BACKGROUND ON TODAY'S DECISION & OUR UPCOMING APPEAL

After a 2-week hearing and 40 lawyers completely opposing PNM's application for a "financing order" or asking for MAJOR financial modifications the Hearing Examiners in their Recommended Decision ("RD") recommended the approval of PNM's request for a Financing Order in the amount of $361M[1] - the amount *in full* stating that it was "generally reasonable."[2] The Hearing Examiners found that the ETA dictated and pre-determined the rights, duties and obligations of ratepayers on the basis of PNM's desires, ignoring existing legal standards[3] and relevant facts[4]. In practical terms what this means is that all the evidentiary claims or defenses presented by various parties to amend or adjust PNM's financial request were precluded and there is no *actual* meaningful opportunity to be heard.[5]

The Hearing Examiners recommended giving PNM 100% of its financial request, $361M[6], in its financing order plus an unknown interest rate and the ability to upwardly adjust the financing order based on "actual costs" expended because they were constrained by the ETA. ("[T]he ETA constrain[s] the Commission's ability to adopt limits on recovery." RD at p. 97)

FRANKLY, THE PEOPLE GETTING SCREWED REGARDING SAN JUAN GENERATING STATION IS JUST THE TIP OF THE ICEBURG. What do we mean? The full-on public bailout to close San Juan is *not* why New Energy Economy is so up in arms.

Here's the real doozy: If this $361M is approved and adopted then ALL of PNM's coal and gas investments will be as well – looking to this case as "precedent." Even more onerous than that, is PNM's secret weapon: foisting ALL PNM's **nuclear** investments on to the public: we are talking decommissioning costs (clean-up costs) of *a billion or 2 billion or more* and all "undepreciated investments" (remaining "stranded assets").

Essentially, PNM's $361M request which was granted without ANY disallowance will "be peanuts" (according to a high-up official energy official who was silenced) compared to the outstanding nuclear investments.

If we don't challenge this corporate irresponsibility and financial bail-out then it will be binding, determinative for all other future PNM bail out requests.

ADDITIONAL EVIDENCE WE UNCOVERED IN SUPPORT OF OUR ARGUMENTS:

The ETA was predicated on the assumption that there was an economic benefit to ratepayers. However, the evidence demonstrates otherwise:

a. The Energy Transition Act could cost ratepayers $483 million more for ratepayers than a non-ETA outcome. [7]

b. While one of the ETA's primary purported benefits is a lower-interest rate secured via AAA bond rating, PNM's draft financing order includes language beyond the law's specifications. PNM testified that if they remove the paragraphs in order to comport with the law's specifications, the bond may not

be eligible to earn AAA bond rating, hence the benefit of the lower interest rate would not be realized.[8]

c. Ratepayers could be stuck with an "extremely steep yield curve where -- where interest rates in the longer years are quite, quite high."[9]

NM AREA's request that the Commission refile its financing application between three and nine months prior to the issuance of the Energy Transition Bonds because PNM's request for $361 million is based on estimates that are "unreliable, speculative and untimely" was denied. (RD at p. 45 - 47) The Attorney General's recommendations that 1) disallowance of PNM funding for $5.4 million in estimated severance and job training costs for plant and mine employees be denied because PNM ratepayers should only be responsible for the *pro rata* ownership share of 58% of those costs (58% *not* 100%) was denied (RD at pp. 47-51); and 2) decommissioning costs and coal mine reclamation costs be capped was rejected because "the ETA constrain[s] the Commission's ability to adopt the Attorney General's limits on recovery." (RD at p. 97)

None of the above factual context (and much much more) and none of these claims or defenses could be or were considered in the RD because the ETA constrains regulation; the Hearing Examiners applied the ETA and therefore were restricted from adjusting or modifying PNM's financial requests even to balance the interests of ratepayers and shareholder investors.

The ETA is unconstitutional, because it would deprive ratepayers of its property without due process of law contrary to the provisions of the Constitutions of the United States and of the State of New Mexico, and there are additional grounds for this law to be held unconstitutional:

1. The ETA commits ratepayers to pay PNM's undepreciated assets and abandonment and decommissioning costs without meaningful opportunity to be heard or present a claim or defense, in violation of the Due Process clauses of the New Mexico and U.S. Constitutions. N.M. Const. Art. II, § 18; U.S. Const. Amdmt. XIV.

