

# No Just Transition without Indigenous Consultation

*FAQ: Energy Transition Act: Senate Bill 489*

Indigenous communities in northwestern New Mexico have long borne the brunt of fossil-fuel industries and bad environmental policy. Community members living in close proximity to existing power plants lack electricity in their homes, while they are forced to pay the true costs of polluting industries with devastating impacts on their health. These are the communities that should have been consulted with first in creating a transition plan and ensuring community safeguards in the closure of the San Juan Generating Station. The lack of consulting with impacted communities is a failure in what should be a mutual partnership between Indigenous communities and environmental organizations as well as the State of New Mexico. As Indigenous organizers in Indigenous communities, we have put together the following Q&A to help our communities and our allies understand SB 489 from our perspective:

The Public Service Company of New Mexico is the primary owner and operator of the San Juan Generating Station. The company and other co-owners have decided to close the plant in 2022 because the plant is no longer economic. The plant has been in operation since 1972. Coal for the plant is mined at the nearby San Juan mine which is owned by Westmoreland, who filed for bankruptcy last year. For 35 years, the plant's operation included four stacks and the plant's carbon emissions were approximately 6 million tons per year. In 2012 PNM agreed to close two of the plant's Units by 2018 in order to redress its violations of the EPA Haze Rule. At that time, many co-owners left the plant but PNM picked up 132 megawatts of additional ownership shares in the remaining Units. As we approach the plant's closure, PNM owns 497 megawatts. Over the 35 year life of the plant, PNM has made 100s of millions of dollars in profits according to their financial records.

## **BAILOUT**

**Is this a PNM bailout bill? YES.** All ratepayers would have to pay an energy transition charge to pay for financing costs, abandonment costs, for plant decommissioning and reclamation, for severance and job training for employees losing their jobs, and many other costs. Rather than taking a loss or "write-down", PNM will be able to securitize their undepreciated assets.

**Is PNM held accountable or does PNM pitch in? NO.** PNM and its shareholders don't share in reclamation or transition costs, ratepayers fund those projects.

**Are the abandonment, financing order, and other processes transparent to the public? NO.** Data used by the PRC to select replacement resources are available to official parties to commission proceedings but doesn't specify that the public shall have access to this data. Approval of applications for a financing order does not allow a hearing unless "good cause" is established.

**If PNM breaches its agreement or fails to comply with the Energy Transition Act, will ratepayers still have to pay financing costs? YES.** The bill states that the failure of compliance by a utility shall not invalidate, impair or affect a financing order, energy transition property, energy transition charge or energy transition bonds and financing costs. **BUT** the PRC may impose sanctions.

## **REGULATORY POWER**

**Does this bill take away the power of the PRC? YES.** This is a legislative fix instead of the usual abandonment process through the PRC. The bill directs the PRC to take specific action and takes away most of the discretion of the PRC. **BUT** the PRC retains authority to ensure compliance with conditions of a financing order, impose sanctions for failure to comply with financing order, among other actions.

**Does this bill give PNM the power to self regulate? YES.** PNM decides the details of the financing order, including the amount of undepreciated investment recovery, and the bill directs the PRC to approve PNM's plan as long as it meets minimal requirements.

## **ENVIRONMENT**

**What is the plan for cleanup and what is the actual cost of cleanup?** Nobody has a good estimate of how much reclamation will cost, the bill allows for reclamation and plant decommission up to \$30 million, which is much lower than any projected costs of cleanup. More investigations into contamination, specifically water contamination, are needed.

**Does the bill include nuclear energy? YES.** The bill allows PNM to keep its contracts with nuclear-generating stations **AND** includes "zero life cycle carbon emissions," which could potentially include nuclear.

**Does the bill allow for natural gas replacement power? YES.** Because the bill includes the language "the Commission shall grant all necessary approvals for replacement resources" it removes PRC authority to require PNM to prove that their proposed resources are a net benefit to the public and are the most cost-effective among feasible alternatives as normally required by law. The bill gives PNM the ability to build the gas and purchase the nuclear in their integrated resource plan and undermines our ability to challenge those investments before the PRC.

**Does the bill include an analysis of impacted water sources and potential contamination to local water sources? NO.** The bill does not include an analysis of how cleanup and reclamation will impact local water sources. More investigation is needed.

**Will this bill impact future abandoned coal mines? YES.** This bill applies to any coal-fired generating facility that is abandoned before 2023.

**Does the bill include a renewable energy feasibility study that includes the status of the current transmission system? NO.** The bill does not include a renewable energy feasibility study that examines how possible renewable energy is after abandonment.

## **RENEWABLE ENERGY GOALS**

**What are the renewable energy benefits of this bill?** This bill makes NM a leader in renewable energy. The goals are to increase renewable energy 50% renewable energy by 2030, 80% renewable energy by 2040, and 100 % zero-carbon resources by 2045. The bill defines renewable energy as solar, wind and geothermal, hydropower, fuel cells that don't use fossil fuels, biomass facilities that are powered by animal waste and agriculture, small-diameter timber, salt cedar, and landfill gas.

**What's in it for laid-off workers?** The bill provides up to \$20 million for severance and job training for employees losing their jobs.

## **CONSULTATION**

**Did the bill proponents meet with impacted community members and seek guidance and input? NO.** The communities that have been most impacted by SJGS were not asked for their input and guidance. Large environmental groups have been pushing this bill and have ignored the local community's voices.

**Did environmental groups and lawmakers adhere to environmental justice principles in creating and advocating for SB 489? NO.** The voices of those that have been most impacted by coal-fired power plants in New Mexico have not been consulted with and have been left out of the conversation.

## **UNCONSTITUTIONALITY**

**Is this bill constitutional? NO.** The NM Constitution forbids the state legislature to take any action that infringes on the rights or remedies of parties in an ongoing legal proceeding. The New Mexico Constitution, Art. IV, § 34, states: *No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.* The PRC opened a docket on PNM's San Juan coal plant abandonment case in January 2019, 19-00018-UT, to address the specifics of the closure of the plant.

## PROPOSED AMENDMENTS

- PNM should share in the costs as a responsible party.
- A timeline of reclamation and decommissioning should be included in the bill to hold PNM accountable.
- “No nuclear” should explicitly be stated in the bill.
- Electricity and roads should be provided to communities living in close proximity to SJGS.
- Consultation with Tribes needs to be included in the bill.
- There should be more hearings in impacted communities regarding the economic development plan.
- Money should be allocated to solarize schools and chapter houses in the impacted area. Also, PNM should help fund renewable energy programs at tribal colleges.
- Funds are needed to study contamination and actual reclamation and decommissioning costs.
- Funds are needed for a comprehensive health study and a needs assessment.
- Funds are needed for transmission studies to examine if the facility can be transitioned to other power sources.
- **Break up the Monopoly-** Pueblos and sovereign Native Nations should be allowed to produce and sell clean energy, PNM should NOT be allowed to own all replacement power.