan on  
 11 running the unit that long, you would think it would  
 12 be -- I believe, in my experience -- it would be  
 13 prudent to invest in the maintenance and the repairs  
 14 that are required to get a better capacity out of  
 15 that unit.  
 16 **Q. So you think it could be done?**  
 17 A. Absolutely.  
 18 **Q. Okay.**  
 19 **(Exhibit marked, 10.)**  
 20 **Q. (By Mr. Boyd) I'm showing you now what**  
 21 **I've marked as Exhibit 10.**  
 22 **Would you tell me what that is by title,**  
 23 **and then also tell me whether it's part of**  
 24 **Exhibit 2?**  
 25 A. Yes. I'm looking at Exhibit 10, and it's

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1 titled "San Juan Generating Station Total Station  
 2 Budget Summary, 100 percent, in 2014."  
 3 I do recognize Exhibit 10 as being  
 4 contained within Exhibit 2.  
 5 **Q. Okay.**  
 6 A. Exhibit 10 lends direct support to what we  
 7 just talked about in Exhibit 9, when we talked about  
 8 why is it Unit 1 will not run well into the future,  
 9 and Exhibit 10 tells you why.  
 10 **Q. What does it show with respect to the**  
 11 **maintenance budget?**  
 12 A. It shows a 38 percent reduction in the  
 13 maintenance budget from the year before, where I had  
 14 chopped 19 million out of that budget.  
 15 **Q. So in other words, the budget -- do I**  
 16 **understand you correctly that in the following year**  
 17 **the budget cuts have increased?**  
 18 A. Yes, sir.  
 19 **Q. Okay. And in your opinion, what will the**  
 20 **effect on the operation of the San Juan generating**  
 21 **station be as a result of those increased**  
 22 **maintenance budget cuts?**  
 23 A. In my opinion, San Juan will continue to  
 24 run poorly. And based upon PNM investor reports for  
 25 the third quarter of 2014 it, in fact, did.



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1 **Q. Okay. And what effect -- I know I'm**  
 2 **asking you to repeat something you have said**  
 3 **earlier.**  
 4 **But what effect will that poor performance**  
 5 **have on the rates paid by you -- by PNM's customers?**  
 6 A. When San Juan performs poorly, that  
 7 generation needs to be replaced, typically, with  
 8 higher-priced generation. And the cost of that  
 9 higher-priced generation is then passed on to the  
 10 taxpayers and the customers of PNM.  
 11 **Q. Without any action by the PRC?**  
 12 A. No. If I may, a point of clarification.  
 13 **Q. Yes.**  
 14 A. When I talked about \$19 million being  
 15 chopped in the fall of '12 for the '13 budget, that  
 16 was after A&G.  
 17 And in Exhibit 10, this includes A&G. So  
 18 it's not an apples-to-apples comparison. However,  
 19 it is significant.  
 20 **Q. Okay. And what's A&G, for the record?**  
 21 A. A&G is the administrative and general fees  
 22 associated with running the plant. It's the  
 23 additional fees it takes to run the plant.  
 24 To kind of put it in perspective, in 2012  
 25 the O&M budget that was plant controllable without

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1 A&G was about 108 million. And I believe with A&G  
 2 that was an additional -- somewhere in the  
 3 neighborhood of about 30 million. I don't have that  
 4 in front of me, but it gives you a flavor for the  
 5 proportion of A&G versus the proportion of non A&G.  
 6 **Q. Okay. Have you -- in the course of your**  
 7 **employment with PNM, did you acquire stock in PNM?**  
 8 A. Yes, I did.  
 9 **Q. Okay. And do you still have that stock?**  
 10 A. No, I do not.  
 11 **Q. Okay. And when did you sell it?**  
 12 A. I sold it around March of 2013.  
 13 **Q. Okay. And why did you sell it?**  
 14 A. Well, I was concerned. I had earned the  
 15 stock, and I actually think I had contributed to the  
 16 price of the stock going up by how well I had ran  
 17 San Juan.  
 18 And the company had given me stock or  
 19 stock options as a way of compensating me for my  
 20 hard work.  
 21 And by the spring of 2013 I became  
 22 concerned because my superiors weren't taking it  
 23 very well that I expressed my concerns about the  
 24 poor maintenance of the plant and the fuel clause  
 25 and the safety issues.

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1 I thought it was prudent to go ahead and  
 2 sell my stocks and basically cash in on that  
 3 compensation and get it in the bank to protect my  
 4 family moving forward.  
 5 **Q. Okay.**  
 6 A. But I had other reasons too.  
 7 **Q. What was that?**  
 8 A. Well, like I said, it was stock that I had  
 9 earned. If what PNM was doing got out in the  
 10 public, I'm not sure the shareholders or the  
 11 investors would appreciate it and there might be a  
 12 chance that that stock price would drop pretty  
 13 significantly.  
 14 **Q. Okay.**  
 15 A. On the other hand, if it didn't get out  
 16 and PNM continued to profit by doing this, that was  
 17 kind of dirty profits. I didn't want that either.  
 18 **Q. Okay.**  
 19 MR. BOYD: I don't have any further  
 20 questions.  
 21 (Discussion off the record.)  
 22 EXAMINATION  
 23 BY MR. NOBLE:  
 24 **Q. Mr. Smith, my name is Chuck Noble. I**  
 25 **represent the Coalition for Clean Affordable Energy.**

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1 **The first question I have is: Were you**  
 2 **served a subpoena to appear here today?**  
 3 A. Yes, I was.  
 4 **Q. Now, you talked about this -- what's**  
 5 **called a balanced draft, this equipment called a**  
 6 **balanced draft.**  
 7 **Were you at PNM when this decision to add**  
 8 **a balanced draft was made?**  
 9 A. There was discussion about balanced draft,  
 10 and it had been something that had been actually  
 11 discussed for years.  
 12 I don't recall it being approved at the  
 13 point in time that I left PNM.  
 14 **Q. Okay. And you said that while you were**  
 15 **there it had not been justified?**  
 16 A. Yes, sir.  
 17 **Q. And can you talk about what you mean by**  
 18 **whether it had been justified or not?**  
 19 A. Yes. If I may reflect back to my  
 20 testimony earlier.  
 21 From a capital justification standpoint,  
 22 you look for the payback. You look at the net  
 23 present value of the project versus the amount of  
 24 savings that you realize for investing in the  
 25 project and then save money on O&M.

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1 **Q. Is there -- does PNM have some type of**  
 2 **written policy that capital additions need to be**  
 3 **cost justified?**  
 4 A. Yes. As a matter of fact, the last  
 5 several hundred pages of Exhibit 2 are examples of  
 6 capital projects and how they're justified and the  
 7 alternatives that are considered.  
 8 **Q. So that's a normal business practice for**  
 9 **PNM, is to look at these projects and look at what**  
 10 **alternatives to those projects are and see what the**  
 11 **best cost method of solving the problem is going**  
 12 **forward?**  
 13 A. That's correct. That's the prudent way to  
 14 manage the business.  
 15 **Q. Do you know if there is some PNM document**  
 16 **that says that's the prudent way to manage the**  
 17 **business?**  
 18 A. I would have to direct you to the last  
 19 couple hundred pages of Unit 2, which is an example  
 20 of it.  
 21 I'm not sure if there's a procedure, so to  
 22 speak, on how you do that.  
 23 **Q. All right. Did you attend the meetings**  
 24 **between the partners of the San Juan owners that**  
 25 **occurred while you were the plant manager at**

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1 **San Juan?**  
 2 A. Yes. Actually, I led many of those  
 3 meetings.  
 4 **Q. Okay. Did PNM ever inform its partners**  
 5 **that it was going to cut its own O&M budget and that**  
 6 **could likely cause increases in capital budgets?**  
 7 A. Could you say that again, please?  
 8 **Q. Did PNM ever inform the other partners**  
 9 **that it was going to cut the O&M budget for San Juan**  
 10 **power plant, and that could likely lead to increased**  
 11 **capital budgets for the San Juan plant?**  
 12 A. I'd have to answer your question with a  
 13 yes and no. Yes to the first part, and may I  
 14 explain?  
 15 **Q. Yes.**  
 16 A. When -- in the fall of '12, the 2013  
 17 budget to chop \$19 million in O&M, that O&M -- that  
 18 chop in O&M didn't relate to an increase in capital,  
 19 but the original capital goal still had to have been  
 20 met.  
 21 Relative to the information we provided to  
 22 the owners, the owners were happy to hear that I was  
 23 chopping \$19 million out of the budget. Of course  
 24 they pay a large portion of that.  
 25 The owners were not informed of the risk

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1 or a lowering of the plant goals. We told the  
 2 owners that we're chopping the budget by \$19 million  
 3 and we're still going to deliver 85 percent  
 4 performance.  
 5 **Q. 85 percent capacity factor?**  
 6 A. Availability factor.  
 7 **Q. Availability factor.**  
 8 **Is there a point at which -- a dollar cost**  
 9 **going to which a repair becomes a capital addition**  
 10 **rather than an expense?**  
 11 A. Yes. There is a threshold for a dollar  
 12 amount of expenditure to become capital, and that's  
 13 typically \$50,000.  
 14 But there's also other criteria for what  
 15 makes the capital threshold rather than just  
 16 strictly a dollar amount.  
 17 MR. NOBLE: Those are all the questions I  
 18 have.  
 19 Thank you.  
 20 MR. THRONE: John, I'm going to have a few  
 21 questions too.  
 22 MR. BOYD: Let's take a break.  
 23 THE VIDEOGRAPHER: We are now going off  
 24 the record.  
 25 The time is approximately 2:26 p.m.

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1 (A recess was taken from 2:26 p.m. to 2:36  
 2 p.m.)  
 3 THE VIDEOGRAPHER: We are now going back  
 4 on the record.  
 5 The time is approximately 2:36 p.m.  
 6 EXAMINATION  
 7 BY MR. ALBRIGHT:  
 8 **Q. Good afternoon, Mr. Smith.**  
 9 A. Good afternoon.  
 10 **Q. My name is Jeffrey Albright. I'm with the**  
 11 **law firm of Lewis Roca Rothgerber, and I represent**  
 12 **Bernalillo County, the County of Santa Fe, and the**  
 13 **City of Santa Fe in this proceeding.**  
 14 **I have just a few questions.**  
 15 **First, to begin with, distinctions of**  
 16 **Units 1 through 4, you mentioned earlier in your**  
 17 **testimony about some combination of common factors**  
 18 **and so forth.**  
 19 **Could you go through and just distinguish**  
 20 **what's different between Units 1 and 4 and what's in**  
 21 **common between 1 through 4 of the SJGS units?**  
 22 A. Yes. In very basic terms, Units 1 and 4  
 23 are fairly identical, not exactly.  
 24 And Units 3 and 4 are fairly identical,  
 25 not exactly.

<p style="text-align: right;"><b>Page 166</b></p> <p>1 Tell me how you would like me to proceed 2 after that. 3 <b>Q. Well, I think with regard to what 4 equipment is in common between 1 -- between 1 and 2 5 or between 3 and 4.</b> 6 A. Yes. I did the analysis on, What are the 7 different combinations of the units that would make 8 the most sense in terms from an engineering 9 perspective. 10 I believe we identified 17 different 11 systems that are common among the units. I can't 12 recall all the 17 units, but -- the 17 systems. 13 Many of the systems I can tell you about: Air 14 compressors, fly ash blowers, electrical 15 distribution systems, cooling water systems. I 16 think I have mentioned compressor systems. 17 Fly ash conveyance systems, coal delivery 18 systems, the conveyer belts that deliver the coal to 19 the units. 20 <b>Q. So even with the shutdown of units -- 21 proposed shutdown of Units 2 and 3, those systems 22 are going to have to be maintained in order to 23 operate Unit 1 and Unit 4, correct?</b> 24 A. That is correct. 25 <b>Q. And that's what would account for some of</b></p>	<p style="text-align: right;"><b>Page 168</b></p> <p>1 <b>that's common between 1 and 2 or between 2 and 3 2 or 3 and 4?</b> 3 A. The SCR works by injecting urea, which is 4 a liquid ammonia, by essentially spraying it into 5 the fireball in the furnace. It reacts with the NOX 6 at that point in time, and introduces the nitrous 7 oxides. 8 So essentially, all that's involved with 9 this SNCR is to be able to have the piping and pumps 10 and storage tank required to inject the ammonia into 11 the furnace. 12 With Units 1 and 4 being separate, it 13 would take an engineering evaluation to determine if 14 each unit needed its own storage tank and pumping 15 systems or if there's some commonality that -- a 16 single tank between both. That would have to be an 17 engineering evaluation. 18 <b>Q. Would Units 1 through 4 get the same SNCR 19 equipment or are the units sufficiently different 20 where they would require unique SNCR equipment?</b> 21 A. Yes. The SNCR equipment on Unit 1 would 22 have to be different than the SNCR equipment on 23 Unit 4. A different size boiler, different mass 24 flow would require a much larger system on Unit 4. 25 <b>Q. Often, in some of the numbers that were</b></p>
<p style="text-align: right;"><b>Page 167</b></p> <p>1 <b>the more than half cost that was projected in one of 2 the exhibits from the MSR report, correct?</b> 3 A. In my mind that would be -- account for a 4 lot of it, yes. 5 <b>Q. Or at least a contributing factor, 6 correct?</b> 7 A. Yes, sir. 8 <b>Q. Okay. I also want to call your attention 9 to Exhibit 8, I believe it was, from the MSR report. 10 The one that was titled "Budget" at the top. 11 It was a bar graph.</b> 12 A. Yes, sir. 13 <b>Q. You explained earlier, in your testimony 14 earlier today, what SCR was.</b> 15 <b>This says the chart does include costs for 16 SNCR O&amp;M.</b> 17 <b>Can you explain what SNCR is?</b> 18 A. Yes. SNCR stands for selective non 19 catalytic reduction. It -- its function is to 20 remove NOX out of the flue gas. It's not nearly as 21 effective as an SCR, which is selective catalytic 22 reduction. But along those lines, it's not nearly 23 as expensive. 24 <b>Q. Where is it located in the system? Is it 25 located with each unit or is this part of equipment</b></p>	<p style="text-align: right;"><b>Page 169</b></p> <p>1 <b>given -- I think there was a number given around 2 90.6 million of SNCR and balanced draft equipment. 3 And I believe at one point in time you split out 4 what that cost was.</b> 5 <b>Are -- are those two, the SNCR and the 6 balanced draft equipment, equipment that is -- that 7 works together or that have to be installed at the 8 same time, or could they be installed separately in 9 Units 1 through 4, or 1 and 4?</b> 10 A. Yes. My understanding of SNCR, balanced 11 draft, totally completely different. It -- the 12 balanced draft could have been installed 10 years 13 ago or 10 years from now, and the SNCR would still 14 have the same effectiveness. 15 <b>Q. Is there any maintenance savings by doing 16 them in tandem, as opposed to doing them as separate 17 projects?</b> 18 A. I'm sure that the outage to put one in 19 could -- there's some efficiencies by doing them in 20 the same outage. 21 <b>Q. Okay. So this could go back to where you 22 were talking about doing planned maintenance when 23 you have a system that's down, of doing several 24 things at one time to maximize that --</b> 25 A. Absolutely.</p>

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1 **Q. -- time that it's down, correct?**  
 2 A. Correct. But just if you have a window of  
 3 opportunity doesn't mean you have to take it.  
 4 **Q. And what are the most significant**  
 5 **components that drive the SNCR cost? Do you know?**  
 6 A. Storage tank, piping, and injectors into  
 7 the boilers.  
 8 **Q. You made -- you also made reference to**  
 9 **meetings -- changing subjects.**  
 10 **But you made reference earlier -- well,**  
 11 **let me ask you one more question.**  
 12 **In ranking Units 1, 2, 3, and 4, you gave**  
 13 **the time lines with respect to when they were placed**  
 14 **into service.**  
 15 **From an operational point of view, which**  
 16 **units have been the most efficient?**  
 17 A. When you use the word efficient, that's  
 18 typically used in power plants as to how  
 19 efficient -- how much -- how little fuel you can  
 20 burn to get the kilowatts.  
 21 Are you referring to efficiency or  
 22 reliability?  
 23 **Q. I'm not referring to the EAF, if that**  
 24 **helps.**  
 25 A. Okay.