2. The Energy Transition Act violates separation of powers by infringing the PRC's constitutional duty to regulate utilities, and by restricting judicial review and rendering it irrelevant. For instance, the ETA obstructs court review of financing orders and bond issuances by imposing an unreasonably short period for parties to appeal a financing order (a ten-day time limit to file a notice of appeal after denial, ETA § 8B and allowing PNM to issue bonds that are beyond the reach of the judiciary, even if the financing order was found to be unlawful the bond is still "valid" (ETA§ 22), in violation of N.M. Const. Art. III § 1.

3. It violates our Constitution's ban on logrolling by including numerous subjects that are omitted from its title. N.M. Const. Art. IV § 16.

4. Its title, while verbose, fails to identify ETA's purpose and its significant amendments to the Public Utility Act, violating N.M. Const. Art. IV, §18 includes no mention of how it alters PRC procedures, including its elimination of PRC regulatory authority over

recovery of undepreciated investments and decommissioning costs, its impact on rates, its change of the time for appeal, and more. Record hearing testimony addresses how the ETA, without identifying its amendments of the PUA, effectively amends it:

> Elisabeth A. Eden, Vice President and Treasurer of PNM Resources, testified:
>
> Q. (Nanasi) "The ETA has a long title, but doesn't reference its amendment to the Public Utility Act, and specifically 62-6-6, the requirement to file a separate financing application. Is that also correct?"
>
> A. (Eden) "Yes."[10]

5. It violates N.M. Const. Art. II § 19, forbidding laws that impair the obligation of contracts. As applied to this case, ETA impairs the settlement that PNM agreed to in the Modified Stipulation in Case No. 13-00390-UT.

6. It impairs the vested rights of ratepayers and changes the rules of evidence and procedure in pending cases in violation of N.M. Const. Art. IV § 34.

7. Because the relevant provisions of the ETA relate only to PNM's resources, it is "special" legislation forbidden by N.M. Const. Art. IV § 24.

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[1] 19-00018-UT, Recommended Decision on Financing Order, p. 4.

[2] *Id*., at p. 107 (making slight modifications to "conform the text of the financing order to the findings and recommendations made in this decision."

[3] *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n*, 2019-NMSC-012, 444 P.3d 460, ¶¶8-11: requiring the PRC to determine whether rates are "just and reasonable," whether they balance consumer and investor interests, and whether costs are prudently incurred in the first place, citing, NMSA 1978, §§ 62-6-4(A), 62-8-1, 62-8-7(A) and 62-3-1(B). Also at ¶21: "the Commission has considered whether expenditures were prudently incurred and whether the asset is used-and-useful in providing service when determining the ratemaking treatment of expenditures on utility plants. The prudent investment theory provides that ratepayers are not to be charged for negligent, wasteful or improvident expenditures, or for the cost of management decisions which are not made in good faith. To be considered 'used and useful' a property must either be used, or its use must be forthcoming and reasonably certain; and it must be useful in the sense that its use is reasonable and beneficial to the public." (citations omitted.)

[4] The development of the factually-specific portions of the securitization provisions of the ETA is not a proper legislative function and is instead a proper quasi-judicial function: factual determinations based on an application and facts developed at a public hearing. *Albuquerque Commons P'ship v. City Council of City of Albuquerque*, 2008-NMSC-025, ¶ 32, 144 N.M. 99, 109, 184 P.3d 411, 421.

[5] 19-00018-UT, TR., 12/13/19 (Eden) p. 968. Q. (Nanasi) "If the ETA's provisions are applied in this case, the PRC's approval will be ministerial only. Essentially, if the requirements of Section 4 are met, then the Commission has no choice but to issue a financing order. Is that correct?"
A. (Eden) "Well, the Energy Transition Act specifies the role of the Commission and what needs to be -- the conclusion needs to be a non-appealable financing order, yes."

[6] RD at p. 117 (PNM's Financing Order is approved for the "principal amount [] of $361.0 million unless PNM shall have obtained an amendment to the Financing Order as provided in Section 7(B)(2) of the ETA. ")

[7] CFRE's post-hearing brief, p. 33, # 4, 19-00018-UT, TR. 12/17/2109, Crane, pp. 90-91.

[8] 19-00018-UT, TR., 12/13/2019, Charles Atkins, PNM's expert witness on securitization, pp.1106-1118.

[9] 19-00018-UT, TR., 12/13/2019, Charles Atkins, PNM's expert witness on securitization, pp.1056-1057.

[10] 19-00018-UT, TR., 12/13/2019, Eden, p. 960.