

IN THE NEW MEXICO SUPREME COURT

NEW MEXICANS FOR UTILITY SAFETY,

Petitioner,

vs.

Case No. _____

NEW MEXICO PUBLIC REGULATION
COMMISSION

and

CHRISTOPHER RYAN, in his official
capacity as Hearing Examiner,

Respondents.

**EMERGENCY PETITION FOR A WRIT OF MANDAMUS OR
SUPERINTENDING CONTROL, AND REQUEST FOR STAY**

Theresa Dawn Truitt Kraft, *pro hac vice*
Attorney for New Mexicans for Utility
Safety
133 Porter Parkway
Fruitland, MD 21826
603-568-2464
tkraft@theresakraft.com

Jonathan M. Diener
Local Counsel for New Mexicans
for Utility Safety
P.O. Box 27
Mule Creek, NM 88051
575-388-1754

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INTRODUCTION

New Mexicans for Utility Safety (“NMUS”) comes before this Court to request that it prevent irreparable harm to the public health, safety, welfare and environment of New Mexico by exercising its superintending control under Article VI, Section 3 of the New Mexico Constitution. NMUS respectfully requests the Court issue a Writ of Mandamus or Superintending Control to the New Mexico Public Regulation Commission (“PRC” or “Commission”) and Hearing Examiner Christopher Ryan requiring them to admit and consider evidence, pro and con, regarding health and the environment in deciding: *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 22-00058-UT*. Since PNM filed its application, Hearing Examiner Ryan has admitted into the record all evidence of the *safety* of Advanced Metering Infrastructure (“AMI” or “smart meters”) while excluding all evidence of the *harm* caused by AMI.

The public hearing in Case 22-00058-UT is scheduled to begin March 17, 2022. NMUS requests the Court to order the PRC to permit the full participation in this hearing of parties in intervention that oppose AMI for reasons of health and environment, along with the evidence they have filed. NMUS further requests the

Court to decide this Petition prior to beginning of the public hearing, or in the alternative to order that Case 22-00058-UT be suspended pending a hearing and decision on this Writ, in order to prevent irreparable harm to NMUS, other intervenors, their constituents, the public health, and the environment of New Mexico.

In addition, because Hearing Examiner Ryan has demonstrated bias and has prejudged this case, NMUS requests the Court to order that he be recused from presiding over it.

Recusal of a judge or quasi-judicial decision-maker for potential bias is not lightly requested nor should it easily be granted. *Gerety v. Demers*, 1978-NMSC-097, ¶ 9, 92 N.M. 396. The burden is on the requesting party to show why recusal is necessitated by the judicial official's actions. *United States v. Hall*, 424 F. Supp. 508, 534 (W.D. Okla. 1975), *affirmed* 536 F.2d 313 (10th Cir. 1976). This burden is satisfied where the decision-maker's actions cast doubt in a reasonable person whether the decision-maker can be fair and impartial. *State ex rel. Bardacke v. Walsh*, 1985-NMCA-028, ¶ 62, 102 N.M. 592. Moreover, New Mexico law specifically mandates that “[a PRC] commissioner or hearing examiner shall self recuse in any adjudicatory proceeding in which the commissioner or hearing examiner is unable to make a fair and impartial decision or in which there is *reasonable doubt* about whether the commissioner or hearing examiner can make a

fair and impartial decision...”. NMSA 1978 § 62-19-7(A) (emphasis added). Under this standard, recusal is required here.

COURSE OF THE PROCEEDINGS

This is PNM’s third application for smart meters.

On April 11, 2018, the PRC adopted the hearing examiner’s Recommended Decision in Case 15-00312-UT. That decision denied PNM’s application for approval of an AMI project, including the installation of 531,000 smart meters, finding that “[t]he plan presented in the Application does not provide a net public benefit and it does not promote the public interest.”¹ NMUS participated as an intervenor and presented evidence on the harm caused to human health by radio frequency (“RF”) radiation from smart meters. In judging the evidence of the safety of AMI presented by PNM against the evidence of the harm of AMI presented by NMUS, the hearing examiner stated “[t]he evidence was conflicting... The Hearing Examiner, thus, cannot, based upon this record, make definitive findings on the health impacts of emissions from PNM's proposed AMI Project...”² “Perhaps most concerning,” he wrote, “PNM has presented its plan in inflexible terms, refusing to consider and address the concerns expressed by the non-PNM parties.”³

¹ *Recommended Decision*, 3/19/18, Findings of Fact and Conclusions of Law ¶ 4.

² *Id.*, pp. 107-8.

³ *Id.*, p. 83.

On October 28, 2020, the PRC adopted the hearing examiner's Recommended Decision in Case 20-00087-UT. That decision approved PNM's 2021 Energy Efficiency and Load Management Plan but did not approve the AMI Pilot Program that was part of that Plan.⁴ NMUS participated as an intervenor in that case as well.