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1 **Q. I'm referring to, from an operational**  
 2 **point of view, less maintenance, less O&M. Is there**  
 3 **a breakdown of that that we can refer to, or do you**  
 4 **know off the top of your head from your experience?**  
 5 A. Again, I'm seeking for clarification.  
 6 Are you looking at the gas mileage on the  
 7 units?  
 8 **Q. No. What I'm looking for is you had an**  
 9 **O&M budget. You ran through a list of categories of**  
 10 **different things that could be done with regard to**  
 11 **hot well pumps, with regard to all of those things.**  
 12 A. Correct.  
 13 **Q. From the plant manager point of view,**  
 14 **which plants were operationally in the best shape**  
 15 **that needed the less O&M maintenance?**  
 16 A. Okay. Sure.  
 17 Units 1 and 2 have been more challenging  
 18 from a maintenance and reliability standpoint.  
 19 Units 3 and 4 had typically, but not  
 20 always, been more reliable and required less  
 21 maintenance.  
 22 **Q. Okay. Changing subjects.**  
 23 **You also mentioned that you had met, with**  
 24 **aid of the owners, with regard to -- in discussing**  
 25 **the periodic operations of the plant.**

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1 **Can you just give us most of whom those**  
 2 **eight owners are or were?**  
 3 A. Yes. I may have said the other eight  
 4 owners. PNM is always present at the meetings,  
 5 especially if I was there.  
 6 The other eight owners, units -- Tucson  
 7 Electric Power, Southern California Public Power  
 8 Association. That's SCPPA, is what they're  
 9 typically called.  
 10 There's TriState, there's MSR, and there  
 11 is UAMPS, which is the Utah one.  
 12 City of Farmington, and City of Anaheim.  
 13 **Q. And they own different percentages in**  
 14 **different units?**  
 15 A. Yes, sir.  
 16 **Q. Okay.**  
 17 A. Did I capture all eight?  
 18 **Q. I think you got them.**  
 19 **Seven: Tucson, Southern Public Service**  
 20 **there, TriState, MSR, UAMPs, City of Farmington, and**  
 21 **Anaheim.**  
 22 MR. BOYD: So are there eight or nine  
 23 owners?  
 24 THE WITNESS: There's a total of nine  
 25 owners.

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1 MR. BUTLER: Then we're missing one.  
 2 MR. ORTIZ: Yeah, Los Alamos.  
 3 THE WITNESS: Thank you.  
 4 MR. ALBRIGHT: I have no further  
 5 questions.  
 6 Thank you very much, Mr. Smith.  
 7 EXAMINATION  
 8 BY MR. GOULD:  
 9 **Q. Mr. Smith, my name is Peter Gould. I**  
 10 **represent an intervenor in the -- in the case where**  
 11 **we're looking at the San Juan abandonment.**  
 12 **My client is called the New Mexico**  
 13 **Industrial Energy Consumers, or NMIEC.**  
 14 **And forgive me, I'm going to be jumping**  
 15 **around. I just want some clarifications on some of**  
 16 **the things that you said.**  
 17 **Could you describe generally what is meant**  
 18 **by heat rate?**  
 19 A. Yes. Heat rate, in very basic terms,  
 20 would be the gas mileage, so to speak, of the unit.  
 21 How much fuel does it take to get X amount of  
 22 kilowatts?  
 23 Heat rate is expressed in -- on BTUs,  
 24 which is the heat content of the fuel.  
 25 And the number of BTUs that it takes to

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1 get a kilowatt is the typical way of expressing a  
 2 heat rate.  
 3 **Q. So the higher the heat rate the less**  
 4 **efficient the plant?**  
 5 A. That is correct.  
 6 **Q. Okay. Do you know whether or not SNCRs**  
 7 **have the impact of lowering or increasing the heat**  
 8 **rate?**  
 9 A. Heat rate is a measure of unit efficiency,  
 10 the gas mileage.  
 11 SNCRs make the unit have very little  
 12 effect on it.  
 13 **Q. What about balanced draft?**  
 14 A. Balanced draft requires more auxiliary  
 15 load. It makes the units less efficient.  
 16 **Q. Okay. So there's -- there's more --**  
 17 **there's more -- there is more power draining out of**  
 18 **the system to run the balanced draft?**  
 19 A. That's correct.  
 20 **Q. Okay. What impact did the 2011 mine fire**  
 21 **have on the EAF rate at the plant?**  
 22 A. None.  
 23 **Q. So the plant was run, had the same**  
 24 **availability factor, even with the mine being out?**  
 25 A. That is correct.

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1 **Q. My understanding is that they ramped the**  
 2 **plant back somewhat during the winter months of 2012**  
 3 **so they wouldn't go through the entire inventory.**  
 4 **Is that your understanding?**  
 5 A. That is true.  
 6 **Q. So it had an effect in 2012 on the EAF?**  
 7 A. No, it did not have an impact on the EAF.  
 8 It did have an impact on capacity factor.  
 9 **Q. Okay. That was the next question I wanted**  
 10 **to get to.**  
 11 **Could you explain the difference between**  
 12 **capacity factor and EAF?**  
 13 A. The EAF is the equivalent availability  
 14 factor.  
 15 And it's a measure, as we talked about, is  
 16 how available the units are to run.  
 17 The capacity factor is how much did the  
 18 units actually run.  
 19 An example, the Afton combined cycle, it  
 20 may have availability factors in the 90s, but it's  
 21 only needed to run 40 percent of the time. So it's  
 22 how much it's needed versus how much it's available.  
 23 **Q. Okay. So you might have a plant available**  
 24 **but decide not to run it because it's not profitable**  
 25 **to run it, there's another option that's cheaper?**

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1 A. Yes, sir.  
 2 **Q. Okay. Do you have any memos or reports in**  
 3 **which you memorialized any of the conversations that**  
 4 **you mentioned when you were talking to Mr. Boyd with**  
 5 **Ron Talbot?**  
 6 A. No, I do not.  
 7 **Q. Okay. Did you put any of the observations**  
 8 **that you had about the impact of taking 50 percent**  
 9 **of that discretionary maintenance budget and doing**  
 10 **away with it? Did you memorialize that in any**  
 11 **document or include that in any report, say for**  
 12 **instance, Exhibit 2?**  
 13 A. I memorialized it with the company  
 14 documents at the time. I do not have those  
 15 documents, and I would not expect to see that in  
 16 Exhibit 2. That's the 2014 budget.  
 17 **Q. And would there -- and prior to the 2013**  
 18 **budget, would some of those documents appear in**  
 19 **there or be referenced in that 2013 budget?**  
 20 A. The 2013 budget, the budget book similar  
 21 to what you see in Exhibit 2, was built in October  
 22 of 2012 before I was asked to do the budget cuts.  
 23 **Q. Okay. The type of documents that were the**  
 24 **internal documents that you've mentioned, the**  
 25 **internal PNM documents, what kind of documents are**

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1 **those and where could they be found?**  
 2 A. They can be -- well, they are ongoing  
 3 financial forecasts of the actual expenses made in  
 4 the plant, and with the targets and goals in them,  
 5 typically used on almost a weekly basis to determine  
 6 where we stand -- where PNM stands relative to  
 7 financial goals.  
 8 And of course PNM owns those documents,  
 9 and that's where they're retained.  
 10 **Q. And in those documents, just to make sure**  
 11 **I understand your testimony, in some of those**  
 12 **documents the feedback that you gave Ron Talbot,**  
 13 **that if you lower the maintenance budget you're**  
 14 **going to have long-term impacts on EAF, plant**  
 15 **reliability, there are comments like that in some of**  
 16 **those documents that you produced.**  
 17 **Is that what you're saying?**  
 18 A. No. Those are only financial documents  
 19 that highlight the financial goals.  
 20 **Q. Okay.**  
 21 A. Those will reflect the reduction.  
 22 **Q. Oh, they will reflect the reductions.**  
 23 **Was there ever a document that you**  
 24 **produced that would be similar to a memo or an**  
 25 **e-mail or a letter saying, Ron, if you do this, it's**

45 (Pages 174 to 177)

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1 **against my advice, and I think it will have a**  
 2 **long-term impact on reliability or whatever?**  
 3 A. Yes. I had a document that listed the  
 4 risks that we were taking and what was going to be  
 5 chopped from the budget, yes.  
 6 **Q. Okay. And do you have that document?**  
 7 A. No, sir, I don't.  
 8 **Q. Okay. That would be a PNM document that**  
 9 **you have not seen since you produced it.**  
 10 **Is that a fair statement?**  
 11 A. That is correct.  
 12 **Q. Okay. And do you have any of the**  
 13 **documents that have to do with the disciplinary**  
 14 **matters that led to your dismissal?**  
 15 A. I have the letter that I was given when I  
 16 was fired.  
 17 **Q. Okay. Did that go into the use of**  
 18 **inappropriate sexual language at one of the**  
 19 **meetings? Did it go into any detail on that?**  
 20 MR. BOYD: Object to the form.  
 21 A. No, sir.  
 22 **Q. (By Mr. Gould) Okay. I wanted to ask**  
 23 **you. This came up very early in the deposition.**  
 24 **I wanted to ask you about the evaporation**  
 25 **pools at the San Juan plant.**

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1 **It's my understanding, and it's a total**  
 2 **laymen's understanding, that the majority of the**  
 3 **water in those pools is what would be called boiler**  
 4 **water.**  
 5 **Is that your understanding?**  
 6 **In other words, my understanding is that**  
 7 **you boil water again and again, and at a certain**  
 8 **point it becomes too salty and you can't reuse it,**  
 9 **and so that's the water that you put in the pond.**  
 10 **Is that a fair statement or not?**  
 11 A. No, sir, that's not correct.  
 12 **Q. Okay.**  
 13 A. Although there's terminology that would  
 14 lead someone to think that.  
 15 **Q. Okay. So correct me. Tell me what's in**  
 16 **the ponds and what that water mainly is composed of.**  
 17 A. Let me start with the definition of a term  
 18 that's called blowdown.  
 19 **Q. Okay.**  
 20 A. And blowdown is water that is used to  
 21 control the chemistry in a process.  
 22 Within the boilers it's critical that the  
 23 water in the boilers be absolutely pure. And  
 24 because water does tend to concentrate over time  
 25 with the cycles of the boiler, we continue to blow

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1 down a little water and inject fresh, clean, pure  
 2 water into the system. So that's boiler blowdown.  
 3 That's very -- still pretty pure water,  
 4 pure -- more pure than what you get out of the tap,  
 5 when it comes out of the boiler blowdown. We  
 6 wouldn't want to waste that water by sending it to  
 7 the evaporation ponds as blowdown. We use it in  
 8 other processes.  
 9 And then once it's concentrated with ION  
 10 chlorides -- the cooling tower is a good example --  
 11 it's used with ION chlorides, you blow down water  
 12 out of the cooling tank.  
 13 **Q. And then at what point does it get put**  
 14 **into the evaporation pond? Does it get used once?**  
 15 **Twice? Three times?**  
 16 A. To be honest with you, I don't recall  
 17 exactly what stage in the process that is.  
 18 I can tell you the objective, though, is  
 19 to use every drop of water as many times as you can.  
 20 And of course you cycle it down into increasingly  
 21 concentrated water.  
 22 **Q. Right.**  
 23 A. And now if we can use that water in the  
 24 bottom ash, the bottom of the boiler, that's pretty  
 25 dirty water. By the time we're done with that, as I

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1 recall, that's probably where we blow it down to the  
 2 evaporation pond.  
 3 **Q. Okay. But it's my understanding that the**  
 4 **evaporation ponds are not what's commonly known in**  
 5 **the industry as ash ponds.**  
 6 **And my understanding is that in some power**  
 7 **plants where they don't have an option to truck off**  
 8 **the ash they mix it, make it into slurry, and they**  
 9 **put those into ponds.**  
 10 **Are you familiar with that process?**  
 11 A. Yes, sir.  
 12 **Q. These ponds are not those type of ponds,**  
 13 **are they?**  
 14 A. No, they're not. They're not for ash  
 15 disposal.  
 16 **Q. Okay. But they do have a small residual**  
 17 **amount of ash in there. That's what you said**  
 18 **earlier.**  
 19 **Is that correct?**  
 20 A. That's safe. Ash and pipe chlorides and  
 21 salt.  
 22 **Q. Okay. Do you have any idea of the**  
 23 **percentage of the ash in that evaporation pond?**  
 24 A. No, sir, I don't.  
 25 **Q. Do you know if those evaporation ponds --**

