

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF THE)
ABANDONMENT OF THE FOUR CORNERS)
POWER PLANT AND ISSUANCE OF A)
SECURITIZED FINANCING ORDER)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant)
_____)**

Case No. 21-00017-UT

**SUPPLEMENTAL TESTIMONY
OF
MARK FENTON**

March 15, 2021

**NMPRC CASE NO. 21-00017-UT
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MARK FENTON**

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PUBLIC SERVICE COMPANY OF NEW MEXICO**

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SELF-VERIFICATION

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1

I. INTRODUCTION AND PURPOSE

2 **Q. PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

3 **A.** My name is Mark Fenton. I am the Executive Director of Regulatory Policy and
4 Case Management for Public Service Company of New Mexico (“PNM” or
5 “Company”). My business address is Public Service Company of New Mexico,
6 414 Silver Avenue SW, Albuquerque, New Mexico 87102.

7

8 **Q. HAVE YOU FILED PRIOR TESTIMONY IN THIS PROCEEDING?**

9 **A.** Yes, I filed Direct Testimony in support of PNM’s original Application on January
10 8, 2021.

11

12 **Q. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY?**

13 **A.** I summarize PNM’s Amended Application and supplemental testimonies filed on
14 March 15, 2021. I also provide additional information to support PNM’s request
15 to abandon its interest in the Four Corners Power Plant (“FCPP” or “Four Corners”)
16 and transfer that interest to the Navajo Transitional Energy Company, LLC
17 (“NTEC”). Finally, I provide background on the New Mexico Public Regulation
18 Commission’s (“Commission”) consideration of the prudence of PNM’s
19 investments in FCPP in Case No. 16-00276-UT (“2016 Rate Case”) and address
20 Issue 4(a) in the Hearing Examiner’s February 26, 2021 *Order on Sufficiency of*
21 *PNM’s Application and Scope of Issues in Proceedings* (“February Order”).

22

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1 **Q. PLEASE SUMMARIZE THE FEBRUARY ORDER.**

2 **A.** In the February Order, the Hearing Examiner found that PNM’s January 8, 2021
3 original Application was deficient because it did not plead and adequately support
4 PNM’s request to transfer its interest in FCPP to NTEC under Sections 62-6-
5 12(A)(4) and 62-6-13 of the Public Utility Act. The Hearing Examiner authorized
6 PNM to file an amended application subject to a nine-month review period pursuant
7 to Section 62-18-5 of the Energy Transition Act commencing on the date of filing
8 the amended application and ordered PNM to file a motion to withdraw the original
9 Application. The Hearing Examiner also required PNM to file supplemental
10 testimony addressing, at a minimum, the prudence of undepreciated investments in
11 FCPP that PNM seeks to include in a financing order as energy transition costs.
12 The Hearing Examiner required these filings to be made by March 15, 2021.

13
14 **Q. WHAT INFORMATION REGARDING PRUDENCE IS PNM PROVIDING**
15 **IN SUPPLEMENTAL TESTIMONY?**

16 **A.** In these supplemental testimonies, PNM is responding to the requirement in the
17 February Order that PNM specifically address the prudence of anticipated future
18 investments in FCPP and address the prudence of the decision PNM made in 2013
19 to extend its participation in the plant beyond 2016. In the direct testimonies of
20 PNM witnesses Fallgren and Baker, PNM details the investments making up
21 PNM’s abandonment costs for recovery through energy transition bonds, including
22 the reasonableness of the undepreciated FCPP investments since PNM’s 2016 Rate

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1 Case. That testimony includes investments made between January 1, 2019 and
2 December 31, 2024 (the expected FCPP exit date) that have not previously been
3 considered by the Commission in a general rate case. PNM's supplemental
4 testimonies detail the basis on which PNM's decision to continue in FCPP should
5 be found to have been prudent, and provides additional information supporting the
6 prudence of the investments that were reviewed by the Commission in the 2016
7 Rate Case, and those investments incurred or anticipated since that case.

8
9 **Q. PLEASE SUMMARIZE THE REVISIONS IN THE AMENDED**
10 **APPLICATION.**

11 **A.** The Amended Application is based on the January 8, 2021 original Application but
12 now addresses two key requirements: PNM's express request for approval of the
13 transfer of its interest in FCPP to NTEC under Sections 62-6-12(A)(4) and 62-6-
14 13, and information addressing the prudence of PNM's 2013 decision to remain in
15 FCPP beyond 2016. The Amended Application reiterates PNM's original requests
16 relating to the abandonment of Four Corners under the Energy Transition Act and
17 issuance of energy transition bonds for the recovery of abandonment and other
18 energy transition costs in accordance with the Financing Order provisions of the
19 Act.

