

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE PETITION BY)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR A REVISION OF ITS RATES,)
RULES AND CHARGES PURSUANT TO)
ADVICE NOTICE NOS. 755 AND 756)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Petitioner.)
_____)**

Case No. 06-00210-UT

ORDER

THIS MATTER comes before the New Mexico Public Regulation Commission (“Commission”) upon the Motion (“Motion”) of the National Nuclear Security Administration (“NNSA”) to Reopen Record, which was filed June 20, 2007. Having considered the Motion and the record in this case, and being fully informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. On June 18, 2007, the Commission issued a Bench Request Order directing Public Service Company of New Mexico (“PNM”) to provide certain information described therein by no later than Tuesday, June 19, 2007. The Bench Request Order further directed PNM to serve a copy of its response to the Bench Request Order to all parties on the certificate of service for this case. On June 19, 2007, PNM filed its Response (“Response”) to the Bench Request Order, except for the information requested in Paragraph 2 of the Bench Request Order. PNM did not respond to the information requested in Paragraph 2 because the personnel who could provide the

information requested in Paragraph 2 were then on personal leave. PNM stated that it would provide the information requested in that paragraph as soon as the personnel returned to work.

2. In its Motion, NNSA objected to PNM submitting the information required by the Bench Request Order, variously asserting that some of the information could have been but was not submitted by PNM at the hearing in this case, and was outside the record in this proceeding. NNSA also asserted that that some of PNM's responses went beyond the information and testimony that was requested by the Bench Request Order. NNSA asserts that PNM should be required to submit sworn testimony on the matters covered by its Responses and that other parties should be given the opportunity to: a) submit discovery to PNM on these issues; b) provide additional testimony regarding these issues; and c) cross-examine PNM on these issues. NNSA further requests the Commission to reopen the hearing for the purpose of taking additional evidence and providing the parties with "the necessary due process to respond to these issues.

3. The Commission will address the merits of each of NNSA's contentions separately below. At the outset, however, the Commission finds that even if the Commission were to find that some of NNSA's claims were meritorious, the Commission could not as a practical matter at this late stage of the proceeding grant the relief requested by NNSA. As NNSA is likely aware, the suspension period in this case ends June 29, 2007, and cannot be extended further by the Commission. As a result, there is insufficient time for the parties to engage in discovery, provide testimony and cross examine PNM on the matters covered by its Responses to the Bench Request Order in the

two days remaining before the end of the suspension period. However, the Commission finds that, to the extent the Commission finds any merit to NNSA's objections, those objections can adequately be addressed and resolved by striking the information objected to by NNSA. from the record in this case.

A. Paragraph 1 of the Bench Request.

4. Objection. NNSA objects to the Commission's request in Paragraph 1 of the Bench Request Order for information regarding the cost of weatherization DVDs on the grounds that PNM's responded with information and testimony not requested by the Commission, that the information requested could have been but was not submitted by PNM at the hearing, and that the information elicited is outside the scope of the record of the hearing. While not clear, it appears that the information provide by PNM that NNSA contends was not requested by the Commission is PNM's statement that "Based on high natural gas prices, PNM Customer Service and Corporate Communications agreed that offering a step-by-step visual guide of how to weatherize homes would be an appropriate, effective and energy-savings tool for customers.

5. Commission Response. All of the information requested by the Commission, and provided by PNM in its Response is, contrary to NNSA's assertions, in the record from the hearing in this case. Accordingly, NNSA and all other parties have already had the opportunity to seek discovery, submit testimony and engage in cross-examination of the information provided in PNM's Response to this request. The Commission thus finds that NNSA objections regarding the information requested in Paragraph 1 should be denied.

B. Paragraph 2 of the Bench Request Order.

6. Objection. In Paragraph 2, the Commission requested PNM to describe all efforts made during the period 2002 through 2006 to mitigate or reduce the worker's compensation claims of its employees. NNSA objects to this request on the grounds that the information could have been submitted by PNM at the hearing in this case and is outside the record of the hearing.

7. Commission Response: As previously discussed, PNM has not yet provided its response to this request for information. In light of NNSA's objections, the Commission is withdrawing this request for information. As a result, the Commission should dismiss NNSA's objections as moot.

C. Paragraph 3 of the Bench Request Order.

8. Objection. In this request, the Commission directed PNM to provide the actual amount of pipeline integrity costs that were incurred by PNM during 2006. In its Motion, NNSA asserts that its witness, on cross-examination during the hearing in this case, limited certain recommended adjustments based on data through May 2006, which is 150 days beyond the end of the Test Period in this case. NNSA objects to the information requested and supplied by PNM to the extent the information is for the period after May 2006.

9. Commission Response: A review of the transcript of the hearings in this case shows that NNSA and PNM agreed that only the known and measurable changes that are within 150 days from the end of the test period should be used in this case. Accordingly, the Commission will sustain NNSA's objection, and strike from PNM's Response the information provided with respect to the months after May 2006.