1 if you can answer -- would be subject to the new ash  
 2 rules that the EPA is thinking about coming up with  
 3 and issuing in December of this year?  
 4 MR. BUTLER: Object as to foundation.  
 5 But go ahead.  
 6 Q. (By Mr. Gould) If you know.  
 7 A. I don't know.  
 8 Q. Okay. Do you know if projects that are  
 9 required by the New Mexico Environment Department or  
 10 the EPA go through a cost justification analysis?  
 11 A. To a degree.  
 12 Q. And explain your understanding, if you  
 13 would, please.  
 14 A. On a very high-level, justification by the  
 15 EPA that SCR should be mandated for San Juan is  
 16 based upon what the EPA estimated as the cost of the  
 17 SCRs.  
 18 Q. Okay. But if the EPA finally came down  
 19 and said you have -- PNM, you have to put SCRs on  
 20 this plant, at that point does PNM do a cost/benefit  
 21 evaluation or do they just go through with the  
 22 project?  
 23 A. Well, absolutely, they're going to look at  
 24 the cost and the benefit.  
 25 Q. Okay. But if they -- if they realize that

1 the pay- -- I guess I'm wondering, at what point  
 2 does the EPA ordering PNM to do something interfere  
 3 with PNM saying, This is not affordable.  
 4 Do you see what I'm trying to get at?  
 5 A. Sure.  
 6 Q. I'm just trying to find out how that  
 7 analysis works.  
 8 A. Maybe a way to look at it is that the EPA  
 9 doesn't say, PNM, you have to install SCRs.  
 10 But the EPA can say, If you want to run  
 11 these units after a particular date, then your NOX  
 12 emissions has to be this, and the best available  
 13 technology for doing this is SCRs.  
 14 Q. Okay. And then if the company basically  
 15 says, We are not going to get a three-year payback,  
 16 they still might have to do the project anyway?  
 17 A. It's up to the company, at that point in  
 18 time, saying do they want to continue to run the  
 19 unit.  
 20 Q. Okay. In other words, they could make the  
 21 decision that the fix is more expensive than the  
 22 shutdown?  
 23 A. Yes, sir.  
 24 Q. And that would be -- that would be the  
 25 tradeoff right there?

1 A. That's correct.  
 2 Q. Okay. I understand. I wanted you to look  
 3 real quickly at your Exhibit 9.  
 4 A. Okay.  
 5 Q. And to the extent you can tell me -- and  
 6 this may be beyond your knowledge because it's  
 7 beyond your time.  
 8 But my understanding is there are going to  
 9 have to be some scheduled outages to install the  
 10 SNCR equipment that the EPA approved, and there's  
 11 also going to be some downtime -- scheduled downtime  
 12 to do the balanced draft work.  
 13 Do you know how those scheduled outages  
 14 impact these capacity factors that are -- that are  
 15 about halfway down the page?  
 16 A. No, I do not.  
 17 Q. In other words, I see a drop of -- you  
 18 know, a pretty significant drop in 2017 for Unit 1.  
 19 I'm just wondering if that was associated  
 20 with the work that's going to be required to  
 21 implement the stated implementation plan.  
 22 A. That's possible.  
 23 Q. Okay.  
 24 A. I don't know.  
 25 Q. But you don't have any direct knowledge of

1 that, do you?  
 2 A. No.  
 3 Q. Okay. And maybe this is more a question  
 4 for your attorney than you.  
 5 But do you know if you're going to be  
 6 offered as a witness in this case, in the underlying  
 7 litigation that's going on at the New Mexico Public  
 8 Regulation Commission over the San Juan abandonment  
 9 case 13-390?  
 10 Do you know if you're going to be a  
 11 witness -- asked to be a witness in that case?  
 12 A. No, sir.  
 13 Q. Do you have any understanding of how your  
 14 deposition might be used in that case, this  
 15 deposition?  
 16 A. Well, I understand at the heart of the  
 17 case is getting to the facts, to make the best  
 18 decision by the PRC.  
 19 And if I've offered information that's  
 20 helpful, then...  
 21 Q. Okay. But you've not been asked  
 22 personally, or through your attorney, to appear as a  
 23 witness at this point?  
 24 A. No, sir.  
 25 Q. Okay.

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1 MR. GOULD: Thank you.  
 2 That's all the questions I have. I  
 3 appreciate it.  
 4 EXAMINATION  
 5 BY MR. THRONE:  
 6 **Q. Good afternoon, Mr. Smith.**  
 7 A. Good afternoon.  
 8 **Q. My name is Bruce Throne, and I'm the**  
 9 **counsel for the Southwest Generation Operating**  
 10 **Company, LLC, in this proceeding.**  
 11 **What I would like to do, before I ask you**  
 12 **to look at a few documents, is just to go back to**  
 13 **some of the -- just to get some clarification of**  
 14 **some of your responses on your earlier examination.**  
 15 **Let me start with a question by Mr. Noble**  
 16 **to you about -- and you referred to this earlier, I**  
 17 **think when Mr. Boyd was questioning you, about the**  
 18 **sort of payback analysis that you understood the**  
 19 **company was engaged in when deciding whether or not**  
 20 **to make or incur various expenses.**  
 21 **I believe you said there was no written**  
 22 **policy on payback, is that correct, that you were**  
 23 **aware of while you were employed by PNM.**  
 24 A. Not that I recall, no.  
 25 **Q. Was there any standard payback period that**

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1 **you considered when deciding, you know, about how**  
 2 **long it would have to be before there would be a**  
 3 **payback that you would apply, to determine whether**  
 4 **or not to make a capital expenditure versus, say, an**  
 5 **operating expense?**  
 6 A. Yes. Typically, that was a three-year  
 7 payback period. Payback periods greater than three  
 8 years raised eyebrows, and it was unlikely that we  
 9 would get that approved.  
 10 **Q. How does that work in terms of a capital**  
 11 **expenditure?**  
 12 **Well, first of all, is that for both**  
 13 **capital expenditures and for operating expenses or**  
 14 **just operating expenses?**  
 15 A. The capital justification is based upon  
 16 the payback being greater than what you're spending  
 17 in O&M or in other efficiencies in the unit.  
 18 **Q. Okay. How -- and how would -- how does**  
 19 **that payback period relate to the -- is there any**  
 20 **relationship between that and the amortization**  
 21 **period for the useful life of a plant if you were --**  
 22 **or a capital expenditure in a plant?**  
 23 A. Are you referring to depreciation?  
 24 **Q. Yes.**  
 25 A. There is no correlation.

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1 **Q. Okay. Can I have you look back at**  
 2 **Exhibit 9 for a moment?**  
 3 A. (Witness complies.)  
 4 **Q. Now to put this in context, when did you**  
 5 **say that this -- this report came out, was**  
 6 **published, the entire report in which this is**  
 7 **contained?**  
 8 A. The 800 pages or just the part that PNM  
 9 put out?  
 10 **Q. Well, this part.**  
 11 A. The San Juan budget.  
 12 **Q. This is part of the San Juan budget book?**  
 13 A. Yes, it is.  
 14 **Q. And what's the date on that, when that was**  
 15 **authored?**  
 16 A. It does not have a date. However, the  
 17 San Juan participation agreement, which is the  
 18 agreement on the owners, requires that this report  
 19 be out in October.  
 20 **Q. Of what year?**  
 21 A. Of each year.  
 22 **Q. So that was October of 2013?**  
 23 A. This was -- came out -- the 2014 budget  
 24 should have been out in October of '13. And it was  
 25 in MSR's report for November -- or excuse me --

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1 October 3. So yeah, it appears that it came out on  
 2 time.  
 3 **Q. Okay. And again, I'm looking at the**  
 4 **capacity factors there.**  
 5 **So these are projected capacity factors.**  
 6 **And at the time that this report was prepared, to**  
 7 **your knowledge, had a decision been made by PNM as**  
 8 **to whether or not it would be installing SCR or SNCR**  
 9 **on -- at the San Juan plant?**  
 10 A. At the time of my departure, the stated  
 11 implementation plan of running only Units 1 and 4  
 12 and abandoning Units 2 and 3 was out and were  
 13 seeking approval.  
 14 **Q. Okay. And maybe you answered this, but I**  
 15 **wanted to make -- I know Mr. Gould just asked you**  
 16 **about this.**  
 17 **What -- I'm trying to understand whether**  
 18 **or not, number one, you know whether or not any of**  
 19 **the capacity factor projections there would have**  
 20 **taken into account the installation of the SNCR as**  
 21 **proposed in the advised state implementation plan.**  
 22 A. I do not know that.  
 23 **Q. Okay. And you know -- looking at Unit 4,**  
 24 **do you have any information that might explain**  
 25 **why -- why, for instance, the capacity factor**



<p style="text-align: right;"><b>Page 190</b></p> <p>1 <b>projected for Unit 4 in 2020 drops to 77.59 percent,</b>  2 <b>compared to what's reported for the prior --</b>  3 <b>projected for the prior years?</b>  4 A. I recall reading quite a bit of Exhibit 2,  5 and I believe it spoke towards major turbine or  6 boiler outage in 2020.  7 I would have to reread Exhibit 2 to make  8 sure, but I recall they were planning a major outage  9 in that time frame.  10 <b>Q. Okay. And as compared to Unit 1, would</b>  11 <b>that -- could there be any other reason why -- do</b>  12 <b>you have any information about why -- why the</b>  13 <b>capacity factor for Unit -- Unit 4 would have been</b>  14 <b>lower than for Unit 1 in that -- in that -- at least</b>  15 <b>for 2020?</b>  16 A. No, I do not.  17 <b>Q. Do you have any understanding of when,</b>  18 <b>pursuant to the revised state implementation plan,</b>  19 <b>PNM would be actually spending -- or actually taking</b>  20 <b>the plant off line to install the SNCR, what year?</b>  21 <b>What time?</b>  22 A. My understanding is that under the state  23 implementation plan PNM is to install the SNCR  24 within so many months of approval of the plan, but  25 no earlier than January of 2016.</p>	<p style="text-align: right;"><b>Page 192</b></p> <p>1 reporting information like this in this format, the  2 row that depicts 2012 would be for an entire year of  3 2012.  4 And then where the row says 2013 YTD would  5 be year to date, which is typically how well the  6 numbers were prior to this document being produced  7 in 2013.  8 <b>Q. So these actual -- are these actual</b>  9 <b>numbers based on historic?</b>  10 <b>These aren't projections. Is that</b>  11 <b>correct?</b>  12 A. No. My understanding is that they are  13 actual numbers.  14 <b>Q. Okay. And do you -- do you have any</b>  15 <b>information that would allow you to form an opinion</b>  16 <b>on why, looking at the equivalent availability</b>  17 <b>factor figures at the bottom of the page there, why</b>  18 <b>the EAF for 2013 for Unit 4 is so much lower than it</b>  19 <b>is shown for 2012, of 91.3 percent?</b>  20 A. I've stayed in contact with colleagues,  21 and they've told me they've had a pretty horrible  22 year in 2013 on Unit 4.  23 <b>Q. And before I get to that, I do notice that</b>  24 <b>it says there -- under that column it says 2013 YTD.</b>  25 <b>I assume that means year to date?</b></p>
<p style="text-align: right;"><b>Page 191</b></p> <p>1 <b>Q. Okay. What I'm trying to understand is</b>  2 <b>whether or not, when you're looking out to 2020 on</b>  3 <b>Unit 4, trying to understand whether you can explain</b>  4 <b>to me, you know, whether that has anything to do --</b>  5 <b>that capacity factor would have anything to do,</b>  6 <b>given that time frame for the installation of the</b>  7 <b>SNCR, anything to do with the installation of the</b>  8 <b>SNCR, or would that be due to the kind of downtime</b>  9 <b>that you, I think, just referred to?</b>  10 A. Yes. In my experience that would seem  11 fairly typical. A few years down the road they  12 would be doing some major equipment work. For every  13 week that the unit is down it loses 2 percent  14 profits EAF.  15 <b>Q. Now if I could have you look again at</b>  16 <b>Exhibit 5, please.</b>  17 A. (Witness complies.)  18 <b>Q. The first thing I would like to know, if</b>  19 <b>you have an understanding of what the time period is</b>  20 <b>covered here by the -- both the EAF factors shown</b>  21 <b>and the equivalent forced outage rate shown.</b>  22 <b>I know there's something at the top of the</b>  23 <b>page, but I wanted to see what your understanding is</b>  24 <b>of what period this data covers.</b>  25 A. It's my experience typically, when</p>	<p style="text-align: right;"><b>Page 193</b></p> <p>1 A. Yes, sir.  2 <b>Q. So it's your understanding that this --</b>  3 <b>this would report the equivalent availability</b>  4 <b>factor, at least for 2013, up until the time this</b>  5 <b>report was prepared?</b>  6 A. That is correct.  7 <b>Q. And do you have any -- based on the kinds</b>  8 <b>of things that you've discussed in the deposition</b>  9 <b>today, do you have any basis to form an opinion</b>  10 <b>about whether or not that EAF factor was a result of</b>  11 <b>any of the items that you've discussed earlier not</b>  12 <b>being done in a timely manner?</b>  13 A. Yes. In fact, we have an exhibit here  14 with pie charts that specifically describes the  15 performance of Unit 4 and the contributing factors.  16 And as mentioned earlier in my testimony,  17 those contributing factors were line items in my  18 budget prior to them being cut.  19 <b>Q. And based on your experience as plant</b>  20 <b>manager, was that drop between 2012 and the 2013</b>  21 <b>year-to-date figure, was that a significant drop in</b>  22 <b>the -- in the EAF for that Unit 4?</b>  23 A. Absolutely.  24 <b>Q. And looking now at the equivalent forced</b>  25 <b>outage rate, I have similar questions.</b></p>

