

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF )  
NEW MEXICO'S APPLICATION FOR AUTHORIZATION )  
TO IMPLEMENT GRID MODERNIZATION )  
COMPONENTS THAT INCLUDE ADVANCED METERING )  
INFRASTRUCTURE AND APPLICATION TO RECOVER ) Case No. 22-00058-UT  
THE ASSOCIATED COSTS THROUGH A RIDER, )  
ISSUANCE OF RELATED ACCOUNTING ORDERS, )  
AND OTHER ASSOCIATED RELIEF )**

**NEW MEXICANS FOR UTILITY SAFETY'S BRIEF-IN-CHIEF**

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**COMES NOW** New Mexicans for Utility Safety (“NMUS”) and pursuant to Rule 1.2.2.36 NMAC of the Rules of the New Mexico Public Regulation Commission (“Commission” or “NMPRC” or “PRC”) and the Hearing Examiner’s briefing orders, hereby files its initial post-hearing brief.

### **INTRODUCTION**

On March 24, 2022, pursuant to the Grid Modernization Act, NMSA 1978, § 62-8-13, the Commission requested Public Service Company of New Mexico (“PNM”) to submit an application for a grid modernization project, to include advanced metering infrastructure (“AMI” or “smart meters”). PNM’s subsequent application, filed on October 3, 2022, is the subject of this proceeding.

Throughout this proceeding, the hearing examiner, Christopher Ryan, has violated the law by excluding any and all evidence that AMI is injurious or lethal to human beings and the environment. He has denied all motions for intervention by parties that oppose AMI for health or environmental reasons or granted their motions conditionally on their not raising such issues.<sup>1,2,3,4</sup> He has excluded all witnesses on the subject of health or environment and has stricken all testimonies relating to health or environment.<sup>5,6,7</sup> He has ignored hundreds of written

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<sup>1</sup> Order on Public Service Company of New Mexico’s Objection to New Mexicans for Utility Safety’s Motion to Intervene, 2/19/23.

<sup>2</sup> Order Granting PNM’s Motion Objecting to the Intervention of the Cellular Phone Task Force, 2/16/23.

<sup>3</sup> Order Striking the Intervention of Isabel Boldizsár, 2/7/23.

<sup>4</sup> Order Granting in Part and Denying in Part PNM’s Motion Objecting to the Intervention of William Bruno, 2/16/23.

<sup>5</sup> Order Granting PNM’s Objection and Motion to Strike the Testimony of NMUS, 2/14/23.

<sup>6</sup> Order Striking the Intervention of Isabel Boldizsár, 2/7/23.

<sup>7</sup> Order Rejecting the Out-of-time Motion for Leave to Intervene of Julian Gresser and Striking the Direct Testimony of Julian Gresser, 3/10/23.



public comments on these subjects,<sup>8</sup> and five hours of oral public testimony on these subjects,<sup>9</sup> all of it uncontradicted. He has ruled that the public health and the environment are irrelevant to these proceedings and will not be considered: “The Legislature did not direct the Commission to consider the impact of AMI on ‘community health and wellbeing’”<sup>10</sup>; “NMUS’s witness’s opinions are not relevant to the issues in this proceeding.”<sup>11</sup>

Mr. Ryan has demonstrated his unconcealed bias on these issues, prejudged this case, misstated fact and law, and declared himself above the Constitution. This proceeding, and any Recommended Decision he will issue, are illegal, void, and without effect.

## **I. CONSIDERATION OF THE PUBLIC HEALTH, SAFETY AND WELFARE IS MANDATED BY LAW**

The Public Utility Act, *of which the Grid Modernization Act is a part*,<sup>12</sup> states that one of its primary purposes is “the preservation of the public health, safety and welfare.” Thus:

The following are the objects and purposes of this act

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(2) It is the declared policy of the state that *preservation of the public health, safety and welfare*, the interest of consumers and the interest of investor-members require that the construction, development and extension of utility plants and facilities be without unnecessary duplication and economic waste.

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(4) It is the intent of the legislature in enacting this statute to bring up to date the laws pertaining to public utilities and rural electric cooperatives... The accomplishment of this intent is necessary and vital to the preservation of the *public health, safety and welfare*.

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<sup>8</sup> Case No. 22-00058-UT, Doc. ID 1216076

<sup>9</sup> <https://www.youtube.com/watch?v=DZGkE-qKkbU>

<sup>10</sup> Order Granting in Part and Denying in Part PNM’s Motion Objecting to the Intervention of William Bruno, ¶ 4.

<sup>11</sup> Order Granting PNM’s Objection and Motion to Strike the Testimony of NMUS, ¶ 1.

<sup>12</sup> Section 3 of the Grid Modernization Act states: “A new section of the Public Utility Act is enacted to read: ‘APPLICATION FOR GRID MODERNIZATION PROJECTS.’” Laws 2020, ch. 15, § 3.

NMSA 1978, § 62-3-2(A) (emphases added). “One of the purposes of enacting [the Public Utility] Act is to preserve the public health, safety and welfare.” *Griffith v. New Mexico Public Service Commission*, 1974-NMSC-024, ¶ 8, 86 N.M. 113, 520 P. 2d 269.

“The Commission has ‘general and exclusive power and jurisdiction to regulate and supervise every public utility....’ NMSA 1978, § 62-6-4(A) (1996)... New Mexico courts recognize this expansive regulatory power, broadly and liberally construing the Public Utilities Act to effect the Legislature’s articulated policies. See *Griffith v. New Mexico Pub. Serv. Comm’n*, 86 N.M. 113, 520 P.2d 269 (1974).” *PNM Elec. Servs. v. New Mexico Pub. Util. Comm’n (In re PNM Elec. Servs.)*, 1998-NMSC-017, ¶¶ 13-14, 125 N.M. 302, 961 P.2d 147. *Griffith*, of course, reminds us that one of the Legislature’s articulated policies in the Public Utility Act is the “preservation of the public health, safety and welfare.”

“The nature and extent of the N[ew] M[exico] P[ublic] U[tility] C[ommission]’s authority was defined by the Legislature when it enacted and amended the N[ew] M[exico] P[ublic] U[tility] A[ct]... To determine the intended scope of the NMPUC’s authority, the NMPUA must be read as a whole, see *High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599...”. *State ex rel. Sandel v. New Mexico Public Utility Commission*, 1999-NMSC-019, ¶ 13, 127 N.M. 272, 980 P.2d 55 (internal citations omitted).

To determine the intended scope of the Commission’s authority under the Grid Modernization Act, the Public Utility Act (NMPUA), of which the Grid Modernization Act is a part, must be read as a whole. It is clear that “the preservation of the public health, safety and welfare” is part of this scope. Any proceeding before the Commission in which the hearing examiner excludes consideration of the public health, safety and welfare is conducted contrary to

law, and contrary to the Legislature’s express intent. The public hearing of March 20-24, 2023, from which issues of health, safety and welfare were totally excluded, is therefore illegal, void, and without effect. And any Recommended Decision that is based on the public hearing in this case is also illegal, void and without effect.

## II. EFFECTS ON HEALTH ARE A PRIMARY PURPOSE OF AMI

Most of the factors that the Grid Modernization Act requires the Commission to consider in any application for AMI have to do with addressing climate change: meeting “energy standards established in Section 62-16-4 NMSA 1978”; “export of clean and renewable energy”; “access to and use of clean and renewable energy”; “the reduction of air pollution, including greenhouse gases.” NMSA 1978 § 62-8-13(B)(1) through (4). “Grid modernization” is *defined* by the Legislature as improvements to electric distribution or transmission infrastructure that are designed to promote “renewable electric generation resources.” NMSA 1978, § 71-11-1(G)(2). And the only reason the Legislature is addressing climate change is to prevent damage to the health of humans, animals and plants.

*See, for example, the New Mexico Forest Re-Leaf Act:*

**Findings and purpose of act.** A. The legislature finds that the *health* and safety of our increasingly fragile environment is threatened daily by increased emissions of carbon dioxide.

NMSA 1978, § 68-2-30 (1990) (emphasis added); the *Environmental Improvement Act*:

**Purpose of Environment Improvement Act.** The purpose of the Environmental Improvement Act is to create a department that will be responsible for environmental management and consumer protection in this state in order to ensure an environment that in the greatest possible measure will confer optimum *health*, safety, comfort and economic and social well-being on its inhabitants; will *protect this generation as well as those yet unborn from health threats posed by the environment*; and will maximize the economic and cultural benefits of a *healthy people*.