On March 3, 2020, the Legislature passed House Bill 233, the Grid Modernization Act, directing the Energy, Minerals and Natural Resources Department ("EMNRD") to develop a roadmap for grid modernization ("Roadmap"), and providing that "A public utility *may* file an application with the commission to approve grid modernization projects that are needed by the utility, or upon *request* of the commission" (emphases added). NMSA 1978 Section 62-8-13(A). The Act does not require utilities to file such applications, and it does not require the PRC to approve them. There is no mention of "health" or "environment" in the Act or in the Roadmap. The Legislature held no hearings on the health or environmental effects of smart meters, nor did EMNRD.

However, the Act requires the PRC, in deciding whether to approve applications, to "review the *reasonableness* of a proposed grid modernization project and *as part of that review* shall consider whether the requested investments, incentives, programs and expenditures are..." (emphases added) and it lists a number

⁴ *Recommended Decision*, 3/17/20, Decretal Paragraph 1.

of criteria, one of which is that the project must “provide customer protection.”⁵ The clause “as part of that review” indicates that the list is not exhaustive. And although “health” is not specifically mentioned, a project that injures or kills the customer obviously does not protect him or her and is not reasonable. Therefore, under the terms of the statute, the PRC must accept and consider evidence of harm to health and the environment that is offered by parties to any proceeding in which such an application is reviewed.

On March 22, 2022, the PRC opened Case 22-00058-UT by issuing an order requesting PNM to file an application for grid modernization including AMI. This was not done to protect the environment. The word “environment” does not appear in the order. The first paragraph of the order refers to a March 4, 2022 Notice of Inquiry in Case 21-00159-UT, which was about supply chain shortages due to COVID-19, and states the importance of improving “reliability” and “resilience” of the electric grid in light of the pandemic. Like the Grid Modernization Act, this order contained no mention of health or the environment. Citing no evidence, no legal precedent, and no language from the Grid Modernization Act or any other act of the Legislature, this order stated that “the implementation of AMI... will provide a net public benefit.” In essence, and contrary to the intent of the Legislature, the Commission included a clause that could be interpreted to *require* approval of

⁵ NMSA 1978 § 62-8-13(B).

smart meters and bypass the need to actually show whether they are a net benefit or a net harm.

On October 3, 2022, pursuant to the March 22, 2022 order, PNM filed its application for Grid Modernization including AMI.

Subsequent to the filing of PNM's application, 15 parties filed motions to intervene. All motions for intervention by parties that do not oppose AMI have been granted unconditionally. These parties include:

- New Mexico Attorney General;
- Coalition for Clean Affordable Energy (CCAIE);
- Albuquerque Bernalillo County Water Utility Authority;
- New Mexico Affordable Reliable Energy Alliance;
- City of Albuquerque;
- Walmart;
- Western Resource Advocates (“WRA”);
- Bernalillo County;
- Vecinos United;
- IBEW Local 611; and
- Daniel T. Baker.

By contrast, all motions for intervention by parties that oppose AMI for health or environmental reasons have either been denied or granted conditionally

on their *not* raising such issues and their testimonies have been stricken and their witnesses excluded. This history is as follows:

A. New Mexicans for Utility Safety

NMUS moved to intervene on December 8, 2022. NMUS alleges AMI has caused and is causing severe, sometimes fatal injuries to its members, supporters, and the public; the deprivation of the right of people to live in their own homes; and severe damage to the birds, animals and plants in the environment.^{6,7} Hearing Examiner Ryan finally granted NMUS’s motion conditionally on January 19, 2023 “to ensure its members are heard about opt-out provisions”⁸ but *not* to present actual evidence that AMI damages the public health, safety, welfare, and environment. He also stated NMUS may not raise Constitutional issues and if it did, the Commission would 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.⁹

He scolded NMUS for daring to assert the public interest: “NMUS does not represent the interests of the ‘public’...”¹⁰

⁶ Motion for Leave to Intervene, 12/8/22, ¶ 7.

⁷ Response to Hearing Examiner’s Order, 1/23/22, ¶ 2.

⁸ Order on PNM’s Objection to NMUS’s Motion to Intervene, ¶ 7.

⁹ *Id.* ¶ 9.

¹⁰ *Id.* ¶ 10.

Although NMUS had participated fully as a party in two previous Commission proceedings, Cases 15-00312-UT and 20-00087-UT, and had filed the minutes of its December 7, 2022 membership meeting with the Commission along with its motion to intervene, he questioned the very existence of NMUS in paragraphs laced with sarcasm:

“...there is no information in the record about how many persons are members of NMUS or how geographically spread the association is over PNM’s service territory. In fact, it is unclear NMUS’s members are all PNM ratepayers or even residents of New Mexico... NMUS is not granted intervenor status to represent the interests of individuals who are not residents of New Mexico...”¹¹

He granted NMUS intervenor status conditionally upon its *not* raising issues of health and safety, a condition that, since it is not viewpoint-neutral, *see infra*, is an infringement of the First Amendment right of free speech:

*NMUS does not appear to understand who it represents here and what is permissible and legitimate argumentation and what not. To the extent that NMUS does engage in conduct that unduly prejudices the other parties to these proceedings, action will be taken to address the matter.*¹²

(emphasis added). It is clear that by “other parties” Hearing Examiner Ryan referred only to PNM, since none of the other parties, including Commission staff, objected to any of NMUS’s pleadings, including its motion to intervene.