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1           **Am I reading that correctly to indicate**  
 2 **that the -- of the -- amongst the four units at**  
 3 **San Juan generating station, the largest increase in**  
 4 **the equivalent forced outage rate was for Unit 4?**  
 5       A. That is correct.  
 6       **Q. And that -- and that indicates that it**  
 7 **went from 6.1 percent to 16.7 percent.**  
 8       **Again, is that -- is that a significant**  
 9 **increase in the forced outage rate -- and I will**  
 10 **stop there -- in your opinion?**  
 11       A. Yes. As I had testified earlier, below  
 12 5 percent is a very good forced outage rate.  
 13       When you get to 6 and up towards 10, it's  
 14 becoming a mediocre rate.  
 15       And if the forced outage rate exceeds  
 16 10 percent, you definitely have problems. That's  
 17 one of the worst changes in forced outage rate I've  
 18 seen in my career.  
 19       **Q. And again, based on your tenure at PNM as**  
 20 **plant manager for San Juan generating station and**  
 21 **your testimony today, in your opinion is there a**  
 22 **direct link between the items that were -- that you**  
 23 **addressed earlier and that forced outage rate?**  
 24       A. Absolutely.  
 25       **Q. I think you have answered this, but I just**

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1       **want to make sure you have.**  
 2       **This is in response to a question, and I**  
 3 **think -- I know Mr. Boyd asked you about this, and**  
 4 **then perhaps it was Mr. Noble, regarding the**  
 5 **balanced draft expenditures.**  
 6       **My notes indicated that you said that --**  
 7 **that you didn't believe that when the balanced draft**  
 8 **process was being considered, you said -- my notes**  
 9 **reflect that you indicated that you didn't believe**  
 10 **at that time it met the requirements for those**  
 11 **expenditures.**  
 12       **Is that -- did I get that right?**  
 13       A. Yeah. That is correct.  
 14       **Q. When you said the requirements for those**  
 15 **expenditures, again, were you referring to the**  
 16 **payback criteria that you discussed earlier?**  
 17       A. No, sir. There's other requirements as  
 18 well, and I believe I made mention of that in my  
 19 testimony.  
 20       **Q. Just clarify it for me, what other**  
 21 **requirements you're referring to.**  
 22       A. The other requirement is: Is it a  
 23 regulatory compliance issue?  
 24       **Q. And so what did you mean? Did you mean**  
 25 **then, by your statement at that part of your**

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1       **examination, that you didn't feel that spending the**  
 2 **money on balanced draft for the San Juan units were**  
 3 **required for regulatory compliance?**  
 4       A. Yes. The plant had operated for 30, 40  
 5 years and maintained compliance. And at that point  
 6 in time, when I was there, it was expected it would  
 7 continue to maintain compliance.  
 8       **Q. Well, I guess to cut to the chase on this**  
 9 **one, were you -- I mean at the time that this matter**  
 10 **came up -- and I know there's some reference to --**  
 11 **in your complaint that's been marked earlier as**  
 12 **Exhibit 1 to the deposition -- to the whole issue of**  
 13 **the extent to which you were being asked to continue**  
 14 **capital expenditures rather than O&M expenses.**  
 15       **Based on your -- on what -- what happened**  
 16 **and what you've described here, do you have an**  
 17 **opinion or -- about whether or not the discussion**  
 18 **about adding the balanced draft expenditures was**  
 19 **intended by PNM to simply increase its rate base so**  
 20 **that it could earn more money?**  
 21       A. I believe that's the case.  
 22       **Q. Did you discuss that? Is that part of**  
 23 **your discussions with Mr. Olson or anybody else at**  
 24 **PNM, at the time when this matter was raised, that**  
 25 **you can recall?**

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1       A. For years I had hoped and tried to make  
 2 solid argument that we needed balanced draft.  
 3       To a plant manager, having balanced draft  
 4 would be great. Not having holes in the unit  
 5 blowing ash everywhere or fumes that can be an  
 6 employee health hazard would be a nice thing to  
 7 have.  
 8       I just never could justify it either  
 9 financially or from a compliance standpoint. It  
 10 seems odd to me that that's now justified at this  
 11 time, when we're shutting down other units.  
 12       **Q. Okay. And another matter you were**  
 13 **questioned about by Mr. Boyd had to do with**  
 14 **discussions of if PNM did decide to shut down the**  
 15 **San Juan Units 2 and 3 by bringing in the Palo Verde**  
 16 **nuclear generating station Unit 3 capacity that it**  
 17 **owned but wasn't in rates.**  
 18       **Do you recall that?**  
 19       A. Yes, sir.  
 20       **Q. At that time was there -- do you know**  
 21 **whether or not PNM was making money off of that**  
 22 **investment in that capacity in Palo Verde, or losing**  
 23 **money, one way or another?**  
 24       MR. ORTIZ: Objection, foundation.  
 25       A. No, I do not.

<p style="text-align: right;"><b>Page 198</b></p> <p>1 <b>Q. (By Mr. Throne) You don't know?</b>  2 A. No.  3 <b>Q. At the time you had that discussion, was</b>  4 <b>there any discussion about whether or not PNM would</b>  5 <b>be able to write up the value of that plant compared</b>  6 <b>to its net book value in rates?</b>  7 A. When you say plant, you're talking Palo  8 Verde Unit 3?  9 <b>Q. Yes, sir.</b>  10 A. I do not know.  11 <b>Q. Going back to another question Mr. Boyd</b>  12 <b>asked you about having to do with performance</b>  13 <b>projections that were being made while you were</b>  14 <b>employed by PNM, I just want to get some</b>  15 <b>clarification on -- on -- again, onto whom these</b>  16 <b>projections normally are made, to your knowledge.</b>  17 <b>Were those projections typically made to</b>  18 <b>PNM's existing investors?</b>  19 A. That is correct.  20 <b>Q. And how were those communicated, to your</b>  21 <b>knowledge?</b>  22 A. Those are communicated through investor  23 presentations that happen on a quarterly basis. And  24 in fact, I believe the investor communications  25 support that.</p>	<p style="text-align: right;"><b>Page 200</b></p> <p>1 <b>information is typically included in filings</b>  2 <b>required by the Security Exchange Commission, by the</b>  3 <b>parent company, PNM Resources?</b>  4 A. As a matter of fact, I have looked at the  5 SEC filings. And yes, that is correct.  6 <b>Q. Those filings do include some -- some</b>  7 <b>performance or reliability projections for the</b>  8 <b>individual plants including San Juan?</b>  9 A. Yes, sir.  10 <b>Q. And again, just to be clear, one of the</b>  11 <b>things that you were -- that you've represented here</b>  12 <b>today, is that -- is that those projections -- that</b>  13 <b>PNM continued to make projections that you felt were</b>  14 <b>not realistic, given the budget cuts that you were</b>  15 <b>being asked to make.</b>  16 A. Yes, sir.  17 <b>Q. I have four documents that I would like to</b>  18 <b>show you, and I will -- I guess I will mark them.</b>  19 <b>And for the record, I will represent that</b>  20 <b>these all have to do with the PNM fuel clause, or</b>  21 <b>what's known as the fuel and purchase power cost</b>  22 <b>adjustment clause, or FPPCAC.</b>  23 <b>So let me pass this out.</b>  24 MR. BOYD: Before you start, let me  25 interrupt just briefly.</p>
<p style="text-align: right;"><b>Page 199</b></p> <p>1 At the time the budget cuts were made,  2 communications were indicating that we were  3 expecting good plant performance.  4 <b>Q. Okay. And then I believe -- but correct</b>  5 <b>me if I'm wrong -- you said also those performance</b>  6 <b>projections are made to the -- were made to the</b>  7 <b>owners, the different owners of the San Juan</b>  8 <b>generating station, correct?</b>  9 A. That is correct.  10 <b>Q. And that was communicated how?</b>  11 A. Through owners' meetings.  12 <b>Q. And to your knowledge, is there a record</b>  13 <b>of those projections?</b>  14 A. There should be, on the owner  15 presentations that I delivered every owners'  16 meeting.  17 <b>Q. Okay. And then are those projections also</b>  18 <b>made sort of to the general investment community, to</b>  19 <b>Wall Street, as well?</b>  20 A. That is correct.  21 <b>Q. And do you know how those are</b>  22 <b>communicated?</b>  23 A. Through the same mechanism; through PNM  24 investor communications.  25 <b>Q. Do you know whether or not that</b></p>	<p style="text-align: right;"><b>Page 201</b></p> <p>1 And for the record, I'm handing the --  2 Mr. Butler a subpoena and cover letter for Mr. Smith  3 to appear at the January 5 meeting. And I think the  4 letter is self-explanatory.  5 And of course we will cover any travel  6 expenses, in addition to the witness fee.  7 So will you accept that on Mr. Smith's  8 behalf?  9 MR. ORTIZ: Are you going to provide us a  10 copy of the subpoena?  11 MR. BOYD: Sure.  12 MR. GOULD: Can I ask you a question, Joe?  13 Are you anticipating that we're going to  14 be taking testimony on January 5?  15 MR. BOYD: I think he's there for  16 cross-examination. We're going to submit this as  17 testimony.  18 MR. GOULD: Okay. But my question is,  19 there is -- usually with these hearings that go on  20 for two or three weeks, there's a lot of scheduling.  21 MR. BOYD: Right.  22 MR. GOULD: And my understanding is the  23 first day is going to be mostly comments.  24 So are you just saying for the 5th itself?  25 MR. BOYD: Yes. We'll coordinate. That's</p>

**51 (Pages 198 to 201)**

1 for the hearing, and we'll coordinate the date.  
 2 MR. GOULD: Okay. So you're saying for  
 3 the entire -- okay. I understand.  
 4 MR. BUTLER: It is the equivalent of a  
 5 trial subpoena, is what you are saying?  
 6 MR. BOYD: Yes.  
 7 MR. BUTLER: We'll accept it, and I'll  
 8 talk to Mr. Smith. We will accept it.  
 9 (Discussion off the record.)  
 10 MR. BOYD: Then I'll make copies for  
 11 anybody that wants it.  
 12 (Discussion off the record.)  
 13 **Q. (By Mr. Throne) Okay. First, let me ask**  
 14 **you, Mr. Smith.**  
 15 **When you were plant manager for the**  
 16 **San Juan plant, I believe you already testified that**  
 17 **you're generally aware of -- that PNM had a fuel**  
 18 **clause that they used to pass through its operating**  
 19 **expense.**  
 20 **Is that correct?**  
 21 A. That is correct.  
 22 **Q. Okay. And as part of your job, in terms**  
 23 **of the -- any -- any data, cost data, that kind of**  
 24 **thing for the plant, did you -- did you or people**  
 25 **under your supervision and control provide cost data**

1 **for the preparation of the filing of the fuel clause**  
 2 **reports to PNM's management?**  
 3 A. My team prepared a lot of documents  
 4 relative to plant performance and the owners'  
 5 reporting and financial reporting.  
 6 I'm not sure of all the end users of that  
 7 data.  
 8 **Q. Okay. Were you routinely provided with**  
 9 **copies of the fuel clause reports that PNM filed**  
 10 **with the New Mexico Public Regulation Commission?**  
 11 **And by that, I'm referring to the monthly**  
 12 **reports.**  
 13 A. No, sir, I was not.  
 14 **Q. Were you routinely provided with copies of**  
 15 **any of the reports that PNM filed while you were**  
 16 **working as plant manager regarding the fuel clause?**  
 17 A. No, sir, I was not.  
 18 **Q. Now, I've placed before you what has been**  
 19 **marked as Exhibit 12 in this deposition.**  
 20 **Have you seen that document before?**  
 21 A. It looks familiar, yes, sir.  
 22 **Q. And can you -- do you understand what this**  
 23 **document is?**  
 24 A. Yes, sir. I have a basic understanding of  
 25 it, yes.

1 **Q. What is your understanding?**  
 2 A. It's -- essentially, there's a base fuel  
 3 rate that PNM is allowed to charge its customers,  
 4 and it acts as the base for adjustments in the fuel  
 5 adjustment clause.  
 6 **Q. Now, is it your un- -- is it your**  
 7 **understanding that the fuel adjustment clause allows**  
 8 **the company to recover costs on a monthly basis that**  
 9 **are either higher or lower than the costs that they**  
 10 **project in their base fuel rates?**  
 11 A. Yes, that's correct. That's my  
 12 understanding.  
 13 **Q. And is it your understanding that those**  
 14 **base fuel rates are established in PN- -- by the --**  
 15 **they're established by the Public Regulation**  
 16 **Commission in general rate cases filed by PNM?**  
 17 A. Yes, sir. That's my understanding.  
 18 **Q. And so -- and is it your understanding**  
 19 **that this -- this particular verified notice of**  
 20 **filing of fuel and purchase power cost adjustment**  
 21 **clause annual factor reset for July 2013 through**  
 22 **June 2014 was one of the PNM filings for the annual**  
 23 **reset of its fuel factor?**  
 24 A. Yes, sir. That's my understanding.  
 25 **Q. And just to -- let me refer you to the**

1 **certificate of service that -- it's sort of three**  
 2 **pages from the end of this document, where it refers**  
 3 **to the date of filing of May 17, 2013.**  
 4 **Do you see that?**  
 5 A. That's the third page from the end?  
 6 **Q. Yeah. It's the certificate of service.**  
 7 **Right at the top it says "Certificate of Service."**  
 8 **It says the date on which this was filed with the**  
 9 **commission?**  
 10 A. 30 May 2013, yes.  
 11 **Q. It should be -- it looks to me like**  
 12 **May 17.**  
 13 **Do you see -- where are you looking at?**  
 14 MR. BUTLER: Counselor, what's the date of  
 15 this submission? Is this the '13/'14 or the  
 16 '14/'15?  
 17 A. This is the May 17, 2013, according to the  
 18 first page and the certificate of service. It looks  
 19 like at the end it says May 17.  
 20 MR. BUTLER: I may be confused. But  
 21 what's your title date here, Mr. Smith? What does  
 22 this state? July --  
 23 A. July 2014 through June 2015.  
 24 MR. BUTLER: Okay. So I think he has the  
 25 wrong exhibit. That's what I'm trying to -- I