NMSA 1978, § 74-1-2 (1997) (emphases added); the *Community Energy Efficiency Development Block Grant Act*:

**Selection of community energy efficiency projects.** A. When reviewing and selecting community energy efficiency projects for grants from the community energy efficiency development block grant fund, the department shall consider: (1) the estimated reduction in energy use from the project; ... (6) the degree to which the project benefits an underserved community, including any non-energy benefits and *health* benefits provided by the project.

NMSA 1978, § 62-17A-6 (2022) (emphasis added); the State Climatologist statute:

**State climatologist; duties.** The duties of the state climatologist shall include: A. assessing the effect of climate on the natural environment, agricultural production, land and natural resources and *human health*;

NMSA 1978 § 75-4-3 (1979) (emphasis added). *See also* the *National Climate Program Act*, establishing a National Climate Program:

The Program shall include, but not be limited to, the following elements: (1) assessments of the effect of climate on the natural environment, agricultural production, energy supply and demand, land and water resources, transportation, *human health* and national security.

15 U.S.C. § 2904(d)(1) (emphasis added); the *Global Climate Protection Act of 1987*:

GOALS OF UNITED STATES POLICY.—United States policy should seek to— (1) increase worldwide understanding of the greenhouse effect and its *environmental and health consequences*;

15 U.S.C. § 2901 note (emphasis added); the White House/HHS *Health Sector Pledge*, signed by over 100 health systems, hospitals, and other health services providers as of October 28, 2022 and republished on March 9, 2023 by the Department of Health and Human Services. Signatories commit to “lower[] greenhouse gas emissions” and “[d]evelop and release a climate resilience plan for continuous operations by the end of 2023.”<sup>13</sup>

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<sup>13</sup> <https://www.hhs.gov/climate-change-health-equity-environmental-justice/climate-change-health-equity/actions/health-sector-pledge/index.html>

### **III. THIS PROCEEDING SHOULD BE SUSPENDED FOR THE FOLLOWING REASONS**

#### **A. MR. RYAN HAS ALLOWED EVIDENCE OF THE ENVIRONMENTAL BENEFITS OF AMI WHILE EXCLUDING EVIDENCE OF ITS ENVIRONMENTAL HARMS**

In response to NMUS's assertion that Mr. Ryan was denying NMUS due process by allowing PNM to submit abundant evidence of the environmental benefits of AMI while prohibiting NMUS or any other party from rebutting such evidence, and excluding all evidence of the environmental harms of AMI,<sup>14</sup> Mr. Ryan issued an extraordinary and unprecedented order purporting to address this legal issue. The order, issued on March 14, 2023, was titled *Order Striking All Evidence Submitted by PNM Bearing on the Issues Upon Which New Mexicans for Utility Safety is Focused* ("Order"). Not only did Mr. Ryan purport to prohibit anyone from even mentioning the impact on the environment, pro or con, of a technology whose primary purpose is its effects on the environment, but his order is full of contradictions and instead makes the denial of due process explicit. For Mr. Ryan's order does not actually concern whether or not health or environmental effects of AMI may be addressed in this proceeding—obviously that is what this proceeding is all about—but only whether or not health or environmental effects of *radio frequency ("RF") radiation* from AMI may be addressed in this proceeding. In so doing, Mr. Ryan has revealed his personal bias on this issue and his inability to judge this case fairly. Neither the Legislature nor the Commission, in any law, rule, or order, has prohibited the consideration of this particular aspect of health and environment. They did not say "health and environmental effects of AMI shall be considered, *except* for effects due to RF radiation." Quite the opposite: in Case No. 15-00312-UT, the Commission took evidence on the

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<sup>14</sup> NMUS Motion for Reconsideration of Order Striking Testimonies, 2/22/23; Motion and Supporting Brief of New Mexicans for Utility Safety to Disqualify and Remove Hearing Examiner Christopher Ryan, 2/27/23.

health effects of RF radiation from AMI for two years.<sup>15</sup> Mr. Ryan has attempted to hide his personal bias about RF radiation by not naming it explicitly, pretending instead that this is an argument about the admissibility of health and environmental issues in general, which it obviously is not.

“By striking PNM’s preemptive statements that there are no health or biological impacts associated with implementation of AMI, NMUS’s due process claim is answered, and no unfairness worked upon it here. The playing field is made level,” wrote Mr. Ryan in his order. *Order*, ¶ 29. Except that is not what Mr. Ryan actually did. He struck all evidence from PNM related to *RF radiation* effects on health and environment (*Order*, ¶¶ 31(a), (b), (d) through (h), 32(o)), and did *not* strike evidence from PNM related to *non-radiation* effects on health and environment (*Order*, ¶¶ 31(i), 32(a) through (i) and (q) through (v). Even where he struck a few sections that were about environmental benefits in general (*Order*, ¶ 32(j) through (p)), he was careful to clarify that these sections were not about RF radiation and that he was striking them out of an abundance of caution. The following are the sections of PNM’s testimonies cited by NMUS regarding the purported health and environmental benefits of AMI that Mr. Ryan did *not* order PNM to redact:

- *Direct Testimony of PNM witness Hawkins, Exhibit JCH-2*, p. 18, stating that “Applicable Laws include, without limitation, “Environmental Laws” and p. 19, stating that ““Environmental Law(s)’ means all federal, state, tribal and local laws, rules, regulations and ordinances governing, regulating or relating to *public health*, pollution, petroleum and petroleum products, wastes and discarded materials and contamination or the protection of the environment...” (emphasis added). Mr. Ryan writes: “This evidence does not bear on the issues

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<sup>15</sup> Case No. 15-00312-UT, Recommended Decision, 3/19/18, pp. 28-33, 57-65, 107-109.

NMUS wishes to litigate here: whether AMI will harm humans and biological matter.” What he means, of course, is whether *RF radiation* from AMI will harm humans and biological matter. *Order*, ¶ 31(i).

- *PNM Application for Grid Modernization, Executive Summary, p. 3*, summarizing the “Environmental Benefits” of grid modernization, including “zero-emission power.” Mr. Ryan writes: “This writing is evidence bearing on how PNM will reach its legal obligations to provide New Mexicans energy from 100% zero-emission power. This writing has no bearing on the issues NMUS is here focused on: whether AMI will physically harm biological organisms.” What he means is whether *RF radiation* from AMI will physically harm biological organisms. *Order*, ¶ 32(a).

- *PNM Witness Sanchez Direct Testimony, pp. 33-35*, on “the use of clean energy,” “transition to 100% carbon-free generation,” a “reduction in greenhouse gas (GHG) emissions,” and “movement away from “carbon intensive resources.” “None of this,” asserts Mr. Ryan disingenuously, “bears on the issues NMUS wishes to litigate here: whether AMI will harm humans and biological organisms.” What he means is whether the *RF radiation* from AMI will harm humans and biological organisms. But he will not say so. *Order*, ¶ 32(b).

- *Direct Testimony of PNM Witness Sanchez, exhibit LES-2, p. 4*, on “the reduction of air pollution, including greenhouse gases.” “To the extent this statement addresses environmental concerns, it is not those NMUS is focused on,” writes Ryan. “None of this testimony bears on the issues NMUS wishes to litigate here: whether AMI will harm humans and biological organisms.” Again, Mr. Ryan does not say what he means. Of course, the reduction of greenhouse gases has no other purpose than to prevent harm to humans and biological organisms. What he means is

whether the *RF radiation* from AMI will harm humans and biological organisms. But he will not say so. *Order*, ¶ 32(c).

- *Direct Testimony of PNM witness Sanchez, exhibit LES-2, p. 18*, on “Transportation Electrification,” which is “a new paradigm in transportation, and one that has significant impacts for people, for the environment, and for electric utilities.” In other words, transportation electrification, by addressing climate change, will protect the health of human beings, animals and plants. Mr. Ryan, in fact, in allowing this evidence, cites to the Transportation Electrification Statute, which states that transportation electrification is “designed to contribute to the reduction of air pollution and greenhouse gases.” NMSA 1978, § 62-8-12(B)(3). But, Mr. Ryan continues, “[a]llowing this testimony into the record creates no proportional obligation rooted in due process requiring the Commission to allow NMUS to supply testimony that AMI will harm biological matter.” Of course, Mr. Ryan does not believe that. Parties to this case have a due process right to respond to PNM’s claims that AMI protects human and environmental health. What Mr. Ryan means, without saying so, is that he will not allow testimony that *RF radiation* will harm biological matter. *Order*, ¶ 32(d).

- *Direct Testimony of PNM witness Sanchez, exhibit LES-2, p. 18 n. 25*, on transportation electrification. Mr. Ryan states that electric vehicles “are beneficial in part because they reduce total GHG emissions.” Yet he states: “This testimony in no way addresses the issues NMUS is focused on here: whether AMI will harm biological entities.” What he means is whether *RF radiation* from AMI will harm biological entities. *Order*, ¶ 32(e).