20
21 PNM updated the attachments to the Amended Application – the proposed form of
22 notice and the proposed form of financing order – to reflect the amendments in the

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1 Amended Application. PNM also updated the proposed form of financing order to
2 define the term “Decommissioning Costs.”
3

4 **Q. PLEASE IDENTIFY PNM’S OTHER WITNESSES AND THE TOPICS**
5 **THEY ADDRESS IN THEIR SUPPLEMENTAL TESTIMONIES.**

6 **A.** In addition to my supplemental testimony, PNM is filing supplemental testimonies
7 from Thomas G. Fallgren, Thomas S. Baker, Michael J. Settlage, and Frank C.
8 Graves in support of the Amended Application. These supplemental testimonies
9 are summarized as follows:

- 10 • Mr. Fallgren provides additional detail and support for PNM’s request for
11 approval of the proposed sale of its interest in FCPP to NTEC and explains
12 how the proposed sale and abandonment provides a net public benefit. Mr.
13 Fallgren discusses a recent development relating to an agreement among the
14 FCPP owners concerning the future seasonal operation of FCPP and the
15 associated benefits of that agreement. He also addresses Issues 1(a) and 2
16 from the February Order by describing and supporting the necessity and
17 reasonableness of PNM’s capital investments in FCPP and their recovery
18 under the Energy Transition Act.
- 19 • Mr. Baker addresses portions of Issues 1, 2, 3 and 4 from the February Order
20 by identifying the undepreciated investments in FCPP that are currently in
21 rates, the amounts collected in rates, and by quantifying the impacts to the
22 energy transition charge of PNM’s recovery of different tranches of

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1 undepreciated investments. He also explains the financial impact to PNM
2 of the prior disallowances ordered by the Commission in the 2016 Rate
3 Case.

- 4 • Mr. Settlage addresses Issue 1 from the February Order by providing the
5 individual rate impacts of recovery of undepreciated investments in FCPP
6 through energy transition bonds.
- 7 • Mr. Graves, a Principal at The Brattle Group, addresses Issue 3 in the
8 February Order by demonstrating the prudence of PNM’s 2013 decision to
9 remain in FCPP beyond 2016. He finds that further FCPP disallowances
10 based on prudence determinations, beyond those ordered by the
11 Commission in PNM’s 2016 Rate Case, would not be warranted.

12
13 Mr. Graves’ supplemental testimony directly responds to the prudence scope
14 required by the February Order and therefore is the first testimony he has filed in
15 this case. PNM witnesses Fallgren, Baker, and Settlage all filed direct testimonies
16 in support of PNM’s Application on January 8, 2021, and their supplemental
17 testimonies are in addition to those previously filed.

18
19 PNM Exhibit MF-1 (3-15-21 Supplemental) attached to this testimony identifies
20 where each requirement from the February Order is addressed in supplemental
21 testimony.

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1 **Q. IS PNM AMENDING OR WITHDRAWING THE DIRECT TESTIMONIES**
2 **FILED ON JANUARY 8, 2021?**

3 **A.** No. PNM is not amending or withdrawing any of the direct testimonies filed on
4 January 8, 2021; those testimonies remain part of the docket in this matter. PNM's
5 January 8, 2021 testimonies are being supplemented by the March 15, 2021
6 testimonies described above.

7

8 **II. LEGAL STANDARD FOR THE SALE AND TRANSFER OF PNM'S**
9 **INTEREST IN FCPP TO NTEC**

10 **Q. WHAT IS THE LEGAL STANDARD APPLICABLE TO PNM'S REQUEST**
11 **TO TRANSFER ITS INTEREST IN FCPP?**

12 **A.** As I discussed in my direct testimony, Section 62-6-12(A)(4) of the Public Utility
13 Act provides: "With the prior express authorization of the commission, but not
14 otherwise... any public utility may sell, lease, rent, purchase or acquire any public
15 utility plant or property constituting an operating unit or system or any substantial
16 part thereof[.]" Section 62-6-13 provides that the Commission must approve a
17 transfer under Section 62-6-12(A)(4) unless it finds that the transaction is unlawful
18 or inconsistent with the public interest.

19

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1 **Q. HAS THE COMMISSION APPLIED SECTION 62-6-12(A)(4) IN A**
2 **RECENT ABANDONMENT PROCEEDING?**

3 **A.** Yes. In Case No. 20-00199-UT, the Commission approved an application by
4 Continental Divide Electric Cooperative, Inc. (“CDEC”) to abandon and transfer
5 distribution lines and certain other public utility asset to the Pueblo of Acoma
6 (“Acoma”) and to abandon the provision of electric utility services to Acoma.

7
8 **Q. WHAT STANDARD DID THE COMMISSION APPLY TO CDEC’S**
9 **APPLICATION?**

10 **A.** The Commission explained that in cases involving a proposed abandonment and
11 transfer it applies a two-step analysis. First, the Commission considers whether the
12 proposed abandonment results in a net benefit to the public interest. The
13 quantifiable and unquantifiable benefits of the proposed abandonment must
14 outweigh the costs in order for the Commission to approve the action. If the utility
15 satisfies the standard for approval of the abandonment, the Commission then moves
16 to the second step in the analysis: whether the proposed sale of utility assets results
17 in “no net detriment” to the public. “No net detriment” requires that the quantifiable
18 and unquantifiable benefits of the transaction at least equal the costs of the
19 transaction.