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<p>1 didn't realize until we got to the certificate of 2 service. 3 (Exhibit marked, 12.) 4 <b>Q. (By Mr. Throne) I'm sorry. Let's just 5 make this clear on the record. 6 What I've placed in front of you, 7 Mr. Smith, is a document entitled "Public Service 8 Company of New Mexico's Verified Notice of Filing of 9 Fuel and Purchase Power Cost Adjustment Clause 10 Factor Reset for July 2014 through June 2015."</b> 11 MR. BUTLER: 2013 to '14. 12 (Discussion off the record.) 13 MR. ORTIZ: That's July 2013 through June 14 2014. 15 MR. GOULD: And, Bruce, that's in Case 16 Number 10-00086. 17 MR. THRONE: Right. I apologize for that. 18 <b>Q. (By Mr. Throne) All right. So again, 19 let's just verify the date on this. 20 And if you look at the last page it says 21 it was filed May 17, 2013. 22 Do you see that? 23 A. Yes, sir, I do. 24 Q. Okay. 25 A. The last page is right.</b></p>	<p>1 <b>New Mexico Public Regulation Commission of the 2 sources of the -- of the costs that go into its fuel 3 factor and fuel cost to be passed on to customers?</b> 4 A. Yes. That's my understanding. 5 <b>Q. Let me have you look at page 5 of this 6 report. 7 A. (Witness complies.) 8 Q. And specifically referring to the 9 information contained on that page, it's 10 subparagraph D of paragraph 7, or section 7. 11 And there it says -- and I'll quote: 12 "Although PNM's retail energy sales during 13 the fuel clause year was less than had been 14 projected, and losses were higher, generation from 15 the baseload coal-fired plants was also less than 16 forecasted." 17 So is that an example of -- is that an 18 example of how this report reports operational data 19 from a -- that's historic, from a prior period, 20 while you were still plant manager? 21 A. Yes, sir. That's my understanding. 22 <b>Q. Do you know whether or not, where they -- 23 that that statement there that said "generation from 24 the baseload coal-fired plant was also less than 25 forecasted" -- and that refers to San Juan, correct?</b></b></p>
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<p>1 Can we just verify the front page again 2 one more time? 3 <b>Q. Yes. "Verified Notice of Filing of Fuel 4 and Purchase Power Cost Adjustment Clause Annual 5 Factor Reset for July 2013 through June 2014." 6 A. That is correct. 7 Q. And that's -- and this was filed shortly 8 after your employment with PNM was terminated. 9 Is that correct? 10 A. That is correct. 11 Q. But is it your understanding that some of 12 the information that went into this filing was based 13 on the performance of the -- of the San Juan 14 generating station during the time that you were 15 employed by PNM? 16 A. Could you say that again, please? 17 Q. Is it your understanding that some of the 18 information that is contained in this filing, would 19 that have been -- would some of that information be 20 based on data or performance data from the San Juan 21 power plant during the time you were employed by 22 PNM? 23 A. That is correct. 24 Q. Okay. So is it your understanding that 25 this is the document by which PNM informs the</b></p>	<p>1 A. San Juan, among other baseload facilities. 2 <b>Q. Okay. But it does refer there to the 3 baseload coal-fired plants. 4 PNM doesn't have any other coal-fired 5 plants, does it? 6 A. Yes, sir, it does. 7 Q. Which other plants would be included 8 there? 9 A. That would be the Four Corners power 10 plant. 11 Q. Okay. So this -- so that statement you 12 would understand to relate to -- not simply to 13 San Juan, but also to Four Corners? 14 A. Yes, sir. 15 Q. Okay. And I believe you've testified 16 earlier that you had a basic or general 17 understanding of how the fuel clause works. 18 A. Yes, sir. 19 Q. Okay. I just wanted to ask you, if you 20 know -- if you could turn to -- it's the -- at the 21 back of that exhibit there's a table that says "PNM 22 Exhibit B, Table 1" at the top. 23 MR. GOULD: Is there a page number you're 24 referring to for that? 25 <b>Q. (By Mr. Throne) It just says page 1 of 1</b></b></p>

53 (Pages 206 to 209)

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1 on -- in the upper left-hand corner.

2 A. PNM Exhibit B, Table 1.

3 **Q. And it should say Public Service Company**

4 **of New Mexico annual FPPCAC factor reset.**

5 **Do you see that?**

6 A. Yes, sir. I'm on that page right now.

7 **Q. Okay. I just want to find out if you --**

8 **do you -- you said you've looked at this -- this**

9 **document before.**

10 **So you're generally familiar with the**

11 **information that's reported in this particular**

12 **document?**

13 A. Generally familiar. I'm by far no expert

14 on fuel clause.

15 **Q. Okay. Do you know -- looking down at**

16 **line 10, where it says "Stipulated base fuel rate,**

17 **dollars per kilowatt hour," do you see that?**

18 A. Yes, sir.

19 **Q. And there's a figure of 2.1280 cents.**

20 **Do you see that?**

21 A. Correct.

22 **Q. Do you know what that represents?**

23 A. My understanding is that is the base fuel

24 rate that was projected based upon what PNM thought

25 they could deliver the kilowatts for in their

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1 projection of kilowatts.

2 **Q. And do you know when -- when that -- or**

3 **how PNM -- or when PNM made that projection, whether**

4 **it's in a PNM rate case, or do you have any idea**

5 **where or when?**

6 A. My understanding is it's a mechanism of

7 the fuel clause, and it's submitted via this type of

8 report.

9 **Q. Okay. So you don't know whether or not,**

10 **in fact, the base rate was established aside from**

11 **this?**

12 A. No, sir, I don't.

13 **Q. Okay. Looking at line 11, where it says**

14 **"FPPCAC fuel factor before cap," it has a figure of**

15 **9.833 cents -- I'm sorry. It's .009883 per kilowatt**

16 **hour.**

17 **Do you know what the cap refers to?**

18 A. My basic understanding is that there's a

19 cap on the amount that can be collected through the

20 fuel clause.

21 **Q. Is that something that's discussed in this**

22 **document or do you know?**

23 A. I do not know.

24 (Discussion off the record.)

25 (The record was read as requested.)

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1 **Q. (By Mr. Throne) And looking at line 17,**

2 **do you have any understanding of where it says**

3 **"Carryover to next fuel clause year," do you have**

4 **any understanding of what that is?**

5 A. My understanding is that's the gift that

6 keeps on giving. You can keep carrying it over.

7 **Q. So carry it over -- well, I guess I should**

8 **back up to line 15.**

9 **Do you know what that line where it says**

10 **"FPPCAC cap per stipulation" refers to, and it has a**

11 **figure of \$36.2 million?**

12 A. My understanding is that is a maximum

13 amount that can be added under the fuel clause in

14 that period of time.

15 **Q. For 2013?**

16 A. Yes, sir.

17 **Q. So what I'm trying to understand is if**

18 **you -- do you have an understanding if -- if, in**

19 **fact, PNM incurred higher O&M costs at the San Juan**

20 **generation plant as a result of not doing the**

21 **preventative maintenance, taking care of other**

22 **things that you've addressed earlier, do you have**

23 **any understanding of when those costs would get**

24 **flowed through to customers via this fuel clause?**

25 A. No, I do not.

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1 **Q. Okay.**

2 **(Exhibit marked, 13.)**

3 **Q. (By Mr. Throne) All right. The next one.**

4 **What I've placed before you, Mr. Smith --**

5 **and it's been marked as Exhibit 13 -- is a document**

6 **filed in New Mexico Public Regulation Commission**

7 **Case Number 10-00086UT entitled "Public Service**

8 **Company of New Mexico Supplemental Statement**

9 **Regarding Fuel and Purchase Power Cost Adjustment**

10 **Clause Annual Factor Reset for July of 2013 through**

11 **June 2014."**

12 **Is that what you have in front of you?**

13 A. Yes, sir, I do.

14 **Q. Now, this is a document that normally you**

15 **would not have been provided with while you were**

16 **employed by PNM.**

17 **And of course this one -- well, let's look**

18 **at the date of this first. Let me back up.**

19 **This was filed on -- if you will look at**

20 **the last page, do you see where it indicates file**

21 **dated June -- dated June 28, 2013?**

22 A. Yes, sir.

23 **Q. So again, that's after your termination of**

24 **your employment with PNM, correct?**

25 A. Correct.

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1 **Q. Okay. But have you had a chance to**  
2 **actually look at this document before today, this**  
3 **deposition?**  
4 A. To be honest with you, sir, as we've seen  
5 here today, after a while they all start to look the  
6 same.  
7 **Q. Okay. Let me have you look at page 3 of**  
8 **this document.**  
9 A. (Witness complies.)  
10 **Q. And there in items -- in Section 2 and 3**  
11 **they address a description and then reports**  
12 **regarding the -- what's described as the San Juan**  
13 **Coal Company mine fire.**  
14 **Do you see that?**  
15 A. Yes, sir, I do.  
16 **Q. So you were asked earlier a question, I**  
17 **believe, about the mine fire.**  
18 **To your knowledge, is that what this is**  
19 **referring to?**  
20 A. Yes, sir.  
21 **Q. And had you had a chance -- and take a**  
22 **moment, if you'd like, to look through this --**  
23 **whether or not this is -- if you've had a chance to**  
24 **actually look at what kind of information was being**  
25 **submitted to the commission in this document?**

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1 A. Yes. It says -- as you bring this to my  
2 attention, I do recall reading this.  
3 **Q. Okay. And again, this is not a -- this is**  
4 **not a document that you had any involvement in**  
5 **preparing in any way.**  
6 **Is that correct?**  
7 A. No, sir.  
8 **Q. Okay. Let me show you two other**  
9 **documents.**  
10 **(Exhibit marked, 14.)**  
11 **Q. (By Mr. Throne) And, Mr. Smith, I've**  
12 **placed before you another document that's dated at**  
13 **the top August 20, 2013, on the PNM -- PNM**  
14 **letterhead.**  
15 **And it says -- it's addressed to the**  
16 **New Mexico Public Regulation Commission regarding**  
17 **PNM's fuel and purchase power cost adjustment clause**  
18 **report for July 2013.**  
19 **Do you see that?**  
20 A. Yes, sir.  
21 **Q. Now, do you -- do you have a general**  
22 **understanding of what this report was as compared to**  
23 **the two reports or filings that I showed you**  
24 **previously, the difference?**  
25 A. Yes. My understanding is this report is

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1 filed every month that gives actual costs incurred.  
2 And I've looked at several of these types of reports  
3 on the PRC website.  
4 **Q. And do you have a general understanding of**  
5 **whether this is the -- you know, while this is the**  
6 **kind of information generally that -- that PNM filed**  
7 **with the commission to support whatever its fuel**  
8 **clause cost recoveries would be for that month?**  
9 A. Yes, sir. That's my understanding.  
10 **Q. And do you -- while you were employed by**  
11 **PNM, did you ever provide any input or information,**  
12 **or people under your supervision and control at the**  
13 **San Juan plant, to PNM management so that they could**  
14 **prepare this report?**  
15 A. We prepared a lot of information that's  
16 contained in this report. I'm not sure of the end  
17 user.  
18 **Q. And I'm just trying to get -- if you look**  
19 **at the back, there's some -- and I realize it's a**  
20 **little bit daunting to look at all of this data, but**  
21 **I am just trying to get a sense.**  
22 **I know -- if you look, for instance, on**  
23 **page 2 of 10 of the attachment, where it -- do you**  
24 **see where it says at the top "Generation Fuel**  
25 **Expense, July 2013"?**

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1 A. Yes.  
2 **Q. So -- and it looks to me like under**  
3 **"Coal," on lines 2 and 3, it has some costs. First,**  
4 **on line 2 it says "San Juan," and on line 3 it says**  
5 **"San Juan Amortization Deferred Cost."**  
6 A. Correct.  
7 **Q. So is that -- is that information based on**  
8 **information that you would have provided to**  
9 **management, or is that just coming out of their**  
10 **books and records in some other department, or do**  
11 **you know?**  
12 A. The energy, in terms of the megawatt  
13 produced, is something that would come from my team.  
14 I did have people that were involved --  
15 that were involved watching the mine, so to speak.  
16 I do believe they had something to do with  
17 accounting for the coal that had been burned.  
18 So to that extent, that's all the  
19 involvement I know that my team probably had in the  
20 production of this report.  
21 **Q. And what about the extent to which the**  
22 **San Juan generating station may have been used to**  
23 **make off-system sales to earn -- to earn margins or**  
24 **revenues?**  
25 **Would you have been providing -- your**