- *Direct Testimony of PNM witness Sanchez, Exhibit LES-5* on “clean and renewable energy.” Mr. Ryan writes that this “does not bear on the issues NMUS wishes to interject into



these proceedings: whether AMI should be banned as it will harm biological entities.” *Order*, ¶ 32(f).

- *Direct Testimony of PNM witness Rowey, pages 7-8* on a “sustainable energy future.”

Mr. Ryan writes: “This testimony does not bear on the issues NMUS is focused upon here: whether AMI should be banned as it will harm biological entities.” *Order*, ¶ 32(g).

- *Direct Testimony of PNM witness Rowey, p. 12 l. 15 through p. 13 l. 12* on “decarbonization.” Mr. Ryan writes: This testimony does not bear on the issues NMUS is focused upon here: whether AMI should be banned as it will harm biological entities. *Order*, ¶ 32(h).

- *Direct Testimony of PNM witness Rowey, p. 16, lines 6-7* on the objective of “a carbon-free environment.” Mr. Ryan writes: “This is not testimony bearing on the issues NMUS is focused upon here: whether AMI should be banned as it will harm biological entities.” *Order*, ¶ 32(i).

- *Direct Testimony of PNM witness Cervantes, p. 2, l. 16* on “G[reen]H[ouse]G[as] emissions.” Mr. Ryan writes: “Cervantes is not here addressing the concerns NMUS is focused on: whether AMI will harm biological matter.” *Order*, ¶ 32(q).

- *Direct Testimony of PNM witness Warner, p. 5 lines 3-7* on “decarbonization” and “clean energy.” Mr. Ryan writes: “This testimony has no bearing on the issues upon which NMUS is focused: whether AMI will harm the biological world.” *Order*, ¶ 32(r).

- *Direct Testimony of PNM witness Warner, p. 36 line 10 through p. 37 line 14* on “reducing [GHG’s] and other pollutants” and increasing the use of renewable sources of energy.” Mr. Ryan writes: “This statement has no bearing on the claims NMUS wishes to interject here: whether AMI will cause biological harm.” *Order*, ¶ 32(t).

- *Direct Testimony of PNM witness Hawkins, Exhibit JCH-2, p. 3* on ““environmental sustainability” and “environmental stewardship.” Mr. Ryan writes: “It is self-evident that this portion of the testimony has no bearing on the issues NMUS wishes to raise in this proceeding: that AMI will cause biological harm.” *Order*, ¶ 32(u).

- *Direct Testimony of PNM witness Hawkins, Exhibit JCH-2, pp.18-19* stating that “Applicable Laws include, without limitation, “Environmental Laws” and that ““Environmental Law(s)’ means all federal, state, tribal and local laws, rules, regulations and ordinances governing, regulating or relating to *public health*, pollution, petroleum and petroleum products, wastes and discarded materials and contamination or the protection of the environment...” (emphasis added). Mr. Ryan writes: “This evidence does not bear on the issues NMUS wishes to litigate here: whether AMI will harm humans and biological matter.” *Order*, ¶ 32(v).

Over and over, Mr. Ryan refers to “AMI” when he means “RF radiation from AMI.” Over and over, he denies due process by allowing PNM to assert the environmental benefits of AMI while prohibiting NMUS and other parties from rebutting such assertions and asserting the environmental *harms* of AMI.

## **B. VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT**

Mr. Ryan has violated numerous provisions of the Administrative Procedure Act:

“In conducting adjudicatory proceedings, agencies shall afford all parties an opportunity for full and fair hearing.” NMSA 1978, § 12-8-10(A). My Ryan has denied NMUS *any* hearing.

“Unless otherwise provided by any law, agencies... may limit the issues to be heard or vary the procedures prescribed by Subsection B *if the parties agree to the limitation* or variation.” NMSA 1978, § 12-8-10(A)(3) (emphasis added). The parties were *not* asked to agree to exclude health and environment, and NMUS does *not* so agree.

Agencies “shall allow any person showing that he will be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding.” NMSA 1978, § 12-8-10(A)(4). Mr. Ryan has *not* so allowed. He has excluded Cellular Phone Task Force, Isabel Boldizsár, and Julian Gresser, although they will be substantially and specifically affected by the proceeding.

“Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.” NMSA 1978, § 12-8-10(C). Opportunity has been afforded on all issues, including all environmental issues, *except* where it concerns RF radiation.

“In adjudicatory proceedings: ... C. *every party* may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence” (emphasis added). NMSA 1978, § 12-8-11. Mr. Ryan has *prohibited* NMUS from calling and examining witnesses, introducing exhibits, and cross-examining witnesses.

“Parties shall be notified either personally or by mail of any decision or order. A copy of the decision or order shall be delivered or mailed forthwith to each party or to his attorney of record.” NMSA 1978, § 12-8-12(A). Isabel Boldizsar (centaury@fastmail.com) was *not* notified of Mr. Ryan’s order denying her party status. *See* Mr. Ryan’s February 7, 2023 email to his service list containing this order (attached hereto as Exhibit A). Julian Gresser was *not* notified of Mr. Ryan’s order commanding him to reply to PNM. *See* Mr. Ryan’s February 25, 2023 email to his service list containing this order (attached hereto as Exhibit B). *See* Mr. Gresser’s February 26, 2023 email to Arthur Firstenberg stating that he was not served with Mr. Ryan’s order (attached hereto as Exhibit C).

## **C. VIOLATIONS OF THE U.S. AND NEW MEXICO CONSTITUTIONS**

### **1. Mr. Ryan Has Declared He Is Not Bound by the Constitution**

Mr. Ryan has ruled that the parties may not raise Constitutional issues and that if they do, the Commission will not respond to them:

NMUS’s contention that AMI should not be used in New Mexico as this would intrude upon fundamental principles enshrined in New Mexico’s Constitution points in a direction this Commission cannot follow or tread... If NMUS intends to submit evidence to support claims of constitutional dimension, it is in the wrong forum.

*Order on Public Service Company of New Mexico’s Objection to New Mexicans for Utility Safety’s Motion to Intervene*, Jan. 19, 2023, ¶ 9.

In a February 7, 2023 order, he again ruled that the Commission is not “the appropriate forum” to “challenge the constitutionality of AMI.” *Order Striking the Intervention of Isabel Boldizsár*, ¶ 9.

On March 8, 2023, he again ruled: “[T]he assertion implementation of AMI is unconstitutional as AMI will kill or otherwise harm New Mexicans is not one this Commission can adjudicate.” *Order on New Mexicans for Utility Safety’s Motion for the Hearing Examiner to Disqualify and Remove Himself from These Proceedings*, ¶ 1.

And on the same date, in yet another order, he ruled that constitutional questions are not questions that “this Commission can entertain.” *Order on New Mexicans for Utility Safety’s Motion for Reconsideration*, ¶ 17.

### **2. Due Process**

The Fourteenth Amendment to the United States Constitution and Article II, Section 18 of the New Mexico Constitution state that no person shall be deprived of life, liberty or property without due process of law.

The complete denial of the right of NMUS or any other party alleging deprivation of life, liberty and property by AMI to present their case, or even to present *any* evidence contrary to that submitted by PNM and allowed by Mr. Ryan, is an egregious denial of due process. Mr. Ryan has allowed abundant evidence from PNM addressing the health and environmental effects of AMI but has excluded all contrary testimony and evidence, to the extent of striking NMUS's eleven witnesses, denying party status to would-be intervenor Cellular Phone Task Force, denying party status to would-be intervenor Isabel Boldizsár, and granting only conditional party status to both NMUS and William Bruno.

“It is well settled that the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense.” *Alb. Bernalillo Co. Water Utility Authority v. NMPRC*, 2010-NMSC-013, ¶ 21, 148 N.M. 21, quoting *Jones v. N.M. State Racing Comm'n*, 100 N.M. 434, 436 (1983).

In *Pub. Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n*, 2019-NMSC-012, ¶¶ 63-65, 444 P.3d 460, the Commission's final order was vacated for violation of due process because PNM had not been permitted to refute another party's claims.

Due process is also violated because of Mr. Ryan's bias and prejudgment of this case. “Procedural due process requires a fair and impartial hearing before a trier of fact who is disinterested and free from any form of bias or predisposition regarding the outcome of the case.” *New Mexico Brd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, ¶ 27, 142 N.M. 248.