20

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1 The Commission summarized the combined standard as follows: “In short, the
2 statutes... and the Commission’s case law require the applicant to show that the
3 abandonment and transfer or sale produces a net public benefit.”¹

4

5 **Q. ON WHAT GROUNDS DID THE COMMISSION APPROVE CDEC’S**
6 **APPLICATION TO ABANDON AND TRANSFER ITS UTILITY ASSETS?**

7 **A.** The Commission found that the proposed transaction would result in a net public
8 benefit. Specifically, the Commission found that the transaction would provide
9 benefits to both CDEC and Acoma, was cost-effective, would ensure a minimal
10 impact to CDEC’s ratepayers, and would allow Acoma to take control over the
11 production and supply of energy in its territory for its tribal members.²

12

13 **Q. WILL PNM’S PROPOSAL TO ABANDON AND TRANSFER ITS**
14 **INTEREST IN FCPP TO NTEC PRODUCE A NET PUBLIC BENEFIT?**

15 **A.** Yes. As Mr. Fallgren attests in his direct and supplemental testimonies, the
16 proposed transaction is the result of good faith, arm’s-length negotiations with
17 NTEC. NTEC owns a 7% interest in FCPP and also owns the Navajo Mine that
18 supplies the fuel for FCPP. As PNM witness Laura E. Sanchez in her Direct
19 Testimony and Mr. Fallgren in his supplemental testimony discuss, transferring
20 PNM’s interest to NTEC will provide the Navajo Nation a stronger voice regarding

¹ Case No. 20-00199-UT Recommended Decision at 9-10, adopted by Order Adopting Recommended Decision (December 30, 2020).

² *Id.* at 14.

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1 FCPP and the impacts of a future closure. Mr. Fallgren explains the following
2 public benefits of the abandonment and transfer in more detail:

- 3 • Cost savings to PNM’s customers between \$30 million and \$300 million
4 on a net present value basis;
- 5 • Facilitation of the deployment of lower cost and more flexible resources
6 on PNM’s system;
- 7 • Furtherance of New Mexico’s public policy objectives as identified in
8 the Energy Transition Act;
- 9 • Acknowledgment of the interests of the Navajo Nation; and
- 10 • Mitigation of negative economic impacts to the local community at
11 FCPP.

12 In addition, PNM witness Fallgren testifies that transferring PNM’s interest in
13 FCPP to NTEC will facilitate an agreement among the FCPP owners for seasonal
14 operations of one of the generating units which will also result in reduced carbon
15 emissions from the plant. He confirms that there are no reasonable prospects for an
16 early plant closure. As detailed by Mr. Fallgren, this agreement in principle includes
17 the other owners’ waiver of their rights of first refusal, commitments to operate
18 FCPP seasonally beginning in the fall of 2023, fair notice and payment to NTEC
19 for early termination of the coal supply agreement, and NTEC’s agreement that it
20 will not seek to transfer its existing FCPP interest or the interest acquired from
21 PNM, to a third party.

22

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1 **Q. IS PNM SELLING FOUR CORNERS TO NTEC TO MEET PNM’S**
2 **CURRENT MANDATES UNDER THE RENEWABLE ENERGY ACT**
3 **(“REA”)?**

4 **A.** No. As presented in the Direct Testimony of PNM Witness Phillips, PNM can fully
5 comply with the provisions of the renewable portfolio standards while retaining
6 Four Corners in its portfolio through 2031 when the FCPP coal supply agreement
7 expires. While there is language in Section 62-16-4(B)(4) of the REA that states
8 the Commission shall prevent carbon dioxide emitting electricity generating
9 resources from being reassigned, redesignated or sold *as a means of complying* with
10 the renewable portfolio standard in 2040 and 2045, this section of the REA is not
11 applicable until 2040 at the earliest, after the planned closure of Four Corners in
12 2031. Whether PNM exits FCPP in 2024 or in 2031 does not impact PNM’s 2040
13 or 2045 RPS compliance.

14
15 PNM is selling and transferring its interest to NTEC because an early Four Corners
16 exit provides PNM customers with significant savings, as explained by PNM
17 Witness Phillips, and because the sale results in other public benefits discussed by
18 PNM Witness Fallgren. The sale also decreases the carbon footprint of PNM’s
19 retail generation portfolio, which meets the criteria for utilities who utilize
20 securitized bonds to abandon a coal plant, as set forth in Section 62-18-10 of the
21 ETA. However, compliance with the renewable portfolio standard that applies in
22 2040 and 2045 is not the reason for PNM’s proposed sale to NTEC.

