

PNM/Avangrid Merger Not A Benefit for New Mexican Ratepayers



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On November 23, 2020, Public Service Company of New Mexico (“PNM”) and Avangrid, Inc. (“Avangrid”) applied to “merge” their companies with the New Mexico Public Regulation Commission (“PRC”). Avangrid is a publicly traded company on the New York Stock Exchange. Avangrid is a worldwide energy conglomerate with approximately \$36 billion in assets and operations in 24 U.S. states. Iberdrola, (located in Spain), owns 81.5% of Avangrid’s stock.

On October 20, 2020 PNM and Avangrid entered into an Agreement and Plan of Merger (the “Merger Agreement”). As part of the Merger Agreement Avangrid has required that PNM file for “abandonment”¹ of its 13% share in the Four Corners Power Plant (FCPP) and securitize the remaining undepreciated investments. Invoking the Energy Transition Act (ETA), PNM is demanding that ratepayers pay compensation of \$300M to PNM for “imprudent” or irresponsible, coal investments. The purpose of the ETA is to *transition* New Mexico’s dependence on climate-altering coal to renewables, but PNM’s proposed abandonment and “sale” of its ownership interest in the FCPP to Navajo Energy Transitional Company (NTEC)² will not result in shut-down or closure of the FCPP and will require NTEC and the other remaining owners of that plant to continue operating that plant until at least 2027, if not longer. The PNM “sale” to NTEC is contrary to both the letter and spirit of the ETA and is not in the public interest.³

Discovery and research into Avangrid and Iberdrola’s performance at utilities owned in other states and countries raise additional alarming questions about reliability, customer service and the risks of a foreign owned utility conglomerate controlling New Mexico’s energy future.

PNM and Avangrid, known as Joint Applicants, must prove in Case No. 20-00222-UT that their merger is “in the public interest.” In determining whether to approve a utility acquisition the PRC must decide:

¹ “Abandonment” in this context does not mean closure. It means that FCPP will no longer be used to “serve rate base,” also known as, NM ratepayers.

² PNM’s “sale” plan is to pay NTEC \$75M to assume its shares and associated (coal contract) obligations, and for NTEC to pay PNM one dollar.

³

<https://www.politico.com/newsletters/the-long-game/2021/03/30/companies-go-green-but-the-planet-doesnt-always-win-492293>

- 1) whether the acquisition is beneficial to utility customers;
- 2) whether the Commission's jurisdiction will be preserved;
- 3) whether the quality of utility service will be diminished; and
- 4) whether the merger will require ratepayers to improperly subsidize the other financial escapades of Iberdrola, the parent company.

New Energy Economy, along with two dozen other intervenors in the case opposed the merger agreement as NOT in the public interest.

During the process of discovery settlement talks have taken place between the Joint Applicants, PNM and Avangrid, and intervening parties. On May 7th some parties signed on to a stipulated agreement (a settlement) in exchange for concessions from Joint Applicants. Signatories included the New Mexico Attorney General who ignored the testimony of his own experts detailing substantial injustice and risks for New Mexicans, none of which were substantially mitigated by the settlement. We continue to oppose the merger agreement as stipulated.

Here's why:

- **PNM's decisions related to investment in the Four Corners Power Plant were imprudent and full cost recovery of \$300 million would negate any and all possible benefits of the proposed acquisition.** The merger agreement requires that PNM "abandon" the plant and securitize its undepreciated assets in the plant. **The resulting abandonment filing not only means that ratepayers must pay \$300M plus interest on everyone's bill, amortized over 25 years, for PNM's illegal investment, but also results in extending the life of the coal plant due to the terms of the illegal sale of the plant to NTEC.** (We have filed a Motion to Dismiss the Abandonment in a separate case.)
- **No meaningful economic benefits for ratepayers.** The Joint Applicants originally proposed trickling down \$24.6 million of "rate credits" to PNM's customers over 36 months, and raised that benefit to \$50M in the settlement. Over a three year period this averages \$45 per resident. Compare this to four very important metrics:
 - 1) **PNM Resources stockholders will receive in excess of \$255 million just for holding PNMR stock certificates.** Avangrid/Iberdrola has agreed to pay PNM Resources stockholders \$50.30 per share upon closing of the merger deal set for January 2022. PNM Resources is the parent company of PNM (and is the entity which is actually traded on the New York Stock Exchange). That windfall produces no customer benefit whatsoever, but merely enriches those shareholders, the 1%.