### **3. Environmental Pollution**

Article XX, Section 21 of the New Mexico Constitution, titled “Pollution Control,” states: “The *legislature shall provide* for control of pollution and control of despoilment of the air, water and other natural resources of this state” (emphasis added). The Grid Modernization

Act is a legislative act that must be interpreted consistent with New Mexico’s constitution. Mr. Ryan’s interpretation of the Act as prohibiting the PRC from admitting testimony on the pollution of the environment cannot be correct.

**D. FALSE STATEMENTS OF FACT AND LAW**

Mr. Ryan’s recent orders contain false statements of fact and law.

**1. Order Striking All Evidence Submitted by PNM Bearing on the Issues Upon Which New Mexicans for Utility Safety is Focused**

Mr. Ryan states the Commission issued an order “directing” PNM to file an application for AMI.<sup>16</sup> That is false. Actually the Commission issued an order “requesting” PNM to file an application.<sup>17</sup>

He states the Commission “noted the many benefits that PNM’s customers would receive from a grid mod application and one of those benefits is AMI.”<sup>18</sup> That is false. The Commission did not list *any* benefits to PNM’s customers from grid modernization or AMI; rather, it ordered the Commission to determine “*whether* the requested investments, incentives, programs, and expenditures” benefit the environment and customers.<sup>19</sup>

He states the Legislature “resolved” the matter of whether AMI will be deployed.<sup>20</sup> That is false. The Legislature stated that utilities “may” file such applications and that the Commission must evaluate “whether” such applications provide a net benefit.<sup>21</sup>

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<sup>16</sup> *Order Striking All Evidence Submitted by PNM Bearing on the Issues Upon Which New Mexicans for Utility Safety is Focused*, 2/14/23, ¶ 3.

<sup>17</sup> *Order Requesting PNM to File an Application*, 3/22/22.

<sup>18</sup> *Order Striking All Evidence*, ¶ 3.

<sup>19</sup> *Order Requesting PNM to File an Application*, ¶ 5.

<sup>20</sup> *Order Striking All Evidence*, ¶ 17.

<sup>21</sup> NMSA 1978, § 62-8-13(A), (B).

He states “the grid mod statute expressly permits utilities to implement AMI.”<sup>22</sup> That is false. The Grid Modernization Act permits utilities to apply to implement AMI, and directs the PRC to decide whether or not to permit them to do so.<sup>23</sup>

## **2. Order on New Mexicans for Utility Safety’s Motion for Reconsideration**

He states “[O]ur Legislature did not direct the Commission to consider the health impacts of AMI...”<sup>24</sup> That is false. The Legislature did not provide an exhaustive list of criteria, and the Public Utility Act requires the Commission to consider health, safety and welfare in all of its proceedings.

He states that although the list of criteria is not exhaustive, additional criteria may be added only “so long as the concern relates to an item on the list in some way.”<sup>25</sup> That is false. The Legislature included no such wording in the Grid Modernization Act.

He states “[I]t is not sensible to infer that our Legislature’s command that the Commission determine if a plan is “reasonable” means our Legislature intended for the Commission to receive evidence and hold a hearing on whether AMI will harm New Mexicans.”<sup>26</sup> That is erroneous. In enacting the Public Utility Act, *of which the Grid Modernization Act is a part*, the Legislature instructed the Commission to prioritize the effect of any matter before the Commission on the “preservation of the public health, safety and welfare.” NMSA 1978, § 62-3-2(A)(2) and (4).

He states: “The fact that the words “health” and “environment” appear nowhere in the statute indicates these are not concerns upon which the Legislature wanted the Commission to

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<sup>22</sup> *Order Striking All Evidence*, ¶ 20.

<sup>23</sup> NMSA 1978, § 62-8-13(A), (B).

<sup>24</sup> *Order on Motion for Reconsideration*, ¶ 6.

<sup>25</sup> *Order on Motion for Reconsideration*, ¶ 9.

<sup>26</sup> *Id.*

focus.”<sup>27</sup> That is false. The Grid Modernization Act is part of the Public Utility Act, which requires that all matters before the Commission must consider the “preservation of the public health, safety and welfare.”

**E. DISREGARDING HUNDREDS OF ORAL AND WRITTEN PUBLIC COMMENTS IS AN ABUSE OF DISCRETION**

The Commission’s rules provide that oral and written statements by members of the public “shall not be considered by the commission as evidence.” 1.2.2.23(F). But that does not mean they shall be ignored completely, or that would render that section of the Commission’s rules completely meaningless. Certainly, each comment is not to be considered evidence, but the sheer volume and consistency of those comments, the fact that they are uncontradicted, and their accord with the evidence and testimonies filed by several of the intervenors and would-be intervenors, are facts that the Commission may not ignore.

In *Colonias Development Council v. Rhino*, 2005-NMSC-024, 138 N.M. 133, 117 P.3d 939, the New Mexico Environment Department (“NMED”) reviewed an application to operate a landfill. After the Court of Appeals ruled that the Department was not required to consider the public testimony, the Supreme Court reversed, noting that an important purpose of the Solid Waste Act, which NMED is charged with administering, is to “protect the public health, safety and welfare.” *Id.* ¶ 15. Similarly here, an important purpose of the Public Utility Act, which the NMPRC is charged with administering, is “the preservation of the public health, safety and welfare.”

“The Department concluded as a matter of law that granting the permit would not result in a public nuisance or a hazard to public health, welfare or the environment. These conclusions, however, were made only after the Department incorrectly found that lay testimony relating to

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<sup>27</sup> *Id.* ¶ 16.



living near multiple disposal facilities was beyond the scope of the Secretary's authority for granting or denying a landfill.” *Id.* ¶ 33. Similarly here, Mr. Ryan has concluded as a matter of law that granting PNM’s application for AMI would not result in a hazard to public health, welfare or the environment; he has incorrectly found that lay testimony relating to living near multiple smart meters is beyond the scope of the PRC’s authority for granting or denying PNM’s grid modernization application.

“As the regulations indicate, the Department cannot ignore concerns that relate to environmental protection simply because they are not mentioned in a technical regulation. The Department has a duty to interpret its regulations liberally in order to realize the purposes of the Acts.” *Id.* ¶ 34. Similarly here, the Commission cannot ignore concerns that relate to environmental protection simply because they are not mentioned in the Grid Modernization Roadmap; it has a duty to interpret its regulations liberally in order to realize the purposes of the Public Utility Act.

In *Colonias*, more than 300 members of the public spoke against the landfill. *Id.* ¶ 3. “The Secretary did not clearly state the reasoning for the decision to grant the permit in the face of so much public testimony against it.” *Id.* ¶ 40. So here, more than 400 members of the public have spoken against smart meters; Mr. Ryan has not clearly stated the reasoning for his decision to ignore them all.

Similarly, in another jurisdiction: “Because the public comments might affect the Commission’s decision, and because they are part of the Commission’s record, the parties must be given an opportunity to cite to the comments in their briefs and to make permissible arguments about the comments’ significance... The Commission's decision to strike the public comments from the Associations’ brief was arbitrary and capricious and was based on the legally

erroneous conclusion that the public comments were not part of the Commission's record for decision because they could not be used as evidence. That decision was therefore both contrary to law and an abuse of discretion.” *Apple Canyon Lake Property Owners’ Association v. Illinois Commerce Commission*, 985 N.E.2d 695, 708 (Ill. App. 3d 2013). Similarly here, the Direct Testimonies of both Arthur Firstenberg and Sharon Goldberg, M.D., which made arguments based on the public comments in this case, were stricken by Hearing Examiner Ryan, acting contrary to a previous Commission order. The hearing examiner in a previous NMPRC AMI case, Case No. 15-00312-UT, stated in his Recommended Decision, which was adopted as the Final Decision by the Commission, that “[t]he Commission should consider the extent of any public opposition.” *Id.* at 79. It is an abuse of discretion for Hearing Examiner Ryan not to do so.