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1 **Q. DOES THE FACT THAT THE PLANT IS NOT EXPECTED TO**
2 **SHUTDOWN WHEN PNM EXITS PROVIDE A BASIS TO DENY PNM’S**
3 **REQUEST FOR ABANDONMENT AND SECURITIZATION**
4 **FINANCING?**

5 **A.** No. In Case No. 19-00018-UT, which was docketed to consider abandonment of
6 the San Juan Generating Station (“San Juan”), it was specifically determined that
7 the granting of PNM’s requested abandonment of that coal plant would only apply
8 to PNM’s interest in the plant and would not interfere with the efforts of the City
9 of Farmington and Enchant Energy to acquire the plant from PNM and the other
10 San Juan owners and develop it with carbon capture utilization and storage
11 technology (Recommended Decision for Financing Order at 22-23). Thus, the
12 Commission approved PNM’s abandonment of San Juan and expressly
13 acknowledged the prospect for the plant’s continued operations. By this standard,
14 a complete shutdown of FCPP is not a requirement for approval of abandonment
15 and securitization under the ETA.

16
17 **Q. THROUGH ITS DIRECT AND SUPPLEMENTAL TESTIMONIES, HAS**
18 **PNM DEMONSTRATED THAT IT MEETS THE COMMISSION’S**
19 **STANDARDS FOR ABANDONMENT AND THAT THERE WILL BE NO**
20 **NET DETRIMENT TO THE PUBLIC INTEREST?**

21 **A.** Yes. In its direct and supplemental testimonies, PNM has met the required
22 showings. PNM has demonstrated that the proposed sale, transfer and abandonment

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1 of its FCPP interest through the NTEC Agreement meets the *Commuters'*
2 *Committee* criteria applied by the Commission. There will be net benefits to
3 customers because customers will realize significant savings from abandoning
4 FCPP so that it can be replaced with less costly alternatives. These savings are
5 increased through the use of securitized financing under the Energy Transition Act.
6 PNM has also demonstrated as a qualifying utility using securitized financing to
7 abandon FCPP, that it will meet reduced emissions limits for its retail generation
8 portfolio. The NTEC sale will facilitate actual reductions in emissions at FCPP,
9 even without a highly speculative early shutdown of the plant. Further, the sale to
10 NTEC, which already holds a 7% share of FCPP, is lawful and does not result in a
11 net detriment to the public interest.

12

13 **III. PRUDENCE OF PNM'S INVESTMENTS IN FCPP**

14 **Q. WHEN DID PNM MAKE ITS DETERMINATION TO CONTINUE**
15 **PARTICIPATING IN FCPP BEYOND 2016?**

16 **A.** In 2013, PNM decided to continue its participation in FCPP by securing its coal
17 supply under more favorable terms and entering into amended operating
18 agreements, which would allow the plant to operate through 2031. The terms of
19 the previous coal supply and joint operating agreements for FCPP expired in 2016.
20 PNM witness Fallgren discusses the background of FCPP in his direct testimony
21 and PNM witness Graves addresses the prudence of PNM's decision-making in

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1 2012 and 2013 leading to its decision to renew the coal supply and joint operating
2 agreements.

3
4 **Q. HAS PNM’S 2013 DECISION TO CONTINUE PARTICIPATING IN FCPP,**
5 **AND THE ASSOCIATED COSTS AND BENEFITS, BEEN REVIEWED IN**
6 **PRIOR COMMISSION PROCEEDINGS?**

7 **A.** Yes. In Case No. 15-00261-UT, PNM’s 2015 general rate case, PNM sought to
8 include \$19.5 million in test period expenses for the renewed FCPP coal supply
9 agreement (“FCPP CSA”) in base rates and recovery of fuel costs through PNM’s
10 Fuel and Purchased Power Cost Adjustment Clause. New Energy Economy
11 (“NEE”) opposed the inclusion of the FCPP CSA costs in rates on the ground that,
12 “at the time that PNM approved the CSA in late 2013 it had not performed any
13 analysis to show whether [FCPP] was its most cost-effective resource.” The
14 Coalition for Clean Affordable Energy (“CCAЕ”) similarly argued that PNM had
15 “not provided any evidence that its decision to extend its investment in [FCPP],
16 including entering into a new coal contract was prudent.”

17
18 The Commission rejected NEE’s and CCAЕ’s arguments.³ The Commission
19 specifically found that the CSA was reasonable as to its terms and the costs should
20 be recovered through rates; and that because FCPP was a certificated plant and part

³ Case No. 15-00261-UT, *Corrected Recommended Decision* at 174-175, adopted in relevant part by *Final Order Partially Adopting Corrected Recommended Decision* (September 28, 2016).

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1 of PNM’s portfolio, a coal supply was needed to operate the plant. The
2 Commission noted that a general rate case was an appropriate proceeding to address
3 the reasonableness of the costs of the CSA, but was not the appropriate proceeding
4 to address the reasonableness of including a certificated resource in PNM’s
5 generation portfolio. The Commission also noted that intervenors had the
6 opportunity to address PNM’s investments in coal-fired generation in general in
7 Case No. 13-00390-UT.⁴ The Commission’s final order relating to PNM’s
8 recovery of the costs of the CSA in the 2015 Rate Case was appealed and affirmed
9 by the New Mexico Supreme Court.