<p><b>Page 218</b></p> <p>1 department providing data to the company typically 2 for those kind of reports, information with regards 3 to that matter? 4 A. No, sir. We didn't become involved 5 off-system sales. 6 <b>Q. Okay. And then one last document, and 7 this is the one that I had I guess originally 8 mislabeled. And this will be 15. 9 (Exhibit marked, 15.)</b> 10 <b>Q. (By Mr. Throne) And now I've placed 11 before you, Mr. Smith, a document. On the front it 12 has a caption of "New Mexico Public Regulation 13 Commission Case Number 13-00187UT," entitled -- this 14 document is "Public Service Company of New Mexico's 15 Verified Notice of Filing of Fuel and Purchase Power 16 Cost Adjustment Clause Factor Reset for July 2014 17 and through June 2015."</b> 18 <b>Do you see that?</b> 19 A. Yes, sir, I do. 20 <b>Q. And again, let's look at the last page of 21 that.</b> 22 A. (Witness complies.) 23 <b>Q. And that indicates, just for clarification 24 here, that that was filed with the commission in -- 25 on May 30, 2014.</b></p>	<p><b>Page 220</b></p> <p>1 about -- about what happened during your tenure with 2 PNM. 3 <b>Based on what -- on your review of these 4 fuel clause filings with the New Mexico Public 5 Regulation Commission, do you have any opinion on 6 whether or not one could -- someone at the PRC 7 could, by reviewing any of these documents, could 8 have understood some of the causes of fuel cost 9 increases that you have addressed in your deposition 10 today?</b> 11 MR. ORTIZ: Objection. Form and 12 foundation. 13 A. I've spent a lot of time studying a lot of 14 the information in the PRC website and been to 15 different schools and understand the basic 16 mechanisms of the fuel clause. And I'm, by far, no 17 expert. 18 It is very difficult to decipher, and I 19 haven't seen specific information where someone from 20 the PRC could ascertain that plant performance is a 21 factor in these charges. 22 <b>Q. (By Mr. Throne) Let me go back to what 23 was marked as PNM exhibit -- I'm sorry -- was marked 24 as Exhibit 1 in this deposition, which I believe was 25 the complaint that was filed back on April 11, 2014.</b></p>
<p><b>Page 219</b></p> <p>1 <b>Okay?</b> 2 A. Yes, sir. 3 <b>Q. So again, this is -- this was after your 4 employment was terminated at PNM, correct?</b> 5 A. Correct. 6 <b>Q. Did you have a chance -- again, this is a 7 document that you -- well, strike that. 8 Did you have a chance to review this 9 document before the deposition today?</b> 10 A. I can't say for sure, sir. 11 <b>Q. Take some time to look at it and let me 12 know if you have had a chance to look at that 13 before.</b> 14 A. Yes. Some of the information here does 15 sound familiar to me. 16 <b>Q. Do you have a general understanding of 17 whether or not, in this -- in this filing that PNM 18 asked to recover some of that additional money from 19 the fuel clause over the cap that we discussed 20 earlier from the prior year's filing that, in 21 effect, rolled that over for recovery now in a 22 future time period as described in this filing?</b> 23 A. That's my general understanding, is that 24 it's rolling that over. 25 <b>Q. Okay. Mr. Smith, you talked a lot today</b></p>	<p><b>Page 221</b></p> <p>1 A. Yes, sir. 2 <b>Q. Now my understanding is that even though 3 there's a stamp on the front page of this that says 4 "Filed under seal and in camera pursuant to a 5 New Mexico statute," that, in fact, it's not under 6 seal any longer. 7 Is that -- is that your understanding?</b> 8 A. Yes, sir. That's correct. 9 <b>Q. Okay. Take -- if you would, look at 10 paragraph 26 beginning on page 8 of your complaint, 11 carrying over to page 9. I will give you a chance 12 to look at that for a second.</b> 13 A. Yes, sir. 14 <b>Q. Now what I'm particularly interested in is 15 on page 9, about three lines down, you state that 16 prior to his -- or it is stated in the complaint: 17 "Prior to his termination, PNM had also 18 required Smith to label many working documents as 19 confidential and privileged in an attempt to further 20 limit discovery of its intent and actions." 21 My first question is: Who -- who 22 specifically required you to label working documents 23 as confidential and privileged?</b> 24 A. I know Mr. Talbot has asked me to do so. 25 Mr. Olson has asked me to do so.</p>

56 (Pages 218 to 221)



**Page 222**

1 **Q. And?**  
 2 A. And in the past, Mr. Themig has asked me  
 3 to do so.  
 4 **Q. And was that orally or in writing?**  
 5 A. That was orally.  
 6 **Q. Okay. And when you say working documents,**  
 7 **can you -- can you explain what kinds of documents**  
 8 **you're talking about?**  
 9 A. Documents that were produced as documents  
 10 that -- to be worked through to help us make  
 11 business decisions, to analyze different issues, or  
 12 as a way of routinely tracking metrics.  
 13 **Q. So when you say routinely tracking**  
 14 **metrics, are you referring to documents relating to**  
 15 **the performance of the San Juan generating plant?**  
 16 A. Yes, sir. I believe that was included in  
 17 the things that we marked privileged and  
 18 confidential. We had a very liberal policy on that,  
 19 a very liberal use of confidential and privileged.  
 20 **Q. And were these documents that you were**  
 21 **being asked to prepare for just those three**  
 22 **individuals -- Mr. Talbot, Mr. Olson, or**  
 23 **Mr. Themig -- or were these documents that were**  
 24 **being prepared also for attorneys at PNM?**  
 25 A. These were being prepared by the three

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1 individuals mentioned, but also others in the  
 2 organization. And to the extent we could -- when  
 3 those documents were exchanged, we included an  
 4 attorney in the communication.  
 5 **Q. Were you directed to include an attorney**  
 6 **in the communication?**  
 7 A. Absolutely.  
 8 **Q. Do you know why?**  
 9 A. To be able to call it confidential and  
 10 privileged.  
 11 **Q. And who explained that to you?**  
 12 A. It wasn't an explanation, but a direction.  
 13 **Q. I believe you have a law degree.**  
 14 **Is that correct?**  
 15 A. Yes, sir.  
 16 **Q. So based on your education in the legal**  
 17 **area, you understood them to mean that the reason**  
 18 **why you should designate these documents, these**  
 19 **working -- what you call working documents -- as**  
 20 **confidential and privileged, was to make sure that**  
 21 **they could -- would not have been disclosed to**  
 22 **anybody else?**  
 23 A. Yes, sir.  
 24 **Q. When you had these oral discussions about**  
 25 **the disclosure, was there any discussion with any of**

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1 **these individuals -- either Mr. Talbot, Mr. Olson**  
 2 **Mr. Themig, or anyone else at PNM -- about whom --**  
 3 **to whom they were concerned about disclosure**  
 4 **occurring?**  
 5 A. Anybody outside the company.  
 6 **Q. Was there any specific discussion about**  
 7 **disclosure at the Public Regulation Commission that**  
 8 **you can recall?**  
 9 A. Not specific to the PRC.  
 10 **Q. I know it's been a while, but do you have**  
 11 **any recollection -- can you give a specific example**  
 12 **of the kind of document that you're referring to?**  
 13 A. Yeah. One was an analysis that I had done  
 14 that detailed all of the various unit outage and  
 15 cost scenarios for abandoning different combinations  
 16 of units.  
 17 **Q. Again, I realize it's been a while. But**  
 18 **do you have a recollection of -- of who you prepared**  
 19 **that document for?**  
 20 A. That was for Mr. Talbot.  
 21 **Q. And do you have a recollection of -- after**  
 22 **you prepared it -- to whom you communicated that**  
 23 **document?**  
 24 **I assume that Mr. Talbot was one person.**  
 25 A. Yes, Mr. Talbot. I think later on

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1 Mr. Olson.  
 2 **Q. At the time you communicated that document**  
 3 **to Mr. Talbot and Mr. Olson, did -- at the same time**  
 4 **communicate that document, to your recollection, to**  
 5 **any attorney of PNM?**  
 6 A. That, I do not recall.  
 7 Oh, yes, I do. The chief counsel for PNM.  
 8 **Q. Do you recall his name?**  
 9 A. I'm searching for that.  
 10 Gosh, I -- I forget his name.  
 11 **Q. Would that be Patrick Apodaca?**  
 12 A. Yes, Mr. Apodaca.  
 13 THE VIDEOGRAPHER: Excuse me, Counsel.  
 14 I need to take a break and change tapes.  
 15 We're now going off the record.  
 16 The time is approximately 4:07 p.m.  
 17 (A recess was taken from 4:07 p.m. to 4:15  
 18 p.m.)  
 19 THE VIDEOGRAPHER: We're now going back on  
 20 the record.  
 21 The time is approximately 4:15 p.m.  
 22 **Q. (By Mr. Throne) Mr. Smith, going back to**  
 23 **your answer -- your answer to my last question.**  
 24 **Did you have any communications while you**  
 25 **were employed by PNM directly with Patrick Apodaca,**

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1 **the general counsel for PNM?**  
 2 A. When you say directly, I had e-mails, yes,  
 3 but only -- he was copied as the attorney.  
 4 **Q. And who -- were you given a direction to**  
 5 **copy him as the attorney?**  
 6 A. Yes, sir.  
 7 **Q. By whom?**  
 8 A. Mr. Talbot.  
 9 **Q. And was that on all working documents that**  
 10 **you prepared during the time that you were there at**  
 11 **PNM?**  
 12 A. All working documents that were associated  
 13 with the FIP and the SIP or environmental-related  
 14 documents, and some financial documents.  
 15 **Q. And again to clarify, let's -- turning to**  
 16 **paragraph 27 of your -- of the complaint that you**  
 17 **filed earlier in the district court.**  
 18 **There you say that:**  
 19 **"On December 6, 2013, PNM's board of**  
 20 **directors approved a 12 percent raise in dividends**  
 21 **to shareholders, and the dividend equated to**  
 22 **approximately \$7.1 million, and that this amount was**  
 23 **more than covered by the reduction in maintenance**  
 24 **expenses at San Juan and by improperly passing on**  
 25 **costs to PNM's consumers by the fuel clause."**

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1 **So just to be clear, when you say the**  
 2 **amount was more than covered by the reduction in**  
 3 **maintenance expenses of San Juan, what figure were**  
 4 **you comparing to that \$7.1 million?**  
 5 A. Covered by the amount of maintenance  
 6 reductions at San Juan, I'm referring to the  
 7 \$19 million in expenses that were chopped out of the  
 8 San Juan budget, and PNM would reap 47 percent of  
 9 that amount as a 47 percent owner of the station.  
 10 **Q. And when you say there in that paragraph**  
 11 **"and by improperly passing on costs to PNM's**  
 12 **customers by the fuel clause," do you know when**  
 13 **those costs actually were passed on by the fuel**  
 14 **clause to PNM's customers?**  
 15 A. No, sir, I do not.  
 16 **Q. All you know is that it was done pursuant**  
 17 **to the company's fuel clause?**  
 18 A. What I know is there's the mechanism in  
 19 place with the fuel clause that keeps PNM from  
 20 having to pay the difference from San Juan's  
 21 generation to a higher-priced generation.  
 22 **Q. Okay. And turning to paragraph 42 of that**  
 23 **complaint.**  
 24 A. (Witness complies.)  
 25 **Q. In that paragraph, under the subsection 2**

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1 **of that paragraph you refer to expending for other**  
 2 **purposes capital funds slated for such maintenance**  
 3 **as a means to maintain PNM's customer rate base.**  
 4 **I just want to understand what you mean by**  
 5 **that, by expending for purposes of capital funds**  
 6 **that were slated for such maintenance.**  
 7 **Could you just explain what you meant by**  
 8 **that?**  
 9 A. As I discussed earlier in my testimony,  
 10 the O&M budget was reduced, but the capital budget  
 11 was not. And without planned outages to execute the  
 12 capital budget items, I was mandated to continue to  
 13 spend the capital to meet that goal, and I was  
 14 trying to scramble to find things that I could spend  
 15 the capital dollars on.  
 16 That's where I made reference earlier to  
 17 just paving the roads around the plant to count as  
 18 capital.  
 19 **Q. And could you just explain a little better**  
 20 **why it is you have to find ways to spend the capital**  
 21 **funds?**  
 22 **Maybe this is just asking an obvious**  
 23 **question, but for those of us outside the corporate**  
 24 **world.**  
 25 **I mean, you budgeted for capital funds.**

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1 **And so as you've explained, you were told to cut O&M**  
 2 **expenses. But why do you then have to spend the**  
 3 **money that's budgeted?**  
 4 A. Yes. Actually, an easy way to go to  
 5 understand that is go to the PNM website and look at  
 6 their investor communications. You will see a graph  
 7 where PNM is expending capital on a particular  
 8 basis, and they're basing their earnings  
 9 projections, their profitability to shareholders,  
 10 based upon the size of the rate base.  
 11 And the rate base is dependent upon us  
 12 meeting our budgetary targets for capital spending.  
 13 **Q. So while you were there, what -- what**  
 14 **would happen, while you were employed by PNM, if you**  
 15 **didn't spend the entire capital budget that was**  
 16 **presented to you? Or did that ever happen, that you**  
 17 **never -- didn't spend the entire capital budget?**  
 18 A. Not that I recall.  
 19 **Q. You always spent it?**  
 20 A. Yes, sir.  
 21 **Q. Did you ever go over it?**  
 22 A. Yes, sir.  
 23 **Q. Why was that?**  
 24 A. Sometimes when -- in a particular capital  
 25 project there may be an escalation in commodities

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1 associated with that capital project that were  
 2 beyond what our market projections were for those  
 3 commodities.  
 4 A good example is a high demand in China  
 5 for power plant equipment which, when you plan a  
 6 couple of projects a year and a half, two years  
 7 early, when you finally get to it it may cost you  
 8 more.  
 9 MR. THRONE: That's all I have.  
 10 Thank you very much, Mr. Smith.  
 11 THE WITNESS: Thank you.  
 12 MR. BOYD: Anybody else?  
 13 MR. ORTIZ: I have some.  
 14 EXAMINATION  
 15 BY MR. ORTIZ:  
 16 **Q. Good afternoon, Mr. Smith.**  
 17 **My name is Pat Ortiz, and I'm representing**  
 18 **PNM.**  
 19 **Was the subpoena that you were served to**  
 20 **appear today similar to the subpoena that you just**  
 21 **got handed to appear at the hearing?**  
 22 **Or do you have a copy of that subpoena?**  
 23 MR. BOYD: Object to the form.  
 24 A. I haven't looked at it. I will take a  
 25 look at it.