#### **F. CODE OF CONDUCT**

The first clause of the 2021 Code of Conduct adopted by this Commission requires that officers of this Commission “[o]bey both the letter and the spirit of all laws and regulations.” The most of important of all laws are the articles of the Constitution, both Federal and State. In admitting testimony and evidence from PNM supporting the claim that AMI protects health and the environment and excluding all evidence from other parties supporting the claim that AMI harms health and the environment, he has engaged in viewpoint-based discrimination and violated the First Amendment right of free speech. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806 (1985). By requiring NMUS to file with the Commission a list of the names, addresses, and contact information of all its members,<sup>28</sup> Mr. Ryan violated the First Amendment right of association. *NAACP v. Alabama*, 357 U.S. 449, 462 (1958). In admitting testimony and evidence by PNM on the benefits of AMI and prohibiting other parties—parties who are alleging deprivation of life, liberty

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<sup>28</sup> *Order on Public Service Company of New Mexico’s Objection to New Mexicans for Utility Safety’s Motion to Intervene and on New Mexicans for Utility Safety’s Motion for Entry of Protective Order*, ¶ 13.

and property—from refuting that testimony and evidence, he has violated the right to due process enshrined in the Fourteenth Amendment of the U.S. Constitution and in Article II, Section 18 of the New Mexico Constitution. *PNM v. NMPRC*, 2019-NMSC-012, ¶¶ 63-65, 444 P.3d 460. By twisting the meaning of the Grid Modernization Act and interpreting it so as to prohibit the testimony of citizens who are alleging that smart meters destroy the environment, he has violated the Pollution Control section of the New Mexico Constitution.

**G. MR. RYAN’S BIAS NULLIFIES THIS PROCEEDING**

When NMUS; would-be intervenor Cellular Phone Task Force; would-be intervenor Isabel Boldizsár; would-be intervenor Julian Gresser; five expert witnesses on behalf of NMUS; six lay witnesses on behalf of NMUS; five hours of oral testimony by the public; and hundreds of written comments by the public are all screaming at the Commission that it must not kill them, it is a criminal act for the Hearing Examiner to ignore their pleas and exclude their evidence. Since that is what Mr. Ryan has done from day one of this case, this entire proceeding is null and void. The following are a small sample of what he has excluded and ignored:

“Since smart meters emit RF/EMF which affects the function of the heart and the brain, we would expect to see an increase in incidence and severity of serious diseases among New Mexicans. These diseases would include heart attacks, strokes and a wide variety of neuropsychiatric and neurobehavioral conditions.” Direct Testimony of Sharon Goldberg, MD, Jan. 26, 2023, p. 4 line 16 to p. 5 line 3.

“Smart meters are killing me and everything else in their path.” Declaration of Deanna Lee Munson, in Exhibit C of Direct Testimony of Joshua Hart, dated Jan. 25, 2023, filed Jan. 26, 2023.

“After the installation of digital meters, New Yorkers began experiencing and reporting headaches, sleep disturbances, insomnia, skin and eye problems, ringing in the ears, anxiety,

nausea, dizziness, tingling in extremities, high blood pressure, cancer, heart problems, strokes, electrical equipment damage and fires.” Direct Testimony of Michele Hertz, Jan. 13, 2023, filed Jan. 26, 2023, p. 1, lines 16-19.

“By the end of 2012 I had documented the following list, consisting of my friends and neighbors who have either died or become ill since the meter “deployment” (a utility term) by Con Edison during 2008 and 2009.” Exhibit A to Direct Testimony of Michele Hertz, p. 9, lines 6-8.

“[The public comments] are accounts of catastrophic personal injuries and deaths, up to and including cancers, strokes, and heart attacks, from smart meters.” Direct Testimony of Arthur Firstenberg, Jan. 21, 2023, filed Jan. 26, 2023, p. 4, lines 18-19.

“We must stop this murderous technology that will slowly kill us all.” Stephane, quoted on page 38 of NMUS Exhibit AF-4A, filed with Direct Testimony of Arthur Firstenberg.

“Electromagnetic radiation is the “cigarettes” of the digital age, and like cigarettes, it can kill.” Frank Gonzalez, Jr., quoting electromagnetic radiation specialist (“EMRS”) Bill Cadwallader (Public Comments (Document ID 1216076), page 50).

“[I]t is my professional opinion this meter kills all biological life.” Robert Workman, EMRS (Public Comments, page 91).

“Please do whatever you can to keep this silent weapon, ‘Smart Meters,’ that maims and kills out of our wonderful state.” Oshana Spring (Public Comments, page 107).

“Where have all the sparrows gone?’... The smart meters killed them.” Elizabeth Foley Walsh (Public Comments, page 247).

“Radiation kills.” Attorney and nurse Kathleen Prlich (Public Comments, page 344).

Mr. Ryan stated: “The Hearing Examiner also disagrees, as a matter of statutory construction, that there is any language in the grid modernization statute that authorizes the Commission to evaluate how much death and suffering will occur (for both human and non-human life) from AMI implementation when deciding whether to approve a utilities’ grid modernization application.” *Order on New Mexicans for Utility Safety’s Motion for the Hearing Examiner to Disqualify and Remove Himself from These Proceedings*, March 8, 2023, ¶ 2. He is wrong about statutory construction since the grid modernization statute is part of the Public Utility Act, and the Public Utility Act states that one of its purposes is “the preservation of the public health, safety and welfare.” And since the main purpose of advanced metering infrastructure is to prevent damage to the health of humans, animals and plants from climate change, it is insane, illegal, and criminal for Mr. Ryan to ignore and exclude all evidence that smart meters damage human health and devastate the environment wherever it has been deployed in the world. NMUS can only conclude that Mr. Ryan does not believe what he writes and that he has prejudged this case before it began. He cannot seriously tell the Commission, and after the Commission, New Mexico courts, that if he had not prejudged this case, that he would have ruled hundreds of testimonies of death and destruction inadmissible in *any* proceeding he was tasked with judging.

NMUS is willing to give Mr. Ryan the benefit of the doubt, and assume that he does not intend to kill people and despoil the environment. But if that is so, then he is blatantly biased and has prejudged the overwhelming evidence of harm without admitting any of it into the record or permitting any of it to be examined. This is also enough to nullify this whole proceeding, suspend it until he is replaced by a neutral judge, and require PNM to resubmit its application and start over.

“The antithesis of a fair and impartial trial is prejudgment by a court. A tendency to prejudge, or a prejudgment of a particular controversy, or of a class or character of cases only sucks the administration of justice down into the eddy of disrepute.” *State v. Pacheco*, 1973-NMCA-155, ¶ 9, 85 N.M. 778, citing *Geer v. Stathopoulos*, 135 Colo. 146, 309 P.2d 606 (1957).

#### IV. RADIATION PROTECTION

The issue brought to this case by New Mexicans for Utility Safety, the Cellular Phone Task Force, Isabel Boldizsár, Julian Gresser, their expert and lay witnesses, and more than 400 members of the public is one that has already been recognized and codified into law by the Legislature in Chapter 74 of the New Mexico Statutes, “Environmental Improvement.”

The chapter defines “air contaminant” as “a substance, including any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, *radioactive material*, any combination thereof or any decay or reaction product thereof.” NMSA 1978, § 74-2-2(A) (emphasis added).

It defines “radioactive material” as “any materials or sources, regardless of chemical or physical state, that emit *radiation*.” NMSA 1978, § 74-3-4(E) (emphasis added).

It defines “radiation” as follows: “‘radiation’ includes particulate and *electromagnetic radiation* and ultrasound, but does not include audible sound.” NMSA 1978, § 74-3-4(D) (emphasis added).

It defines “air pollution” as “the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.” NMSA 1978, § 74-2-2(B).

It defines “source” as “a structure, building, equipment, facility, installation or operation that emits or may emit an air contaminant.” NMSA 1978, § 74-2-2(T).

It defines “radiation equipment” as “any device that is capable of producing radiation.” NMSA 1978, § 74-3-4(F).

It authorizes the environmental improvement board to promulgate rules “concerning the health and environmental aspects of the use, management, storage and disposal of radioactive material and the operation of *ionizing and non-ionizing radiation* emitting equipment.” NMSA 1978, § 74-3-5(A)(1).

It defines “person” as “the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity and includes any officer or governing or managing body of any political subdivision or public or private corporation.” NMSA 1978, § 74-1-3(D).

It defines “agency” as “the environmental protection division of the department of environment. NMSA 1978, § 74-3-4(B).

It states: “It is unlawful for any person to possess, use, store, dispose of, manufacture, repair, alter or inspect radiation equipment specified by regulation of the board unless he registers with the agency. NMSA 1978, § 74-3-8(A).

It states: “It is unlawful for a person to possess, use, store, dispose of, manufacture, process, repair or alter any radioactive material unless he holds: (1) a license issued by the nuclear regulatory commission and notification by the licensee to the agency of license identification; (2) a license issued by an agreement state and notification by the licensee to the agency of license identification; or (3) a license issued by the agency. NMSA 1978, § 74-3-9(A).

It states that “the environmental improvement board or the local board shall require: (1) a person intending to construct or modify any source, except as otherwise specifically provided by regulation, to obtain a construction permit from the department or the local agency prior to such construction or modification.” NMSA 1978, § 74-2-7(A)(1).