10
11 **Q. HAS THE COMMISSION CONSIDERED PNM’S DECISION TO**
12 **CONTINUE PARTICIPATING IN FCPP IN ANY OTHER CASES?**

13 **A.** Yes. In the 2016 Rate Case, NEE again challenged the prudence of PNM’s 2013
14 decision to continue participating in FCPP. PNM sought to include two categories
15 of future test period costs related to extending its participation in FCPP in rates:
16 \$90.1 million in selective catalytic reduction (“SCR”) pollution controls and \$58.6
17 million in capital investments necessary to ensure the continued operation of FCPP.
18 PNM entered into a stipulated agreement with several parties that, among other

⁴ *Id* at 174-175. In Case No. 13-00390-UT, which approved PNM’s proposal to retire two units of the San Juan Generation Station and procure replacement resources, the Commission specifically rejected arguments that any further acquisition of coal was unreasonable and imprudent because there were feasible renewable alternatives. The Commission found that proposed alternatives to coal generation were more costly and less feasible than the proposed coal-fired capacity, which was already built. Case No.13-00390-UT, *Final Order* at 12-14 (December 16, 2015). The Commission’s final order was affirmed on appeal by the New Mexico Supreme Court.

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1 things, reduced PNM's requested non-fuel base rate revenue increase from \$99.2
2 million to \$62.3 million, limited PNM's return on the \$90.1 million SCR
3 investment to a debt-only return, and required PNM to make an unspecified
4 reduction to its requested revenue requirement of \$16.5 million.

5
6 In addition to considering the merits of the stipulation, the Hearing Examiners
7 specifically considered the prudence of PNM's 2013 decision to continue
8 participating in FCPP. They recommended that the Commission find the decision
9 was imprudent because in their view PNM did not adequately analyze the costs and
10 alternatives of exiting FCPP prior to making its decision in late 2013 and because
11 PNM did not conduct a further review of its decision after October 2013. The
12 Hearing Examiners found that FCPP's poor performance beginning in 2013, which
13 included a significant increase in the forced outage rate, should have prompted
14 further analysis of PNM's decision to continue. As a remedy for this imprudence,
15 the Hearing Examiners found that an appropriate remedy could be to disallow a
16 return on and a return of PNM's \$148.7 million in test year investments; however,
17 based on an evaluation of the stipulation as a whole, the recommendation was a
18 disallowance of any return on the \$148.7 million.

19

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1 **Q. DID THE COMMISSION ACCEPT THE HEARING EXAMINERS’**
2 **RECOMMENDED FINDING OF IMPRUDENCE?**

3 **A.** No. The Commission ultimately issued a *Revised Order Partially Adopting*
4 *Certification of Stipulation* in which it accepted the stipulation with modifications.
5 Regarding FCPP prudence, the Commission acknowledged that the stipulation
6 viewed as a whole was beneficial and that the long-term impact of FCPP and the
7 prudence of PNM’s continued use of the plant should be reserved and litigated in a
8 separate future rate proceeding.⁵ The Commission found that it was justified in
9 deferring a finding on FCPP prudence for the duration of the period the stipulation
10 would be in effect because doing so would:

11 permit consideration of the issue with the full participation of all
12 parties without any constraints that may be placed on such
13 Signatories associated with their current role as proponents of the
14 proposed settlement, while also permitting a more full opportunity
15 for the Commission to consider the necessity and scope of any
16 remedy in light of PNM’s alleged imprudence; an option [that] was
17 not currently available to the Commission in light of the limited
18 record on that issue developed in this proceeding.⁶
19

20 The Commission authorized the inclusion in PNM’s rate base of the entire amount
21 of \$148.7 million of the test period FCPP investments. However, the Commission
22 also ordered, as a condition of accepting the stipulation, that the Signatories accept
23 additional modifications that would limit PNM’s return on those test period FCPP
24 investments to a debt-only return and that they accept a further “unspecific”

⁵ *Revised Order Partially Adopting Certification of Stipulation* at ¶ 65 (January 10, 2018).
⁶ *Id.* at ¶ 66.

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1 reduction to the test year revenue requirement of \$9.1 million, which was ultimately
2 amended to \$4.4 million. The Commission explained that the adjustments were
3 necessary to address “the magnitude of the potential benefit to PNM of deferring
4 the issue of PNM’s FCPP prudence to PNM’s next rate case.”⁷

5

6 **Q. WHY DID THE COMMISSION AMEND ITS REQUIRED “UNSPECIFIC”**
7 **REVENUE REQUIREMENT REDUCTION OF \$9.1 MILLION?**

8 **A.** In its January 17, 2018 *Order on Notice of Acceptance*, the Commission amended
9 the portion of its *Revised Order Partially Adopting Certification of Stipulation* that
10 required the signatories to accept a further \$9.1 million reduction because that
11 revenue reduction was equal to the loss to PNM of a complete disallowance of a
12 return on (debt and equity return) the \$148.7 million capital investment for FCPP.
13 Because the Commission specifically authorized a debt-only return on the capital
14 investment, the Commission granted PNM’s request that the further unspecified
15 revenue requirement be limited to \$4.4 million, to be consistent with the
16 disallowance of an equity portion of the return on the \$148.7 million.