D. Paragraph 4 of the Bench Request Order.

10. Objection. In Paragraph 4, the Commission directed PNM to provide a copy of PNM Exhibit SCH-3 Rebuttal in its original electronic format; i.e., in a format that permits the contents of any cell of that exhibit to be changed. NNSA objects to this request and PNM's response thereto by asserting that the information could have been submitted by PNM at the hearing and that the information provided is outside the scope of the hearing.

11. Commission Response. The Commission finds that all of the information provided in PNM Exhibit SCH-3 was, contrary to NNSA's assertions, submitted into the record by PNM at the hearing. In addition to the testimony of Dr. Samuel C. Hadaway, Page 5 of 5 of PNM Exhibit SCH-3 Rebuttal shows the sources of the information shown on that exhibit, and the computation that were made to derive the amounts that were calculated by Dr. Hadaway. As should be apparent from the Commission request, the Commission had requested PNM to submit an electronic version of the spreadsheet in order to facilitate the Commission's ability to see the results of modifying that exhibit by, for example, eliminating the information of one or more utilities that the Commission determined was not sufficiently similar to PNM. The Commission did not, as NNSA's Motions seems to assert, request that information to determine how PNM had developed its spreadsheet, primarily because the Commission was already well aware of how PNM developed that spreadsheet based upon the record evidence in this case, as were the parties to his case. . Indeed, the Commission (and NNSA and any other party) could have replicated the exhibit in an electronic format, but chose not to do simply because that exhibit in electronic format was readily available from PNM. For the foregoing

reasons, the Commission denies NNSA's objections to the information provided in response to this request

E. Paragraph 5 of the Bench Request Order.

12. Objection: NNSA objects to the information provided in response to this request for information, which had directed PNM to provide certain information regarding PNM's results based pay, which is described beginning on page 79 of the Recommended Decision. NNSA asserts that Paragraph 5 requests information that could have been provided by PNM at the hearing and that is outside the record of the hearing.

13. Commission Response: The Commission agrees that the information requested by Paragraph 5 is not within the record developed by the hearing in this case. Accordingly, the Commission sustains NNSA's objection to this information, and finds that such information should be stricken from the record of this case.

F. Paragraph 6 of the Bench Request Order.

14. Objection. Paragraph 6 directed PNM to explain why PNM changed the manner in which it charged engineering and supervision labor to capital projects in 2005. NNSA objects to PNM's response on the grounds that the response goes beyond the information requested, and objects to the request for information because the information requested could have been submitted by PNM at the hearing and is outside the record of the hearing.

15. Commission Response: The Commission agrees that the information requested by Paragraph 6 is not within the record developed by the hearing in this case. Accordingly, the Commission sustains NNSA's objection to this information, and finds that such information should be stricken from the record of this case.

G. Paragraph 7 of the Bench Request Order.

16. Objection: NNSA objects to the information requested by PNM in Paragraph 7, which directs PNM to state the costs to PNM's ratepayers of recovering the costs of abandoning the San Ysidro Facility, over a one-year period, a two-year period and a three-year period, assuming that PNM will be allowed a carrying charge of 6.28% on the un-recovered balance of the costs. NNSA asserts that Paragraph 7 requests information that could have been submitted by PNM at the hearing and that is outside the record of the hearing. NNA also objects that Paragraph 7 "requested the carrying costs charged to ratepayers" and did not ask for the monthly impact on the Residential Customers.

17. Commission Response: The Commission finds that the cost to ratepayers of recovering the cost of abandoning the San Ysidro Facility over a one-year period is already in the record from the hearing in this case, and is no more than the cap amount recommended by the Recommended Decision. However, the Commission agrees that the per month impact on PNM's residential customers for all three recovery periods, and the costs of recovering the abandonment costs over a two- and three-year period, are outside the record developed by the hearing in this case, and that such information should be stricken from the record in this case.

18. The Commission has jurisdiction over the parties and the subject matter of this case.

IT IS THEREFORE ORDERED:

A. NNSA's request for relief in its Motion is denied.

B. With the exception of the electronic version of PNM's Exhibit SCH-3 Rebuttal that was emailed to Commission counsel as part of PNM's Response, PNM's Response is stricken from the record in this case.

C. Paragraph 2 of the Bench Request Order is withdrawn and shall be of no force or effect.

D. By no later than Wednesday, June 27, 2007, PNM shall file a revised Response to the Bench Request, as modified by this Order, that deletes the information that the Commission has determined should be stricken from the record in this case.

E. A copy of this Order shall be served on all parties on the attached Certificate of Service.

ISSUED under the seal of the Commission at Santa Fe, New Mexico, this
26th day of June, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION



BEN R. LUJAN, CHAIRMAN



JASON MARKS, VICE CHAIRMAN

TELEPHONICALLY APPROVED ,

DAVID W. KING, COMMISSIONER

TELEPHONICALLY APPROVED

CAROL K. SLOAN, COMMISSIONER

EXCUSED

SANDY JONES, COMMISSIONER



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of **Order**, issued June 26, 2007, was mailed first-class, postage prepaid, to each of the following on July 6, 2007:

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DATED this 6th day of July, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION



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