

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S)
ABANDONMENT OF SAN JUAN)
GENERATING STATION UNITS 1 AND 4)**

Case No. 19-00018-UT

**ORDER DENYING WESTERN RESOURCE ADVOCATES'
MOTION TO STRIKE
NEE'S DIRECT TESTIMONY OF STEVEN M. FETTER**

THIS MATTER comes before the Hearing Examiners upon the Motion to Strike New Energy Economy's Direct Testimony of Steven M. Fetter (Motion) filed by Western Resource Advocates (WRA) on August 7, 2019. Being fully informed, the Hearing Examiners **FIND** and **CONCLUDE** as follows:

WRA contends that New Energy Economy's (NEE) Direct Testimony of Steven M. Fetter is irrelevant to any issue the Commission will decide in this case and that it is, therefore, inadmissible. 1.2.2.35(A)(1) NMAC. WRA argues that Mr. Fetter's testimony provides his opinion of the merits of the Energy Transition Act (ETA), NMSA 1978, §§ 62-18-1 to -23 (2019), that the ETA is law, and that its merits are not at issue, just as the merits of New Mexico's Public Utility Act are not at issue.

On August 20, 2019, Public Service Company of New Mexico (PNM) filed a response repeating the arguments in WRA's Motion.

On August 20, 2019, Interwest Energy Alliance and the Sierra Club filed a Joint Response in support of WRA's Motion. They concur with WRA that the Fetter testimony is irrelevant and should be stricken. But they also assert that the Commission lacks the authority to weigh in on the reasonableness of policies adopted by the legislature and signed by the Governor. They argue that Fetter's disagreement with the policy decisions the legislature has made is not relevant to any issue

the Commission will decide in this case. They further allege that the testimony is not relevant to the legal issue the Hearing Examiners ordered the parties to brief, i.e., whether the New Mexico Constitution prevents application of the ETA in this case. Additionally, they say the Fetter testimony provides no factual grounds on which a legal brief could be submitted in response to the Hearing Examiner's order. They insist the testimony is simply policy testimony that airs grievances with the results of the most recent legislative session. Finally, they argue that the testimony regarding future attempts by PNM to securitize its costs for the Four Corners and Palo Verde power plants is not relevant to the issues in this case.

On August 20, 2019, NEE filed its response to WRA's Motion. NEE begins by pointing out that presiding officers in Commission proceedings are accorded flexibility in order to ensure that matters affecting the public interest are decided on the merits, citing 1.2.2.35(A) NMAC. NEE asserts that WRA and others will have the opportunity to persuade the Hearing Examiners that Mr. Fetter's testimony should not be given great weight, or should even be disregarded in its entirety, through the opportunity that WRA and others will have to cross-examine Mr. Fetter at the hearing or argue in its briefs.

NEE states that Mr. Fetter's testimony addresses the regulatory and ratemaking effects of the ETA on matters at issue in 19-00018-UT, which NEE maintains is what is most relevant to the constitutional issues concerning ETA's application in this case. NEE claims the Fetter testimony was not submitted to dispute "the merits" of the ETA, but to address its regulatory and ratemaking effects in this case compared to the Commission's authority under traditional ratemaking and "regulatory compact" principles and past precedent, addressed by Fetter. NEE cites Mr. Fetter's conclusions that the ETA removes the Commission's ability to evaluate PNM's Application for its securitized financing request on the customary bases, including assessment of its justness and

reasonableness, that it unfairly balances the interests of PNM shareholder investors and ratepayers, that it allows recovery of costs imprudently incurred, and that those results were not available under traditional ratemaking prior to the ETA. In sum, NEE argues that Mr. Fetter's comparisons are relevant to whether the ETA should apply to this current proceeding.

Having considered WRA's Motion and the responses pro and con, the Hearing Examiners find that Mr. Fetter's testimony is relevant to the issues in this proceeding and that the Motion thus should be denied. The Fetter testimony compares the effect of PNM's abandonment proposal under the standards established in the ETA versus the standards under traditional ratemaking. The testimony attempts to show the effects of the application of the ETA and, by so doing, it casts light on the significance of the constitutional dispute over which set of standards should apply.


The Hearing Examiners also note that similar testimony has been filed by PNM. Examples include the prepared direct testimony of Ronald N. Darnell, which discusses the benefits of the ETA (Darnell Dir. at 2-3, 12, 13), and the prepared testimony of Henry E. Monroy, which compares the customer savings achieved under the ETA with the savings that would be achieved under traditional ratemaking. Monroy Dir. at 5. Indeed, Mr. Monroy's testimony includes a table "PNM Securitization vs Traditional Recovery" detailing the purported savings. Monroy Dir., Exh. HEM-2.

IT IS THEREFORE ORDERED:

WRA's Motion is **DENIED**.

ISSUED at Santa Fe, New Mexico this 15th day of **October 2019**.

NEW MEXICO PUBLIC REGULATION COMMISSION



Ashley C. Schannauer
Anthony F. Medeiros
Hearing Examiners

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CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent to the parties listed here, via email only, a true and correct copy of the Order Denying Western Resource Advocates' Motion to Strike NEE's Direct Testimony of Steven M. Fetter.

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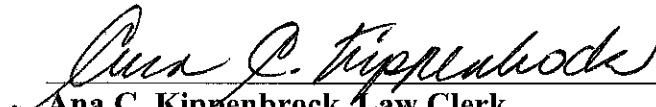
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DATED this October 15, 2019.

NEW MEXICO PUBLIC REGULATION COMMISSION



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