It authorizes “the director [of the environmental improvement board] “or his authorized representatives” to “enter at all reasonable times in or upon any private or public property where the director has reasonable cause to believe there is radioactive material or radiation equipment.” NMSA 1978, § 74-3-5(C).

It states: “A person who knowingly commits a violation of the Radiation Protection Act or a regulation promulgated pursuant to that act is guilty of a misdemeanor and upon conviction shall be sentenced to a term of imprisonment not to exceed three hundred sixty-four days or the payment of a fine not to exceed ten thousand dollars (\$10,000), or both.” NMSA 1978, § 74-3-12.1(A).

Under New Mexico law, therefore, smart meters are sources of radioactive material that cause air pollution, from which the PRC has a duty to protect New Mexicans under the Public Utility Act; for which registration with the environmental protection division of the department of environment is required; for which a license from either the nuclear regulatory commission or the environmental protection division is required; for which construction permits must be obtained by PNM for each and every smart meter prior to their installation, in the event PNM’s application for AMI is approved by the Commission; which make any private property upon which they are installed subject to inspection by the director of the environmental improvement board; and for which PNM is criminally liable if it installs any smart meters without obtaining the required license, registration, and construction permits.



**V. THERE IS A NET PUBLIC HARM, NOT A NET PUBLIC BENEFIT, FROM AMI**

Despite the word used in the Commission’s March 22, 2022 Order to PNM,<sup>29</sup> the Commission did not “find” AMI to be a net public benefit, it just stated it on no basis whatever. The statement did not come from the Legislature. Neither the Commission nor anyone else did a cost-benefit analysis. The statement does not constitute legal authority and neither binds nor informs the decision to be made in the present case.

**VI. THE QUESTIONS MR. RYAN COMMANDED THE PARTIES TO ADDRESS**

**Question 1:** The grid modernization statute states that “a public utility that undertakes grid modernization projects approved by the commission may recover its reasonable costs through an approved tariff rider or in base rates, or by a combination of the two” and then states that “[c]osts that are no greater than the amount approved by the commission for a utility grid modernization project are presumed to be reasonable.” NMSA 1978, Section 62-8-13(C) (2021).

(A) Do these provisions collectively establish that, if the Commission approves PNM’s implementation plan, then PNM is entitled to all costs associated with the implementation plan unless an intervenor or the Commission rebuts the presumption the costs are reasonable? (B) What, exactly, must be shown to rebut the presumption of reasonableness?

**Answer:** No costs for a technology that injures and kills the customers are reasonable.

**Question 2:** The grid modernization statute states that the Commission must consider how proposed grid mod investments will lead to reduction in greenhouse gases and expressly defines grid modernization to include investments to support the electrification of transportation. Should this language be understood as a signal that our Legislature understood grid

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<sup>29</sup> *Order Requesting Public Service Company of New Mexico to File an Application for Authorization to Implement Grid Modernization Components that Include Advanced Metering Infrastructure*, ¶ 7.

modernization as integral to related legislative priorities: ensuring New Mexico utilities achieve RPS compliance and for the State to realize the benefits of transportation electrification? In other words, explain how grid modernization fits into the Legislature's broader energy transition goals, and state what the Commission can discern from that as it considers the application here and whether the statute gives some indication about how aggressive utilities must be.

**Answer:** This question asks the parties to state whether the Commission should abdicate the responsibilities assigned to it by the Legislature. The answer is no. There is no mandatory language in the statute. The Grid Modernization Statute only states that utilities "may" submit grid modernization applications to the Commission, and that the Commission shall consider "whether" the applications are "reasonable."

**Question 3:** If the Commission is required to determine "the reasonableness" of a grid mod application and is to use the factors at (B)(1) to (7) to measure that reasonableness, is there any standard the Commission can employ to resolve the scope of its discretion in deciding what is reasonable and what not? Should the Commission understand it was conferred broad discretion in deciding what is reasonable and what not given that reasonableness itself is a highly malleable term?

**Answer:** The Commission has broad discretion in interpreting terms that are left undefined by the Legislature, subject to certain constraints. One of those constraints is that in interpreting a part of the NMPUA, the NMPUA must be read as a whole. The NMPUA states that a primary purpose is "the preservation of the public health, safety and welfare." Killing the customers is never reasonable. Evidence that this is what AMI does may not be summarily excluded. As that is what has occurred in this proceeding, the Commission must require PNM to resubmit its application and start over with an unbiased hearing examiner.

**Question 4:** Does the grid modernization statute in any way answer or point to an answer to the disagreement between the parties in this case about whether PNM was obligated to perform a cost benefit analysis to justify its grid mod investments?

**Answer:** The reasonableness of the application cannot be ascertained without a cost-benefit analysis, including a cost-benefit analysis of AMI. No one—not the Legislature, not the Commission, and not PNM—has done a cost-benefit analysis of AMI. Such an analysis must be done. The evidence that AMI is catastrophic for the public health, safety and welfare must be included in that analysis.

**Question 5:** Please explain what the Legislature intended by Section 62-8-13(D). This provision states that “[c]osts for a grid modernization project that only benefits customers of an electric distribution system shall not be recovered from customers served at a level of one hundred ten thousand volts or higher from an electric transmission system in New Mexico.” What is the functional purpose of this provision and why is it included in the statute?

**Answer:** The question is moot because a grid modernization project that includes AMI, such as that submitted by PNM, does not benefit its customers.

**Question 6:** Is the Commission authorized to tie approval of grid modernization investments to performance metrics?

**Answer:** The question is moot because the hearing examiner excluded evidence necessary to justify approval at all.

**Question 7:** The grid modernization statute states that the Commission, when deciding whether to approve a grid mod plan, should consider whether it is “reasonably expected to increase access to and use of clean and renewable energy, with consideration given for increasing access to low-income users and users in underserved communities.” (Emphasis

added). What did our Legislature intend when it said “low-income users” and “users in underserved communities” should have “increased access” to clean and renewable energy? What is “access?” As a purely conceptual matter, what types of grid mod investments “increase” access to renewable energy?

**Answer:** NMUS addresses this question by attaching as Exhibit D hereto the *Written Comments in Opposition to PNM Application for Authorization to Implement Grid Modernization Components*, by William Athas, Ph.D., Retired Professor of Population Health at the University of New Mexico. His comments were filed with the Commission on March 27, 2023 and are part of the record of this case as pages 713-716 of the Public Comments (Document ID 1216076). They constitute evidence that rather than benefit low income communities, the approval of PNM’s grid modernization application would violate environmental justice requirements. Dr. Athas’s comments have seven sections. The section headings in this document are:

*PNM Seeks Approval to Introduce New Environmental Hazard Source at Large-Scale, Population Level*

*PRC has a Duty to Consider Environmental Justice and Disproportionate Exposure Issues*

*PNM Application Fails to Address Disproportionate Population Exposures to Smart Meter RFR*

*1. Opt-Out Costs Are Discriminatory Towards Low Income = Environmental Injustice*

*2. Smart Meter RFR Exposures Higher in Multi-Unit Housing = Environmental Injustice*

*3. Greater Multi-Unit Housing Among Disadvantaged = Environmental Injustice*

*PNM Application Should be Denied on Environmental Justice Grounds*

## CONCLUSION

The Commission should find:

1. That substantial evidence has been filed in the record of this case that AMI severely harms human health and the environment.
2. That the public health, safety and welfare have been improperly excluded from this proceeding.
3. That Christopher Ryan has shown unmistakable bias and has prejudged this case.
4. That Christopher Ryan has violated New Mexico law and the U.S. and New Mexico Constitutions.
5. That Christopher Ryan has committed perjury.
6. That Christopher Ryan has disregarded hundreds of written and oral public comments.
7. That Christopher Ryan has violated the Commission's Code of Conduct.
8. That smart meters pollute the air and are a source of radioactive material.

The Commission should deny PNM's application for grid modernization. In the alternative, the Commission should nullify this proceeding, suspend it until Mr. Ryan is replaced by a neutral judge, and require PNM to resubmit its application and start over in a proceeding that shall admit and examine evidence of the effects of RF radiation from AMI on human health and the environment.