17

⁷ *Id.* at ¶ 67.

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1 **Q. DID THE SIGNATORIES ACCEPT THE COMMISSION'S**
2 **MODIFICATIONS TO THE STIPULATION?**

3 **A.** Yes. The signatories filed a Modified Revised Stipulation in which they accepted
4 the Commission's modifications. The Commission issued orders accepting the
5 Modified Revised Stipulation on January 17, 2018 and January 31, 2018.

6

7 **Q. WAS THE MODIFIED REVISED STIPULATION A "BLACK BOX"**
8 **SETTLEMENT?**

9 **A.** No. The Commission noted that it and the Hearing Examiners were not limiting
10 their review of the Modified Revised Stipulation to just a thumbs up or thumbs
11 down judgement, but were performing the same type of analysis that would be
12 applied in a fully litigated rate case.⁸ Further, the Commission's initial procedural
13 order issued on December 14, 2016 specifically ordered that any stipulated cost of
14 service was to provide specific cost of service items such as a stated rate of return,
15 and would have the same force and effect as a fully litigated cost of service
16 approved by the Commission. The Modified Revised Stipulation included the
17 required cost of service that showed the adjustments of the various provisions of
18 the stipulation to PNM's originally filed cost of service, including the allowed cost
19 of capital, the debt-only return on the \$148.7 million of FCPP investments, and the
20 \$4.4 million revenue requirement reduction; and the Modified Revised Stipulation

⁸ Revised Order Partially Adopting Certification of Stipulation at ¶ 37 - 39.

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1 was approved by the Commission. In addition, PNM filed detailed work papers in
2 its required compliance filing with Advice Notice 545 filed January 23, 2018,
3 which implemented the phase one rates approved by the Commission. The
4 compliance filing included a stipulated revised cost of service that showed the
5 Commission-ordered adjustments and the resulting rates. The Commission’s
6 Utility Division Staff reviewed Advice Notice 545 and recommended Commission
7 acceptance of the compliance filing.⁹ The Commission’s own orders and the
8 requisite details on its cost of service filed by PNM confirm that the 2016 Rate Case
9 did not involve a “black box” settlement.

10
11 **Q. WERE THE FCPP INVESTMENTS AT ISSUE IN THE 2016 RATE CASE**
12 **INCLUDED IN PNM’S RATES?**

13 **A.** Yes. The Commission approved the inclusion of these FCPP investments in PNM’s
14 rate base. PNM witness Baker explains in his supplemental testimony how the
15 \$148.7 million, with a debt-only return, was identified in the cost of service in the
16 Modified Revised Stipulation and Advice Notice 545 and included in PNM’s rates.
17 The approved rates first became effective on February 1, 2018, and therefore the
18 FCPP investments have been in PNM’s rates since prior to January 1, 2019, which
19 means they can be recovered through a financing order pursuant to the Energy
20 Transition Act.

⁹ *Order Closing Docket* (January 31, 2018).

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1 **Q. WAS THERE EVIDENCE THAT SUPPORTED THE COMMISSION’S**
2 **DETERMINATIONS TO INCLUDE THE FCPP INVESTMENTS IN PNM’S**
3 **RATES?**

4 **A.** Yes. Although the Commission was critical of PNM’s decision-making process, it
5 did not find that PNM was imprudent. PNM provided evidence that it had included
6 consideration of its FCPP ownership in PNM’s integrated resource plans, and had
7 specifically considered the possibility of selling its interests but concluded there
8 wasn’t an interested buyer at the time. PNM also specifically analyzed whether it
9 would be economical to replace FCPP when it evaluated the reasonableness of the
10 new coal supply agreement as it was being negotiated in the 2012-2013 time frame.
11 PNM provided evidence that in comparison with a combined cycle gas plant, under
12 most scenarios it was beneficial to customers to remain in the plant through 2031.

13
14 Additionally, PNM submitted substantial information in support of the FCPP
15 capital projects to be included in PNM’s rate base. Although the prudence of
16 PNM’s decision making was challenged, no substantive or meritorious objections
17 were raised on the reasonableness of the costs for those projects, and the
18 Commission specifically allowed those capital investments to be recovered in
19 PNM’s rates.