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1 No, sir. The subpoenas are different.  
 2 One subpoena is for a deposition and the other  
 3 subpoena is for a hearing.  
 4 **Q. (By Mr. Ortiz) Could I see a copy of that**  
 5 **subpoena that you got to appear today?**  
 6 A. (Witness complies.)  
 7 MR. ORTIZ: John, is it possible to get  
 8 copies of this and make it an exhibit?  
 9 MR. BOYD: Sure. I have no objection.  
 10 MR. ORTIZ: That would be Exhibit 16.  
 11 (Exhibit marked, 16.)  
 12 **Q. (By Mr. Ortiz) Bear with me a little bit**  
 13 **as I go through my notes.**  
 14 **Now, you were mentioning that PNM was**  
 15 **estimating the SCR project to cost about a billion**  
 16 **dollars.**  
 17 **Is that correct?**  
 18 A. Yes, I did. It was in very general terms,  
 19 as I specified in my testimony.  
 20 **Q. Okay. And if PNM had decided to invest in**  
 21 **SCR and not shut down Units 2 and 3, that would have**  
 22 **been rate base additions.**  
 23 **Isn't that correct?**  
 24 A. That's my understanding.  
 25 **Q. You mentioned that you were involved in**

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1 **the discussions with EPA and the New Mexico**  
 2 **Environment Department regarding compliance with the**  
 3 **regional haze group.**  
 4 A. Yes, sir.  
 5 **Q. Do you recall -- or do you know if the**  
 6 **New Mexico Environment Department proposed shutting**  
 7 **down Units 1 and 2?**  
 8 A. I don't recall that they proposed that, to  
 9 be honest with you. I don't know who did.  
 10 **Q. Okay. Do you recall that proposal being**  
 11 **made by someone?**  
 12 A. Not at the meetings that I was involved  
 13 with.  
 14 **Q. Okay. So you don't know if EPA rejected**  
 15 **shutting down Units 1 and 2 as opposed to 2 and 3?**  
 16 A. Mr. Talbot told me that the EPA had  
 17 rejected shutting down Units 1 and 2.  
 18 **Q. Now, you mentioned that you were concerned**  
 19 **with PNM's actions in reducing the O&M budget and**  
 20 **collecting increased costs through the fuel clause.**  
 21 **Is that correct?**  
 22 A. Yes, sir.  
 23 **Q. Did you report that to the -- to someone**  
 24 **higher than Mr. Talbot, your concerns?**  
 25 A. PNM has a concerns mechanism, if you're

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1 concerned about the company doing ethical practices.  
 2 I talked to Regan Hallford, who is our  
 3 plant representative in my chain of command, about  
 4 my concern.  
 5 I didn't specify exactly what the concern  
 6 was. I didn't want him to be pulled into that.  
 7 But he told me that any concerns I  
 8 expressed would go right back to Mr. Talbot. And if  
 9 my concerns were with Mr. Talbot, I didn't think  
 10 that was appropriate.  
 11 **Q. And what capacity did you say Mr. Hallford**  
 12 **was in, or was in?**  
 13 A. I'm sorry, I forget exactly what the title  
 14 was. But within PNM there is a group of people set  
 15 up to express ethical concerns about the company.  
 16 And that was a group of people that were routed up  
 17 to the proper places in the company for that  
 18 solution.  
 19 **Q. Are you aware that PNM has an integrity**  
 20 **hotline where you can report ethical concerns**  
 21 **anonymously if you so desire?**  
 22 A. Yes, sir. And I believe that was closely  
 23 tied to the same mechanism that Mr. Hallford was  
 24 tied to.  
 25 **Q. You are not aware that that integrity**

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1 **hotline is run by an independent third party?**  
 2 A. No, sir, I'm not.  
 3 **Q. You acknowledge that you had read Do The**  
 4 **Right Thing during the course of your employment**  
 5 **with PNM?**  
 6 A. Are you referring to I read the doing-the-  
 7 right-thing policy?  
 8 **Q. Yes.**  
 9 A. Yes, sir, I have.  
 10 **Q. Okay. And you have talked about going on**  
 11 **the PNM resources website. I believe it's for your**  
 12 **investor communications?**  
 13 A. Yes, sir.  
 14 **Q. Were you also aware that that website**  
 15 **contains an opportunity to contact the board**  
 16 **directly about concerns?**  
 17 A. No, sir, I was not aware of that.  
 18 **Q. And you didn't attempt to bring your**  
 19 **concerns to the attention of the PRC, did you?**  
 20 A. No, sir.  
 21 **Q. Now under the statute that you filed your**  
 22 **lawsuit under, the New Mexico Fraud Against the**  
 23 **Taxpayers Act, if successful, that's treble damages.**  
 24 **Is that correct?**  
 25 MR. BUTLER: I will object as to form.

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1 A. I'm sorry. Treble damages? I'm at a loss  
 2 at what you mean by treble.  
 3 **Q. (By Mr. Ortiz) If you are able to prove**  
 4 **loss to the State of New Mexico, that that's**  
 5 **tripled.**  
 6 A. I'm not aware of a multiplier.  
 7 I do know that the courts have the ability  
 8 to add a deterrent to the company for -- to deter  
 9 any -- if the case pans out, that there's a  
 10 deterrent mechanism built in.  
 11 **Q. Do you know why the complaint was**  
 12 **unsealed?**  
 13 A. Was unsealed?  
 14 **Q. Yes.**  
 15 A. That was at the discretion of the Attorney  
 16 General, I understand.  
 17 **Q. The Attorney General. Is it your**  
 18 **understanding that the Attorney General declined to**  
 19 **participate in your complaint?**  
 20 A. My understanding is they didn't want to  
 21 become an active party to the lawsuit at this time,  
 22 but they preserved their ability to be part of it in  
 23 the future.  
 24 **Q. Is there a document that states what the**  
 25 **Attorney General's position regarding your complaint**

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1 **was?**  
 2 MR. BUTLER: Object as to form. It may be  
 3 invading attorney/client privilege and work product,  
 4 so I will object as to form.  
 5 Go ahead and restate it, if you will.  
 6 **Q. (By Mr. Ortiz) Is there a document that**  
 7 **states the Attorney General's position with regards**  
 8 **to your complaint?**  
 9 MR. BUTLER: The same objection. I'll  
 10 direct you to the pleadings in the civil lawsuit  
 11 where the Attorney General did file a position  
 12 statement regarding their intention not to  
 13 intervene, but to reserve the right at this point in  
 14 time -- to reserve the right to intervene in the  
 15 future.  
 16 MR. ORTIZ: And Mr. Smith couldn't answer  
 17 that?  
 18 MR. BUTLER: The same objection.  
 19 Mr. Smith, are you a layperson or are you  
 20 a practicing attorney?  
 21 THE WITNESS: I am not a practicing  
 22 attorney.  
 23 **Q. (By Mr. Ortiz) Did you read the Attorney**  
 24 **General's pleading?**  
 25 A. I don't recall if I got anything in

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1 writing or not from the Attorney General. I would  
 2 imagine they do do things in writing.  
 3 Mr. Butler worked with me. I've been in  
 4 the midwest now, so I don't recall getting that  
 5 communication.  
 6 **Q. Now, you were discussing what occurred at**  
 7 **a couple of staff meetings that led to your**  
 8 **termination by PNM.**  
 9 **Do you recall that?**  
 10 A. Yes, sir.  
 11 **Q. And those meetings occurred on April 11**  
 12 **and April 23, 2013?**  
 13 A. That sounds about right. I don't recall  
 14 the exact dates. I may have them somewhere, but it  
 15 sounds about right.  
 16 **Q. Do you recall being interviewed by PNM HR**  
 17 **regarding those meetings?**  
 18 A. Yes, sir, I do.  
 19 **Q. Do you recall admitting that there were**  
 20 **inappropriate comments or jokes made during those**  
 21 **two meetings?**  
 22 A. No, sir, I don't.  
 23 **Q. Do you recall admitting that you made a**  
 24 **joke that was inappropriate as well?**  
 25 A. No, sir.

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1     **Q. Do you -- do you recall discussions with**  
2     **the HR business person, where she discussed her**  
3     **concerns regarding inappropriate conversation that**  
4     **occurred during the meetings?**  
5     A. When you say HR business person, who would  
6     that be?  
7     **Q. Mary Gordy.**  
8     A. Mary Gordy? Okay.  
9     Could you repeat the question?  
10    **Q. Do you recall having a conversation with**  
11    **her where she expressed her concerns about the**  
12    **inappropriate comments and jokes being made during**  
13    **the course of the meeting?**  
14    A. No, sir.  
15    **Q. When you said that these meetings were**  
16    **supposed to be open and frank discussions about the**  
17    **topics that were being discussed, you believed that**  
18    **open and frank discussions allow inappropriate**  
19    **comments that offend others and may create a hostile**  
20    **working environment?**  
21        MR. BOYD: Object to the form.  
22        MR. BUTLER: The same objection.  
23        Go ahead and answer.  
24    A. I'm sorry. Could you repeat that, please?  
25    **Q. (By Mr. Ortiz) When you state that these**

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1     **staff meetings are supposed to be open and frank**  
2     **discussions about topics, do you believe that open**  
3     **and frank means that people can make inappropriate**  
4     **comments, if they so desire, in order to express**  
5     **their opinions?**  
6        MR. BOYD: The same objection.  
7        MR. BUTLER: The same objection.  
8        Go ahead and answer.  
9    A. No, I do not.  
10    **Q. (By Mr. Ortiz) Do you recall someone,**  
11    **during the meeting where the pregnancy leave was**  
12    **being discussed that you discussed earlier, that**  
13    **someone remarked that if the employee was covered by**  
14    **the Family Medical Leave Act and it renews each**  
15    **year, he didn't want to pay someone who gets**  
16    **pregnant every year to be off work.**  
17        **Do you recall that statement?**  
18    A. I believe I recall a manager being  
19    concerned about that, yes.  
20    **Q. Do you recall someone saying that happens**  
21    **when you hire women in childbearing years?**  
22    A. No, sir, I don't remember that.  
23        MR. GOULD: I wonder if I could ask a  
24    question as to form.  
25        You're reading from some documents on your

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1     computer. Are those going to be made exhibits to  
2     this deposition or...  
3        MR. ORTIZ: No.  
4        MR. GOULD: Okay. Are they confidential  
5     in any way?  
6        MR. ORTIZ: They are confidential to me.  
7        MR. GOULD: In other words, they are  
8     designated confidential by PNM?  
9        MR. ORTIZ: Yes.  
10       MR. GOULD: Okay. Thank you.  
11    **Q. (By Mr. Ortiz) When your complaint became**  
12    **unsealed, did you contact New Energy Economy or**  
13    **Mr. Boyd about your allegations?**  
14    A. No, sir.  
15    **Q. Do you know how New Energy Economy became**  
16    **aware of your lawsuit?**  
17    A. No, sir, I don't.  
18    **Q. What are you being paid to appear here**  
19    **today?**  
20    A. Nothing, sir.  
21    **Q. Nothing. Mileage? Witness fee?**  
22    A. I don't have any agreement for  
23    reimbursement for being here.  
24    **Q. No reimbursement of expenses?**  
25    A. My lawyer and I talked and said we're --

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1        MR. BOYD: Wait. Hold it.  
2        There is an understanding that he's going  
3     to be reimbursed for travel and some expenses of  
4     being here. But there's no witness fee or mileage  
5     or...  
6    **Q. (By Mr. Ortiz) Okay. If I understood**  
7    **correctly, you said that you met Mr. Boyd for the**  
8    **first time yesterday.**  
9    A. That is correct.  
10    **Q. Had you talked to him on the phone before?**  
11    A. No, sir.  
12    **Q. You met Ms. Nanasi before today?**  
13    A. I met her yesterday.  
14    **Q. You met her yesterday as well.**  
15        **And I assume that you cooperated with**  
16    **Mr. Boyd in preparing for your deposition here**  
17    **today?**  
18    A. Mr. Boyd asked me questions and I answered  
19    truthfully.  
20    **Q. Do you know what a typical -- what the**  
21    **equal availability factor is for a solar**  
22    **photovoltaic unit?**  
23    A. I have owned several. I have owned solar  
24    voltaic at my home in Flagstaff, Arizona, since  
25    2006, and they've been available 100 percent of the

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1 time.

2 **Q. At night?**

3 A. The fuel source for the solar voltaic is

4 not available 100 percent of the time.

5 **Q. Do you think that if the New Mexico**

6 **Environmental Department has included in San Juan's**

7 **operating permit that it has to have balanced draft,**

8 **that it needs to put it in?**

9 MR. BUTLER: I will object as to form.

10 Go ahead and answer.

11 And lack of foundation.

12 Go ahead.

13 A. I've worked with the New Mexico

14 Environmental Department on several issues, and

15 we've come to agreement on several issues.

16 And once we came to agreement on things we

17 carried out with those agreements.

18 **Q. (By Mr. Ortiz) Do you know if the**

19 **San Juan operating permit requires balanced draft?**

20 A. My understanding is that it currently

21 does.

22 **Q. I can't find it in my notes, but I think**

23 **at some point -- well, let me ask you this.**

24 **Is it your understanding that PNM can't --**

25 **cannot shut down any of the units at San Juan**

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1 **without getting PRC approval?**

2 A. Could you say that one more time?

3 **Q. Do you know if PNM can shut down any of**

4 **the units of San Juan without getting PRC approval?**

5 A. It's my understanding that to abandon a

6 unit requires PRC approval. We shut down units all

7 the time.

8 **Q. Explain to me what you consider the**

9 **difference between abandonment and shutdown.**

10 A. Shutdown is when you reduce the electric

11 load on a generator, you turn off the fans, you turn

12 off the fire, and the unit is shut down.

13 **Q. Okay. So when you said that PNM had a**

14 **choice of either installing SCR under the federal**

15 **implementation plan or not operating San Juan, did**

16 **you take into account that maybe the PRC might have**

17 **a say in that?**

18 A. It's been my understanding that whatever

19 course of action PNM took, there would be many

20 stakeholders that would have a say in the final

21 outcome.

22 **Q. Such as?**

23 A. Intervenors. Customers. I'm sure there's

24 public hearings.

25 **Q. When they -- when they -- when you say**

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1 **have a say in it, intervenors can't tell PNM what to**

2 **do. Would you agree?**

3 **Well, they try. But...**

4 MR. BUTLER: Well, while we may agree,

5 I'll object as to form and foundation.

6 Go ahead.

7 **Q. (By Mr. Ortiz) Well, let me try to cut**

8 **this short.**

9 **When I say have a say, PNM cannot retire**

10 **any portion of San Juan without the commission's**

11 **approval.**

12 **Isn't that correct?**

13 **Or are you aware?**

14 A. I believe that to be true.

15 **Q. Okay. So PNM simply couldn't make a**

16 **unilateral decision as to whether it wanted to**

17 **install SCR or abandon those units?**

18 A. Again, sir, I don't think PNM could

19 undertake any course of action without approval of

20 the PRC and several stakeholders. And the State and

21 the EPA have the final approval.

22 **Q. I think you've testified that Palo Verde**

23 **Unit 3 is under lease, and because the leases were**

24 **expiring, that was a good time to move into rate**

25 **base.**

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1 **Did I understand your testimony correctly?**

2 A. That's what I had understood in

3 conversations during my employment at PNM.

4 **Q. Okay. And so you would be surprised if**

5 **someone told you that Palo Verde 3 had never been**

6 **leased.**

7 **Is that correct?**

8 A. Based on the information that I had, yes.

9 That would be different from what I understood.

10 I do know that Palo Verde 3 was not in the

11 rate base.