Respectfully submitted,

NEW MEXICANS FOR UTILITY SAFETY

*/s/ Arthur Firstenberg*

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April 20, 2023

**22-00058-UT: Order****EXHIBIT A**

**From:** [Ryan, Christopher, PRC <Christopher.Ryan@prc.nm.gov>](mailto:Christopher.Ryan@prc.nm.gov)

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**Cc:** [Records, PRC, PRC <Records@prc.nm.gov>](mailto:Records@prc.nm.gov)

**Subject:** 22-00058-UT: Order

**Date:** Tuesday, February 07, 2023 11:25 AM

**Size:** 389 KB

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF )**  
**NEW MEXICO’S APPLICATION FOR )**  
**AUTHORIZATION TO IMPLEMENT GRID )**  
**MODERNIZATION COMPONENTS THAT INCLUDE )**  
**ADVANCED METERING INFRASTRUCTURE AND )**  
**APPLICATION TO RECOVER THE ASSOCIATED )**  
**COSTS THROUGH A RIDER, ISSUANCE OF RELATED )**  
**ACCOUNTING ORDERS, AND OTHER ASSOCIATED )**  
**RELIEF )**

**Case No. 22-00058-UT**

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See the attached order.

Records, please file.

Christopher P. Ryan  
 Hearing Examiner  
 New Mexico Public Regulation Commission  
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22-00058-UT-02072023-Order Striking Intervention of Isabel Boldiszar.pdf 264 KB



**22-00058-UT: Order****EXHIBIT B**

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[wtempleman@cmtisantafe.com](mailto:wtempleman@cmtisantafe.com) <[wtempleman@cmtisantafe.com](mailto:wtempleman@cmtisantafe.com)>

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**Subject:** 22-00058-UT: Order

**Date:** Saturday, February 25, 2023 3:39 PM

**Size:** 351 KB

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF )**  
**NEW MEXICO’S APPLICATION FOR )**  
**AUTHORIZATION TO IMPLEMENT GRID )**  
**MODERNIZATION COMPONENTS THAT INCLUDE )**  
**ADVANCED METERING INFRASTRUCTURE AND )**  
**APPLICATION TO RECOVER THE ASSOCIATED )**  
**COSTS THROUGH A RIDER, ISSUANCE OF RELATED )**  
**ACCOUNTING ORDERS, AND OTHER ASSOCIATED )**  
**RELIEF )**

**Case No. 22-00058-UT**

Please see the attached order.

Records, please note that the filing date is Monday, February 27, 2023.

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 New Mexico Public Regulation Commission  
[christopher.ryan@prc.nm.gov](mailto:christopher.ryan@prc.nm.gov)  
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**22-00058-UT-02-27-2023-Order Shortening Response Deadline to PNM's Motion to Strike the Direct Testimony of Julian Gresser.pdf 236 KB**

**Re: 22-00058-UT: Order****EXHIBIT C**

**From:** [julian.juliangresser <juliangresser77@gmail.com>](mailto:julian.juliangresser@gmail.com)  
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**Cc:** [Ben Levi <ben@dialogue.org>](mailto:ben@dialogue.org)  
**Subject:** Re: 22-00058-UT: Order  
**Date:** Sunday, February 26, 2023 10:52 AM  
**Size:** 364 KB

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Arthur,

I was not served. I will examine what to do next.

Thanks for letting me know.

Julian

On Sun, Feb 26, 2023 at 12:42 AM Arthur Firstenberg <[bearstar@fastmail.fm](mailto:bearstar@fastmail.fm)> wrote:

Julian,

Were you served with this?

Arthur

----- Original message -----

From: "Ryan, Christopher, PRC" <[Christopher.Ryan@prc.nm.gov](mailto:Christopher.Ryan@prc.nm.gov)>  
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Cc: "Records, PRC, PRC" <PRC.Records@prc.nm.gov>

Subject: 22-00058-UT: Order

Date: Saturday, February 25, 2023 3:39 PM

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF PUBLIC SERVICE COMPANY OF )  
 NEW MEXICO'S APPLICATION FOR )  
 AUTHORIZATION TO IMPLEMENT GRID )  
 MODERNIZATION COMPONENTS THAT INCLUDE )  
 ADVANCED METERING INFRASTRUCTURE AND )  
 APPLICATION TO RECOVER THE ASSOCIATED )  
 COSTS THROUGH A RIDER, ISSUANCE OF RELATED )  
 ACCOUNTING ORDERS, AND OTHER ASSOCIATED )  
 RELIEF )

Case No. 22-00058-UT

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Please see the attached order.

Records, please note that the filing date is Monday, February 27, 2023.

Christopher P. Ryan

Hearing Examiner

New Mexico Public Regulation Commission

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**22-00058-UT-02-27-2023-Order Shortening Response Deadline to PNM's Motion to Strike the Direct Testimony of Julian Gresser.pdf 236 KB**

**William F. Athas Ph.D.**

Written Comments in Opposition to PNM Application for Authorization to  
Implement Grid Modernization Components

**Case No. 22-00058-UT**

Submitted March 27, 2023

I live in Albuquerque and have been a resident of New Mexico for over 30 years. I have a PhD in epidemiology and am a retired professor of population health from UNM. I have expertise in epidemiology, environmental health, and public health geography. In the 1990's, I was the lead investigator for a series of community health studies in populations living in proximity to the Los Alamos National Laboratory. Over the past 20 years, I have worked closely with the New Mexico Department of Health to improve the state health surveillance system. This includes the use of geographic information systems (GIS) to geocode health and environmental datasets to address community health issues and concerns. I have taught graduate and undergraduate courses in environmental health, occupational health, cancer epidemiology, and public health geography and mapping. Throughout my career as a population health educator, researcher, and practitioner, I have sought to address and raise awareness towards issues of social disparity and environmental justice, particularly in New Mexico. The comments provided herein solely reflect my individual opinion.

**PNM Seeks Approval to Introduce New Environmental Hazard Source at Large-Scale, Population Level**

PNM is seeking approval from the Public Regulation Commission (PRC) to introduce a new environmental hazard source into New Mexico in the form of so-called “smart meters” - devices designed to continually emit short bursts of radiofrequency radiation (RFR) on a daily basis. RFR is a recognized environmental health hazard for which the Federal Communications Commission (FCC) has adopted human upper limit exposure standards for all FCC-regulated transmitters, including smart meters. PNM is planning to deploy smart meters across its entire service area, which involves roughly 530,000 customers, the majority of whom are located in the greater Albuquerque and Santa Fe metro areas. The PNM residential customer base in the service area is highly diverse demographically and socioeconomically, and includes low-income, disadvantaged communities, and some of the poorest and most-impooverished neighborhoods in the state.

**PRC has a Duty to Consider Environmental Justice and Disproportionate Exposure Issues**

New Mexico Executive Order 2005-56 (Environmental Justice Executive Order) affirms a governmental commitment to afford all state residents, including communities of color and low-income communities, *fair treatment and meaningful involvement* in matters dealing with environmental laws, regulations, and policies. The Order states that ALL cabinet level departments, boards, and commissions involved in decisions that MAY affect environmental quality and public health SHALL “*seek to address disproportionate exposure to environmental hazards and risks*”. New Mexico Executive Order 2005-56 conveys a constitutional duty to the PRC to consider environmental justice and disproportionate smart meter RFR exposure issues in their approval process.

**Fair treatment** means no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

Source: New Mexico Environment Department

## **PNM Application Fails to Address Disproportionate Population Exposures to Smart Meter RFR**

The US Environmental Protection Agency (EPA) defines **exposure assessment** as *the process of estimating or measuring the magnitude, frequency, and duration of exposure to an agent, along with the number and characteristics of the population exposed*. The basic metrics of RFR external exposure from smart meters include both “power density” (intensity) and “duty cycle” (duration) terms<sup>1</sup>. Although PNM owns customer databases that would support a population-level exposure assessment of smart meter RFR, they chose not to address any aspect of exposure assessment or exposure disparities in their application. Had they chosen to do so, a variety of environmental justice issues and disproportionate exposure settings would have been identified, three of which are exemplified below.

### **Basic Metrics of Smart Meter RFR External Exposure**

**Power Density** (Power flow per unit area, W/m<sup>2</sup>) + **Duty Cycle** ( % of time meter is transmitting RFR signal)

#### **1. Opt-Out Costs Are Discriminatory Towards Low Income = Environmental Injustice**

The proposed one-time opt-out fees and ~\$340 annual surcharge for residential customers effectively limits smart meter RFR opt-out to only the more affluent communities in the PNM service area. This is discriminatory towards low-income, disadvantaged communities whose residents cannot afford opt-out costs. Higher exposures will disproportionately occur on a population-basis among low-income, disadvantaged communities due to their reduced, if not non-existent, capacity to afford an opt-out compared to their more affluent counterparts.