20

**SUPPLEMENTAL TESTIMONY
OF MARK FENTON
NMPRC CASE NO. 21-00017-UT**

1 **Q. WHAT EVIDENCE IS PNM PRESENTING IN ITS SUPPLEMENTAL**
2 **TESTIMONIES TO ADDRESS THE PRUDENCE OF ITS DECISION TO**
3 **CONTINUE PARTICIPATING IN FCPP AS ORDERED BY THE**
4 **HEARING EXAMINER?**

5 **A.** PNM retained The Brattle Group to independently analyze PNM’s decision to
6 extend its participation in FCPP. PNM witness Graves provides supplemental
7 testimony on PNM’s behalf that evaluates the prudence of PNM’s decision-making
8 process and modeling regarding FCPP. He also provides an opinion on the
9 reasonableness and appropriateness of PNM’s investments at FCPP.

10
11 As Mr. Graves testifies, PNM’s decision-making process and studies regarding the
12 potential extension of PNM’s participation in FCPP were prudent. Mr. Graves
13 notes that intervenors in prior PNM cases have pointed out there were omissions
14 and alternative assumptions that should have informed PNM’s studies, but these
15 criticisms were themselves incomplete. Mr. Graves made complete adjustments to
16 PNM’s studies and conducted his own independent assessment of the value of
17 remaining in the plant at the end of 2013. Mr. Graves confirms that, based on the
18 information available at that time, extending PNM’s participation in the plant was
19 prudent because a thorough evaluation would have reasonably shown projected
20 base level savings of approximately \$46 million and projected maximum savings
21 of \$180 million over the available alternatives at the time.

22

**SUPPLEMENTAL TESTIMONY
OF MARK FENTON
NMPRC CASE NO. 21-00017-UT**

1 **Q. WHAT PRUDENCE STANDARD DOES MR. GRAVES APPLY IN HIS**
2 **ANALYSIS?**

3 **A.** Mr. Graves applies the same prudence standard the Commission does:

4 Prudence is that standard of care which a reasonable person would
5 be expected to exercise under the same circumstances encountered
6 by utility management at the time decisions had to be made. In
7 determining whether a judgment was prudently made, only those
8 facts available at the time judgement was exercised can be
9 considered. Hindsight review is impermissible.¹⁰
10

11 **Q. HAVE OTHER STATE UTILITY COMMISSIONS FOUND CONTINUED**
12 **PARTICIPATION BY OTHER FCPP OWNERS IN FCPP TO BE**
13 **PRUDENT?**

14 **A.** Yes. PNM witness Graves explains that the Arizona Corporation Commission
15 concluded that Arizona Public Service Company's ("APS") decision to acquire
16 Southern California Edison's stake in FCPP units 4 and 5 (equal to 739 MW) in
17 2010 was prudent. Mr. Graves summarizes the findings by APS and Tucson
18 Electric Power, another co-owner of the plant, that extending their participation in
19 FCPP would result in significant savings to customers.
20

¹⁰ Case No. 16-00276-UT *Certification of Stipulation* at 27-28.

**SUPPLEMENTAL TESTIMONY
OF MARK FENTON
NMPRC CASE NO. 21-00017-UT**

1 **Q. HAS PNM ALREADY EXPERIENCED A FINANCIAL PENALTY AS A**
2 **RESULT OF THE COMMISSION ADJUSTMENTS FOR ALLEGED**
3 **IMPRUDENCE IN THE 2016 RATE CASE?**

4 **A.** Yes. As PNM witness Baker explains in his supplemental testimony, PNM
5 recorded a \$27.9 million pre-tax impairment loss for GAAP reporting purposes
6 equal to the net present value of the uncollectible return on equity resulting from
7 the Commission’s order that PNM recover a debt-only return on the \$148.7 million
8 in projected capital improvements. This debt-only determination will be carried
9 forward through 2024 when the proposed securitization financing pursuant to the
10 Energy Transition Act is proposed to take effect. I note that the effect of approving
11 PNM’s request for abandonment and securitized financing under the ETA will be
12 that customers will pay a debt-only rate to bondholders on the entirety of PNM’s
13 undepreciated investments in FCPP regardless of when those investments were
14 made (pre-2016 and previously included in rates by the Commission in past cases;
15 the allowed investments in the 2016 Rate Case; and post-2018 investments not yet
16 included or recovered in rates). PNM will remove FCPP plant from its rate base
17 and will not receive any further return on (debt or equity) on its FCPP investments.
18 Further, this securitized interest rate is anticipated to be lower than for which PNM
19 would otherwise qualify, as addressed by the Direct Testimony of PNM Witness
20 Atkins.

21

**SUPPLEMENTAL TESTIMONY
OF MARK FENTON
NMPRC CASE NO. 21-00017-UT**

1 **Q. IS IT NECESSARY TO CONSIDER THE PRUDENCE OF PNM'S**
2 **DECISION TO REMAIN IN FOUR CORNERS BEYOND 2016 IN**
3 **DETERMINING WHETHER TO APPROVE PNM'S REQUEST FOR**
4 **ABANDONMENT AND SECURITIZED FINANCING FOR FCPP?**

5 **A.** No, it is not necessary to consider the prudence of the past decision to remain in
6 FCPP; the Energy Transition Act is controlling with regard to the abandonment
7 costs for undepreciated investments in Four Corners that are to be recovered
8 through the issuance of energy transition bonds. The February Order acknowledges
9 that PNM's presentation of evidence on the issue of FCPP prudence is without
10 waiver of PNM's legal position that PNM is authorized to recover its undepreciated
11 FCPP investments as part of its abandonment costs defined in the Act.