12 **Q. Now you said, if my notes are correct --**

13 **well, did you -- did I understand your testimony**

14 **correctly that you sold your PNM Resources stock in**

15 **March of 2013?**

16 A. Yes.

17 **Q. And you did so because you were concerned**

18 **that PNM was taking actions, that if discovered,**

19 **might result in the stock price being reduced?**

20 A. Over the long term, yes.

21 **Q. Did you -- did you require -- does PNM**

22 **policy -- did it require you to get permission from**

23 **Mr. Apodaca to sell your stock?**

24 A. I'm not sure if it was exactly with

25 Mr. Apodaca. But I know without PNM approval I

<b>Page 246</b>	<b>Page 248</b>
<p>1 couldn't do that.</p> <p>2 <b>Q. Okay. And in getting that approval, did</b></p> <p>3 <b>you have to represent to PNM that you were not privy</b></p> <p>4 <b>to material nonpublic information?</b></p> <p>5 A. I don't recall that.</p> <p>6 <b>Q. I may not have the name correctly, but are</b></p> <p>7 <b>you familiar with a PNM policy called the capital</b></p> <p>8 <b>improvement -- capital approval policy?</b></p> <p>9 A. No, sir. I'm not familiar with that.</p> <p>10 <b>Q. You mentioned that you were ordered to</b></p> <p>11 <b>copy Mr. Apodaca on documents related to the FIP and</b></p> <p>12 <b>the SIP.</b></p> <p>13 <b>Is that correct?</b></p> <p>14 A. Yes, sir.</p> <p>15 <b>Q. Were you aware that PNM was involved in</b></p> <p>16 <b>litigation over the FIP and the SIP and in</b></p> <p>17 <b>settlement discussions at the time?</b></p> <p>18 A. Yes. I believe it was in the 10th</p> <p>19 District Court.</p> <p>20 MR. ORTIZ: I don't think I have any more</p> <p>21 questions at this time, and we will reserve any</p> <p>22 further cross-examination until the hearing.</p> <p>23 MR. GOULD: Pat, while we're still on the</p> <p>24 record, can you give me the nonconfidential</p> <p>25 designation of the document you are reading from?</p>	<p>1 MR. ORTIZ: I don't know.</p> <p>2 MR. GOULD: Okay.</p> <p>3 MR. ORTIZ: I would have to check, because</p> <p>4 there may have been some documents that were filed</p> <p>5 at Workforce Solutions.</p> <p>6 MR. GOULD: Why don't you just get back to</p> <p>7 us on that, if you will. Send us an e-mail.</p> <p>8 Thanks.</p> <p>9 MR. BOYD: I have a couple of follow-up</p> <p>10 questions.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MR. BOYD:</p> <p>13 <b>Q. You've had -- Mr. Smith, you've had some</b></p> <p>14 <b>questions about the instruction of -- from</b></p> <p>15 <b>Mr. Talbot to include PNM's lawyer or lawyers on</b></p> <p>16 <b>your communications with him.</b></p> <p>17 <b>Do you recall that testimony?</b></p> <p>18 A. Yes, sir.</p> <p>19 <b>Q. When did you get that instruction from</b></p> <p>20 <b>him?</b></p> <p>21 A. It was in the November time frame of 2012.</p> <p>22 <b>Q. Okay. And did he tell you why he wanted</b></p> <p>23 <b>you to copy the lawyers on those communications?</b></p> <p>24 A. It was important that we kept</p> <p>25 communications out of the hands of anybody outside</p>
<b>Page 247</b>	<b>Page 249</b>
<p>1 Who it's to, who it's from, what the name of it and</p> <p>2 the date of it was?</p> <p>3 MR. ORTIZ: No. I think that's</p> <p>4 attorney/client privilege.</p> <p>5 MR. GOULD: I think you have to generally</p> <p>6 identify it if you had a privilege log.</p> <p>7 Can you give me whatever information you</p> <p>8 feel --</p> <p>9 MR. ORTIZ: These were --</p> <p>10 MR. GOULD: I don't want you to -- you</p> <p>11 know, I don't want you to trespass on what you</p> <p>12 believe is confidential.</p> <p>13 MR. ORTIZ: Well, let me look at --</p> <p>14 MR. GOULD: But if I was going to</p> <p>15 request --</p> <p>16 MR. ORTIZ: There may be -- there may be</p> <p>17 some public documents here.</p> <p>18 MR. GOULD: Could you generally</p> <p>19 describe -- are they disciplinary documents? Are</p> <p>20 they reports? Are they personnel files?</p> <p>21 MR. ORTIZ: They are investigative</p> <p>22 reviews -- investigative reports.</p> <p>23 MR. GOULD: Internal to PNM?</p> <p>24 Was there an outside investigator or was</p> <p>25 this just HR stuff?</p>	<p>1 of PNM.</p> <p>2 <b>Q. Okay. And the communications that you had</b></p> <p>3 <b>with him, did you understand that he -- that they</b></p> <p>4 <b>were being used in connection with litigation in</b></p> <p>5 <b>some fashion?</b></p> <p>6 A. No, sir. I did not understand that.</p> <p>7 <b>Q. Okay. And what was the nature --</b></p> <p>8 <b>specifically, so that I understand it, what was the</b></p> <p>9 <b>nature of the instruction that you had from him</b></p> <p>10 <b>about what categories of communications and what</b></p> <p>11 <b>communications should be copied to the legal</b></p> <p>12 <b>department or to a lawyer?</b></p> <p>13 A. Yes. Communications relative to things</p> <p>14 that are concerning the FIP or the SIP, and I think</p> <p>15 I mentioned that in the previous testimony.</p> <p>16 Financial documents and performance</p> <p>17 projections.</p> <p>18 <b>Q. Okay. And -- and what are the FIP and the</b></p> <p>19 <b>SIP, for the record? What are those acronyms and</b></p> <p>20 <b>what do they stand for?</b></p> <p>21 A. Yes. The FIP is the Federal</p> <p>22 Implementation Plan relative to regional haze and</p> <p>23 EPA's plan to eliminate that by using the best</p> <p>24 available retrofit technology.</p> <p>25 The SIP is the State Implementation Plan</p>

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1 concerning the same matter.

2 **Q. Okay. And did any -- did any member of**

3 **the legal department ever tell you to include him or**

4 **her on these communications?**

5 A. No, sir.

6 **Q. Okay. Did Mr. Talbot ever tell you -- or**

7 **strike that.**

8 **When you would have these communications**

9 **with him, can you remember some of the occasions for**

10 **them, whether he asked you or whether you**

11 **volunteered something or whatever? What was it?**

12 A. Sure. I remember him asking me to do an

13 analysis on the feasibility of different unit

14 combinations and the outages and costs associated

15 with it in the future years, and him asking in the

16 November time frame.

17 I told him it would take me 10 days to put

18 that together, to do the research.

19 And in about that same time frame I

20 e-mailed it to him, privileged, with Mr. Apodaca on

21 it.

22 And I believe we discussed it over the

23 phone at a later point in time.

24 **Q. Okay. And so did you -- were there --**

25 **were there other topics that -- when you say**

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1 **financial documents, what sorts of financial**

2 **documents or communications?**

3 A. That was cost projections, not only on the

4 different outages and equipment maintenance and

5 repairs and capital plans for the units in present

6 year and in future years.

7 **Q. Okay. Were those communications also**

8 **related to the FIP and the SIP, or were they just a**

9 **different topic?**

10 A. The near term was the upcoming budget in

11 2013.

12 And then the future years, it was a

13 multipronged analysis to look at the different

14 possible outcomes associated with the SIP and the

15 FIP.

16 **Q. All right. Did you have any understanding**

17 **as to why that would involve the legal department,**

18 **those communications?**

19 A. No, sir. As I mentioned earlier, we had a

20 pretty liberal policy to stamp things privileged.

21 And as long as we copied a lawyer in the

22 communication -- sometimes it didn't even matter

23 which lawyer -- we did so.

24 **Q. And so was that -- was that a common**

25 **practice at PNM, to copy lawyers on communications**

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1 **that you thought might be sensitive at all?**

2 A. Yes, sir.

3 **Q. Okay. And were you instructed to do so?**

4 A. Yes, sir.

5 **Q. By whom?**

6 A. By Mr. Themig, Mr. Talbot, and Mr. Olson.

7 **Q. Okay. Let me see.**

8 **Would it -- would this be a correct**

9 **statement, yes or no?**

10 **"PNM does better in profit if it does not**

11 **perform maintenance, lets equipment degenerate to**

12 **the point that it must be replaced with equipment**

13 **costing more than \$50,000, and that it has a motive**

14 **to do that so long as the public -- as the PRC does**

15 **not interfere with that."**

16 A. That statement is correct.

17 **Q. Okay.**

18 MR. BOYD: Okay. That's all I have.

19 FURTHER EXAMINATION

20 BY MR. THRONE:

21 **Q. Mr. Smith, just again going back to**

22 **Mr. Ortiz' question about the relationship between**

23 **your designating what you call in your complaint**

24 **working documents as confidential and privileged,**

25 **and he asked you about whether or not that was**

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1 **related to the litigation regarding the FIP and the**

2 **SIP.**

3 **Correct?**

4 A. Correct.

5 **Q. But I just want to get some clarity.**

6 **We -- were you referring to -- in**

7 **paragraph 26 of your complaint, were you**

8 **referring -- and why don't you -- if you need to get**

9 **that, that's fine.**

10 A. Okay.

11 **Q. And that's the statement there where you**

12 **referred to earlier, where you said you were**

13 **required by Smith [sic] to label many working**

14 **documents as confidential and privileged.**

15 A. Yes, sir.

16 MR. GOULD: Bruce, for clarification, what

17 paragraph was that?

18 MR. THRONE: 26.

19 MR. GOULD: 26. Thank you.

20 **Q. (By Mr. Throne) Were all of the documents**

21 **that you are referring to there all related to the**

22 **litigation regarding the FIP and the SIP?**

23 A. No, sir.

24 **Q. So I had understood earlier that you were**

25 **just talking about documents relating generally to**



1 actions regarding budget and the impact of budget  
 2 cuts and lack -- and failure to maintain in a way  
 3 that you thought was appropriate, that those were  
 4 the kinds of working documents that you were  
 5 referring to, or at least those kinds of documents  
 6 were included in what you were referring to there.  
 7 Is that correct?  
 8 A. Yes, sir. That's part of a broad  
 9 category.  
 10 Q. So is there some connection between those  
 11 kinds of documents and the litigation that was going  
 12 on, to your knowledge, regarding the FIP and the  
 13 SIP?  
 14 A. No, sir.  
 15 MR. THRONE: Okay. That's all I have.  
 16 FURTHER EXAMINATION  
 17 BY MR. ORTIZ:  
 18 Q. Mr. Smith, do you know if -- from your law  
 19 degree -- if merely labeling a document as  
 20 privileged and sending it to an attorney constitutes  
 21 actual privilege?  
 22 A. It's my understanding that what we were  
 23 doing, stamping --  
 24 Q. (By Mr. Ortiz) That's not my question.  
 25 A. Okay. I'm sorry.

1 MR. GOULD: John, while we're still on the  
 2 record, can I ask you a question about that?  
 3 Is it your intention in filing that  
 4 tomorrow that this deposition would be the  
 5 equivalent of prefiled testimony in opposition to  
 6 the stipulation?  
 7 MR. BOYD: That's our intent.  
 8 MS. NANASI: Not prefiled. Just...  
 9 MR. GOULD: Okay. Well, it's just  
 10 prefiled to the hearing.  
 11 MS. NANASI: That's correct.  
 12 MR. GOULD: That's what -- I'm just  
 13 calling it prefiled, not --  
 14 MS. NANASI: Just direct testimony in  
 15 opposition.  
 16 MR. GOULD: Okay. Thank you. I  
 17 understand. Okay. Thank you.  
 18 THE VIDEOGRAPHER: This concludes the  
 19 deposition of Gregory Smith.  
 20 We're now going off the record.  
 21 The time is approximately 5:03 p.m.  
 22 (Proceedings concluded.)  
 23  
 24  
 25

1 Q. From your law degree background, is it  
 2 your understanding that simply labeling a document  
 3 as privileged and sending it to an attorney is an  
 4 effective privilege claim?  
 5 A. No, sir. It is not.  
 6 Q. To your knowledge, did Mr. Talbot and  
 7 Mr. Olson and Mr. Themig have any legal background?  
 8 A. What do you mean by legal background?  
 9 Q. Do they have a law degree?  
 10 A. Education? I do not believe they do have  
 11 a legal education.  
 12 MR. ORTIZ: That's all.  
 13 MR. BUTLER: I would like to have him read  
 14 and sign.  
 15 I have no questions at this point, unless  
 16 you want to have this caucus first.  
 17 MR. BOYD: We're going to have to file  
 18 this tomorrow. So what we'll do is we'll file it  
 19 with a caveat that you've asked to read and sign.  
 20 MR. BUTLER: Sure.  
 21 MR. BOYD: And then we will -- if there  
 22 are any changes, we will supply those. We will  
 23 attach them or substitute.  
 24 If there are any corrections, we will make  
 25 sure they get in the record.

1 WITNESS SIGNATURE/CORRECTION PAGE  
 2 If there are any typographical errors to  
 3 your deposition, indicate them below:  
 4  
 5 PAGE/LINE  
 6 \_\_\_\_\_ Change to \_\_\_\_\_  
 7 \_\_\_\_\_ Change to \_\_\_\_\_  
 8 \_\_\_\_\_ Change to \_\_\_\_\_  
 9 Any other changes to your deposition are  
 10 to be listed below with a statement as to the reason  
 11 for such change.  
 12 PAGE/LINE CORRECTION REASON FOR CHANGE  
 13 \_\_\_\_\_  
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 16 \_\_\_\_\_  
 17 \_\_\_\_\_  
 18 I, GREGORY SMITH, do hereby certify that I  
 19 have read the foregoing pages of my testimony as  
 20 transcribed and that the same is a true and correct  
 21 transcript of the testimony given by me in this  
 22 deposition except for the changes made.  
 23  
 24 \_\_\_\_\_  
 25 GREGORY SMITH

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CERTIFICATE

I, Paul Baca, RPR, CCR in and for the State of New Mexico, do hereby certify that the above and foregoing contains a true and correct record, produced to the best of my ability via machine shorthand and computer-aided transcription, of the proceedings had in this matter.

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