- 2) **PNM’s senior management will receive a combined \$38 million in executive compensation if shareholders approve the company’s proposed merger with energy giant Avangrid/Iberdrola.** Combined with premiums on shares owned by executives that amount exceeds \$80M – a distribution that is hardly fair, just and reasonable or in the public interest!
 - 3) **No agreement to a rate freeze.** The law says when there is a merger in the context of a regulated monopoly the applicants agree in advance to a rate freeze for a certain period of time. Not only have Joint Applicants refused to agree to a rate freeze, they have refused to state when they will file their next rate case and in what amount. Given their refusal to answer the question about future rate increases, their \$50M “rate credit” is not only *de minimis* to begin with, but without knowing what rate increases are planned for the near future this alleged “benefit” is entirely unquantifiable.
 - 4) **The \$50M “rate credit” is completely arbitrary and is not commensurate with other recent decisions.** PNM Resources has a much smaller utility in Texas, as well as PNM. In March 2021, the Texas Public Utility Commission found that the “rate credit” that Joint Applicants proposed was not in the public interest and suggested an increase. The parallel amount of rate credits for PNM’s New Mexico customers should be a minimum of \$75 million, three times what Joint Applicants are offering.
- **Potentially diminished quality of service for ratepayers.** At first blush, we were excited that the “Exxon of Renewables” would come to NM and replace PNM slow walk on climate change, but then we learned of their terrible electric utility record: worst reliability, worst forced outage rate, among the highest residential rate charges, violations for “corruption and fraud.” After Avangrid/Iberdrola purchased Central Maine Power it has been at the very bottom of customer satisfaction surveys among *all* utilities in the U.S. for three years in a row, 2018, 2019, 2020!

During the legal process New Energy Economy asked Avangrid/Iberdrola for documentation of their violations, penalties and fines from their owned companies in other states and internationally. Avangrid/Iberdrola responded superficially, with an incomplete list of complaints, but it was enough to cause alarm, (digging too close to an electric line, thousand dollar penalties). On May 11th the Hearing Examiner issued a scathing order⁴ suspending all hearings and requiring Avangrid/Iberdrola to

⁴ *Order Regarding Avangrid Service Quality Issues And Management Audits And Suspension Of The Filing Date For Statements In Opposition To The May 7, 2021 Stipulation, 20-00222-UT, 5/11/2021.*

provide a list of penalties, violations and enforcement actions by state and federal regulatory agencies. The Hearing Examiner wrote:

“The Joint Applicants have failed to disclose any of the penalties and disallowances in the current proceeding, despite their relevance to this case, i.e., the risk that the adequacy of PNM’s service may deteriorate under the direct or indirect control of Avangrid, Inc. The failure is also significant, given that Avangrid, Inc. has considered the issues to be sufficiently important to include them in its reports filed with the Securities & Exchange Commission.” pg. 3

and “The Joint Applicants’ failure to disclose this information to the Commission in this proceeding is troubling and is also relevant to the credibility of their witnesses’ testimony and the transparency by which Avangrid and PNM would conduct their business in New Mexico if the merger is approved.” pg. 4

Avangrid then produced upward of 2500 pages of documentation detailing more than 200 violations at eight subsidiaries. Further research uncovered details about ethical and legal violations by Iberdrola SA in Europe, Mexico and South America. A comparison of Avangrid responses to New Energy Economy interrogatories and the Hearing Examiner’s order calls into question the integrity of the company, and as we wrote in reply to Avangrid’s excuses:

“Joint Applicants’ Response reads as an antiseptic and cold-hearted document; if one didn’t know better, one might think that Avangrid was being penalized for failure to accurately account for products on a shelf, not human lives left without access to what is now considered a basic human right: electricity to keep one’s dialysis machine operating or death due to electricity disconnection, or because RG&E failed to abide by the Commission’s Order regarding pole attachments which violated requirements to ensure worker safety and structures during installation, operation, and maintenance, for communication lines attaching to utility poles, and or that electricity took far too long to restore due to inadequate manpower (resulting in certain instances to no access to warm food or heat, disruptions in communications, or caused food spoilage and water contamination).” pg 3-4.

The conduct of utility companies has real and significant implications for the well-being and safety of customers. The merger agreement must now be evaluated not only on the financial implications of the deal, but also its potential impact on quality of service in New Mexico and the human cost if that quality is diminished.

- **Avangrid’s political playbook may be even more nefarious than PNM’s.** Avangrid, via its subsidiary Central Maine Power, used its money and political

influence to kill a pro-rooftop solar bill. Central Maine Power worked behind the scenes in 2017 to rig the debate over rooftop solar and net metering in its favor, including contributing to the Governor's PAC.⁵ Central Maine Power's bid to kill the pro-solar bill was backed by "We Stand for Energy", a front group run by the Washington, DC-based Edison Electric Institute (EEI), the industry association that represents the nation's investor-owned electric utilities. (PNM's current CEO used to be the head of Edison Electric Institute!)⁶ Avangrid poses as an ethical renewable energy company, but its goal is control and profit, not the public good.