12
13 Section 62-18-4(A) specifically defines those recoverable investments. PNM is
14 allowed to include its undepreciated FCPP investments as shown on PNM's books
15 and records at the time of abandonment and that were either being recovered in
16 rates as of January 1, 2019, or are otherwise found to be recoverable through a court
17 decision. For FCPP investments incurred after January 1, 2019, PNM is allowed
18 to include undepreciated investments that were incurred to comply with law,
19 whether established by statute, court decision or rule, or necessary to maintain the
20 safe and reliable operation of the qualifying generating facility prior to the facility's
21 abandonment. PNM has provided evidence of the investments that were included
22 in its rates as of January 1, 2019. PNM has also provided evidence that its

**SUPPLEMENTAL TESTIMONY
OF MARK FENTON
NMPRC CASE NO. 21-00017-UT**

1 investments thereafter are necessary to maintain the safe and reliable operation of
2 FCPP at a reasonable cost.

3

4 The Commission has acknowledged the Four Corners plant is a “qualifying facility”
5 under the ETA in PNM’s recent San Juan abandonment and securitization
6 proceeding in Case No. 19-00018-UT. Securitized financing benefits customers by
7 lowering the debt return bondholders receive for all of the FCPP investments and
8 it allows PNM no more than the return of the capital invested.

9

10 **Q. DOES THIS CONCLUDE YOUR SUPPLEMENTAL TESTIMONY?**

11 **A.** Yes.

GCG#527779

PNM Exhibit MF-1 (3-15-21 Supplemental)
Requirements from the February Order

Issue Required by Order	Witness	Section in Supplemental Testimony
Prudence of all undepreciated investments in FCPP for which PNM seeks inclusion in a financing order as energy transition costs, demonstrating the consequent impact (specified in dollars) on ratepayers attributable to such itemized energy transition costs through recovery in energy transition bonds	Frank Graves (prudence); Thomas Baker (impact on revenue requirement in dollars); Michael Settlege (impact on customer bills in dollars)	Graves at I, V Baker at II, IV Settlege at entire supplemental testimony
Line-by-line justification of the \$73 million in “Capital Clearings” identified in PNM Table TSB-4 to the Direct Testimony of Thomas S. Baker and how they satisfy the criteria of NMSA 1978, § 62-18-2(H)(2)(d)	Thomas Fallgren	V(D), PNM Exhibit TGF-6 (3-15-21 Supplemental)
Prudence of the FCPP investments for which the Commission deferred the “issue of imprudence” or “potential imprudence” in Case No. 16-00276-UT	Frank Graves (prudence); Mark Fenton (review of Commission decisions); Thomas Baker (cost of service from Commission orders)	Graves at I, V Fenton at III Baker at III
Whether or not the FCPP investments for which Commission deferred the issue of imprudence, or framed obversely, the determination of prudence, were in PNM’s rates after issuance of the Revised Final Order in Case No. 16-00276-UT and, thus, were being recovered in PNM’s rates as of January 1, 2019	Thomas Baker	II
If the answer above is affirmative, a) discuss the events or circumstances surrounding when, how, and in what instrument(s) or document(s) filed with the Commission in Case No. 16-00276-UT or some other docket or Records Bureau process, identifying in particular:	Mark Fenton	III
i. FCPP investments, or, if applicable, the constituent elements of the investments, for which the Commission deferred a determination of prudence were recorded	Thomas Fallgren	V (B), PNM Exhibit TGF-4 (3-15-21 Supplemental)
ii. the precise locations and amounts (in dollars) of FCPP undepreciated investments for which the Commission deferred a determination of prudence were recorded in such instrument(s) or document(s)	Thomas Baker	II
b) identify the precise amounts (in dollars) of FCPP undepreciated investments for which the Commission deferred the determination of prudence have already been recovered from ratepayers in rates	Thomas Baker	II
c) identify the precise amounts (in dollars) of FCPP undepreciated investments for which the Commission deferred a determination of prudence remain subject to recovery from ratepayers in rates or through the issuance of energy transition bonds	Thomas Baker	II

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF THE)
ABANDONMENT OF THE FOUR CORNERS)
POWER PLANT AND ISSUANCE OF A)
SECURITIZED FINANCING ORDER)
)
PUBLIC SERVICE COMPANY OF)
NEW MEXICO,)
)
Applicant.)**

Case No. 21-00017-UT

SELF AFFIRMATION

MARK FENTON, Executive Director, Regulatory Policy and Case Management, Public Service Company of New Mexico upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Supplemental Testimony of Mark Fenton** and it is true and correct based on my personal knowledge and belief.

DATED this 15th day of March, 2021.

/s/ Mark Fenton
MARK FENTON