#### **2. Smart Meter RFR Exposures Higher in Multi-Unit Housing = Environmental Injustice**

Smart meter deployment will result in disproportionately higher RFR exposures in multi-unit housing compared to single-family housing. Single family homes generally have one electric meter, while apartments and other multi-unit housing properties typically involve a bank of multiple meters. Meter banks may vary in size from 2 meters up to and over 100 meters, and are often situated on an exterior wall that may be the wall of a residence bedroom, living room, or a child’s nursery. In some settings, meter banks may be located in immediate proximity to outdoor play areas, car parking areas, and adult work and recreational areas. The greater the number of meters in a bank, the longer the daily RFR transmission times will be and the greater the external RFR exposure. PNM chose the Itron Gen 5 Riva meter for deployment in single and multiple meter settings. The Itron meters do not transmit RFR signals simultaneously<sup>2</sup>, and therefore RFR transmission times will increase directly proportional to the number of meters in a meter bank. Daily transmission times for a 4-meter bank will be 4-times longer than for a single meter. A 100-meter bank will be associated with a 100-fold greater cumulative daily RFR transmission time compared to a single meter. In Albuquerque, multi-unit housing accounts for roughly 25% of all residential housing (2017-2021 American Community Survey). The estimated 65,000 multi-unit households in the city account for well over 10% of PNM’s combined residential and commercial service population of ~530,000. Disproportionate RFR exposures times will occur across the PNM service population according to the geographic distribution and density of multi-unit housing.

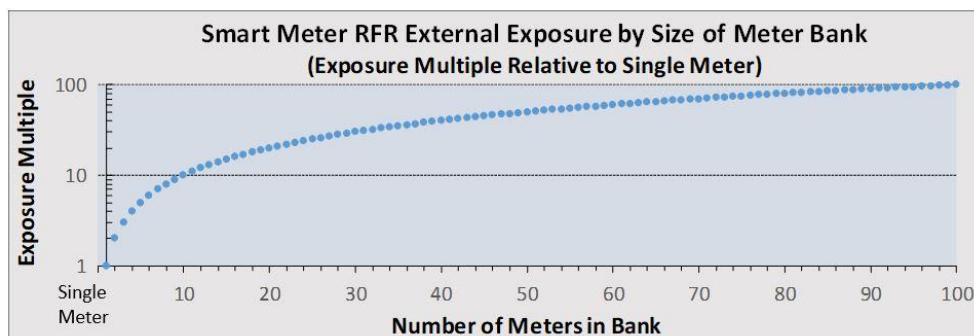
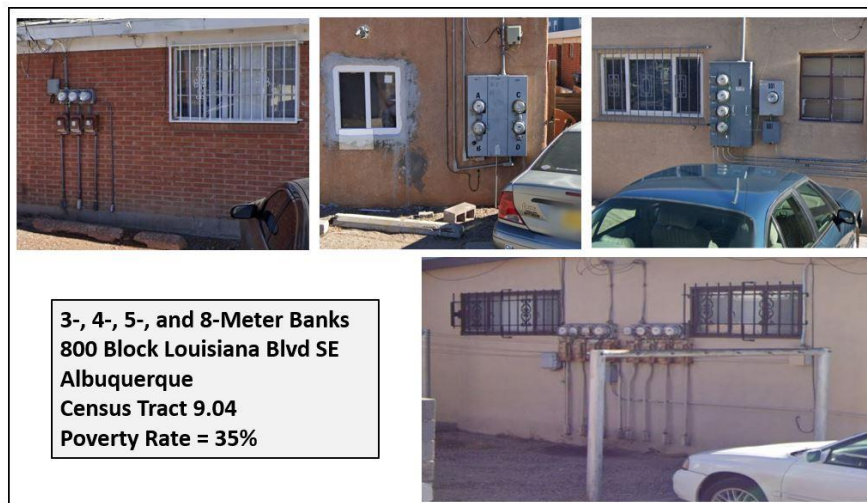
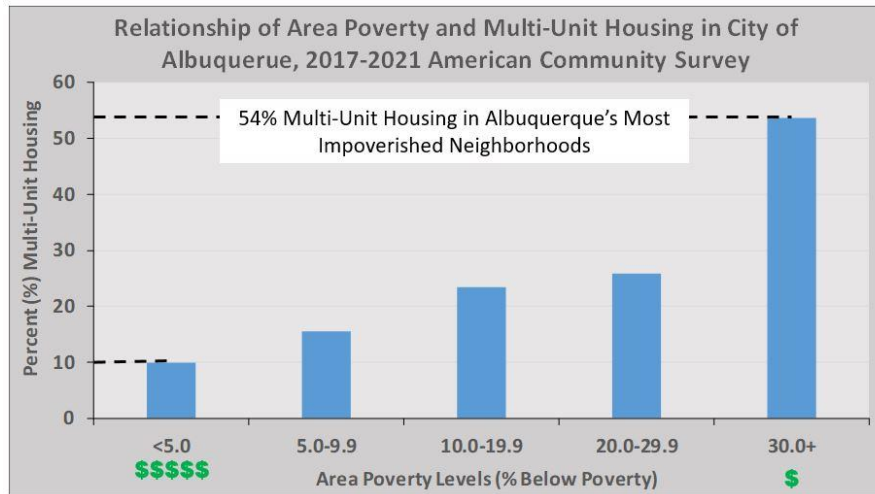


**100+ Meter Bank at 800 Silver Ave SW, Albuquerque (Sterling Downtown Apts)**



### 3. Greater Multi-Unit Housing Among Disadvantaged = Environmental Injustice

Low-income, disadvantaged communities in the PNM service area, particularly in Albuquerque, will suffer disproportionately higher exposures to smart meter RFR due to a higher prevalence of multi-unit housing compared to more affluent communities. Data from the 2017-2021 American Community Survey extracted at the census tract level for Albuquerque show that the prevalence of multi-unit housing increases with increasing area-level poverty. Over half of all housing in the most impoverished areas of the city involve multi-unit housing (N~35,000, poverty rate 30%+) compared to just 10% in the least impoverished areas (N~3,600 households, poverty rate <5%). Multi-unit housing accounts for 87% of all housing in Albuquerque’s five most impoverished census tracts, but only 9% in the five least impoverished census tracts. Single family homes with one meter predominate in more affluent areas.





## **PNM Application Should be Denied on Environmental Justice Grounds**

The PNM application refers to environmental justice only in the context of construction and meter deployment logistics. The application is entirely silent on the matter of fair treatment and disproportionate RFR exposures. It is silent on the issue of meter banks and fails to provide any form of exposure assessment to detail how RFR exposures will vary across its service population according to housing type and area socioeconomics. It is an indisputable fact that daily RFR exposure times will be greater for meter banks than for a single meter, and that exposure times will increase proportionate to the number of meters. PNM fails to address any form of risk communication to be used in exposure settings involving meter banks and increased RFR exposure due to extended transmission times.



For all the above reasons, the PRC is constitutionally obligated to deny PNM's application on grounds that it is non-responsive to existent environmental justice, fair treatment, and disproportionate exposure issues. If smart meter deployment is allowed to proceed, it will introduce and propagate an environmental injustice on various communities, particularly urban low-income communities, which already are suffering from elevated social and environmental stressors.

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### ***References:***

- <sup>1</sup> Lai H. and Levitt BB. The roles of intensity, exposure duration, and modulation on the biological effects of radiofrequency radiation and exposure guidelines. *Electromagn Biol Med*, Apr 3; 41(2): 230-255, 2022.
- <sup>2</sup> ITRON White Paper: The Facts on RF Exposure from Meter Banks, 2012. ("Exposure" refers only to instantaneous power density -- does not include duty cycle)

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF )  
NEW MEXICO'S APPLICATION FOR AUTHORIZATION )  
TO IMPLEMENT GRID MODERNIZATION )  
COMPONENTS THAT INCLUDE ADVANCED METERING )  
INFRASTRUCTURE AND APPLICATION TO RECOVER ) Case No. 22-00058-UT  
THE ASSOCIATED COSTS THROUGH A RIDER, )  
ISSUANCE OF RELATED ACCOUNTING ORDERS, )  
AND OTHER ASSOCIATED RELIEF )**

**SELF AFFIRMATION**

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing *New Mexicans for Utility Safety's Brief-in-Chief* is true and correct to the best of my knowledge.

Signed this 20th day of April 2023.

/s/ Arthur Firstenberg  
Arthur Firstenberg

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE COMPANY OF )  
NEW MEXICO’S APPLICATION FOR AUTHORIZATION )  
TO IMPLEMENT GRID MODERNIZATION )  
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THE ASSOCIATED COSTS THROUGH A RIDER, )  
ISSUANCE OF RELATED ACCOUNTING ORDERS, )  
AND OTHER ASSOCIATED RELIEF )**

**CERTIFICATE OF SERVICE**

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*/s/ Arthur Firstenberg* \_\_\_\_\_

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