In pursuit of approval for a transmission line across the pristine North Woods in Maine to move hydroelectric energy from Canada to Massachusetts, Avangrid acted in anti-democratic ways to stifle public involvement and discourse. Their Political Action Committee spent more than twenty million on private detectives to follow citizen petition gatherers, lobbying, advertising and more. Rather than cooperating on studies to evaluate the project on its merits, Avangrid funded extra-legal measures lobbying and on propaganda to try and force their way.

This kind of corporate abuse is not foreign to New Mexico. PNM's PACs contributed heavily to our PRC,⁷ Legislature,⁸ and our Governor,⁹ and to the PAC that worked to sway New Mexicans to give away their vote for the PRC. Just like Avangrid created and used front groups in Maine to undermine rooftop and community solar, PNM

⁵ <https://www.energyandpolicy.org/central-maine-power-solar-net-metering/>

⁶ <https://www.eei.org/resourcesandmedia/newsroom/Pages/Press%20Releases/Pat%20VincentCollawn%20Elected%20EEI%20Chairman%20Chris%20Crane%20Greg%20Abel%20and%20Lynn%20Good%20Elected%20Vice%20Chairmen.aspx>

⁷ In 2018, the company intervened in two Public Regulation Commission (PRC) races, spending \$440,000 to try to influence the outcome of those contests. <https://www.abqjournal.com/1193698/committee-tied-to-pnm-spends-heavily-in-primary.html>

⁸ PNM Resources bankrolled a separate dark money group in 2020 called the "Council for a Competitive New Mexico" that spent money in five state senate Democratic primary races last spring to boost powerful incumbents while attacking their opponents. <https://nmindepth.com/2021/02/12/utilitys-admission-friday-likely-to-increase-suspicion-it-helped-bankroll-prec-reform-ballot-measure/>

⁹ Spending \$105,200.00 in contributions and PACs. "The Continuing Influence of the Oil and Gas Industry in New Mexico in 2020," NM Ethics Watch, <http://nmethicswatch.org/wp-content/uploads/2021/02/NMEW-Oil-and-Gas-Follow-Up-Report-Updated-02122021.pdf>, p. 11. PNM would have to agree that its campaign contributions before passage of the ETA were significant. *See also*, "The New Mexico Oil and Gas Industry and Its Allies: Oceans of Oil, Oceans of Influence," Common Cause New Mexico and New Mexico Ethics Watch, March 2020, <https://www.commoncause.org/new-mexico/resource/the-new-mexico-oil-and-gas-industry-and-its-allies-oceans-of-oil-oceans-of-influence/>, pp. 8, 13, 26.

(and Avangrid?) used a group called “Committee to Protect New Mexico Consumers” to advocate for a constitutional amendment to undermine the voting rights of NM citizens to vote for PRC Commissioners. PNM paid more than a quarter of a million dollars to produce and distribute mailers supporting a ballot question that would change the composition of the Public Regulation Commission from elected Commissioners to appointed ones.¹⁰ Now imagine the same scenario, but with a \$34 billion corporation holding the purse strings. Seth Berry, a legislator from Maine who submitted testimony in the case on New Energy Economy’s behalf, put it this way:

“Iberdrola is a Spanish company with multinational ownership. Among its larger stakeholders are at least two national governments: specifically, the sovereign wealth funds of Qatar and Norway. To my knowledge, the largest single shareholder in both Iberdrola and Avangrid’s non-Iberdrola shares is the government of Qatar. In sum, I use the name CMP/Avangrid/Iberdrola to help make clear that all important decisions are no longer made locally, at CMP, but rather in other parts of the world with little to no attachment to or concern for our own.” pg 4-5

And further:

“The risks inherent in ownership by Avangrid/Iberdrola are best avoided by adoption of an alternative utility model. In Maine we have proposed bi-partisan legislation to adopt a non-profit consumer owned utility model to save Maine ratepayers \$9 billion over the first 30 years, and to secure our electricity grid. To quote my colleague Senator Rick Bennett (R, Oxford), former Senate President: “Electricity is the lifeblood of Maine homes and businesses, and it is becoming more important every day. Right now, foreign governments and foreign corporations own Maine’s major utility monopolies. This ownership model has been a disaster, leaving Maine with the most outages, the longest outages, the worst customer service, and among the highest rates in the country.”

Electrification of our entire economy will mean total dependence on the grid. We would not entrust our schools or fire departments to for-profit, distantly-owned monopolies. Nor should we do so with our utilities.” pg. 20

New Mexico should not do so either.

¹⁰ “The Continuing Influence of the Oil and Gas Industry in New Mexico in 2020,” NM Ethics Watch, <http://nmethicswatch.org/wp-content/uploads/2021/02/NMEW-Oil-and-Gas-Follow-Up-Report-Updated-02122021.pdf>, p. 45.