¹¹ *Id.* ¶¶ 10, 13.

¹² *Id.*, Ordering paragraph D.

On January 27, 2023, NMUS filed the direct testimonies of eleven witnesses—five expert witnesses and six lay witnesses.

On February 7, 2023, Hearing Examiner Ryan ordered NMUS to produce, within two days, detailed information about its activities, officers, and meetings, plus “[a] list of all of NMUS’s members that are PNM ratepayers and their addresses and contact information,”¹³ a demand that infringed on NMUS’s First Amendment right of association, *see NAACP v. Alabama*, 357 U.S. 449, 462 (1958); *see also Order Granting NEE Motion to Intervene*, NMPRC Case 18-00099-UT (July 12, 2018), at 3, citing *NAACP v. Alabama*, a demand with which NMUS complied under protest.¹⁴

On February 14, 2023, Hearing Examiner Ryan issued an order that struck the direct testimonies of all eleven of NMUS’s witnesses, for the reason that “NMUS’s witness’s opinions [about the impact of AMI on the public health and environment] are not relevant to the issues in this proceeding.,”¹⁵ thereby depriving NMUS of the right to present its case at all.

B. Cellular Phone Task Force (“CPTF”)

Cellular Phone Task Force filed its motion to intervene on January 12, 2023. Hearing Examiner Ryan denied that motion on February 16, 2023 because CPTF is

¹³ Order on PNM’s Objection to NMUS’s Motion to Intervene, ¶ 13.

¹⁴ Response of NMUS to Hearing Examiner’s Order, 2/9/23.

¹⁵ Order Granting PNM’s Objection and Motion to Strike the Testimony of NMUS, ¶ 1.

“affiliated” with NMUS and has “nearly identical” interests in “[t]he health, safety and environmental impacts” of AMI.¹⁶ This is in contrast to the unconditional grant of the motions to intervene of both CCAE and WRA, which are also affiliated, and also have nearly identical interests in promoting clean energy and energy efficiency, but do not oppose AMI.

C. Isabel Boldizsár

Isabel Boldizsár filed her motion to intervene on January 25, 2023, and her direct testimony on January 27, 2023. Hearing Examiner Ryan struck both her testimony and her intervention on February 7, 2023, stating:

[A]rguments attempting to establish that advanced metering infrastructure (AMI) is harmful to human health and, thus, AMI cannot be implemented in New Mexico will not be considered here.¹⁷

He ruled her testimony “of how radio and electro magnetic frequencies have caused her physical suffering”¹⁸ is impermissible and “distracting from the live issues in this case,”¹⁹ and that the PRC is not “the appropriate forum” for her to “challenge the constitutionality of AMI.”²⁰ His first ordering clause states that by asserting “I and all other New Mexicans have a substantial interest in the security of our property including our homes and bodies” she has not “shown that her

¹⁶ Order Granting PNM’s Motion Objecting to the Intervention of CPTF, ¶ 7.

¹⁷ Order Striking the Intervention of Isabel Boldizsár, ¶ 1.

¹⁸ *Id.* ¶ 6.

¹⁹ *Id.* ¶ 8.

²⁰ *Id.* ¶ 9.s

intervention is ‘substantially in the public interest’”. His second ordering clause states “there will be prejudice to the other parties in this case by permitting Ms. Boldizsár to intervene.” By “other parties” he clearly referred only to PNM, since no other party or intervenor besides PNM objected to her intervention.

No matter that Ms. Boldizsár’s interests are not confined to health and safety. She listed her interests in this proceeding as including “privacy, reasonableness, necessity, affordability, cost effectiveness and transparency regarding PNM’s pending application before the Public Regulation Commission.”²¹ But because she dared to also be interested in health and safety, Hearing Examiner Ryan struck her intervention and her testimony.

D. William Bruno

William Bruno filed his motion to intervene on January 27, 2023. On February 16, 2023, Hearing Examiner Ryan granted his motion conditionally upon his not raising issues related to health and environment. “The Legislature did not direct the Commission to consider the impact of AMI on ‘community health and wellbeing’... Bruno’s attempt to make a variant of the same claim NMUS makes is rejected as well,” wrote Ryan.²² Again treading on the right of free speech, Hearing Examiner Ryan permitted Bruno to address his other interest, which is cybersecurity: “If Bruno [sic] wishes to intervene to offer expert testimony on that

²¹ *Id.* ¶ 3.

²² Order Granting in Part and Denying in Part PNM’s Motion, ¶¶ 4, 5.

subject, that is permissible.”²³ Ryan’s first ordering clause states:

PNM’s motion objecting to Bruno’s motion to intervene is granted to the extent that Bruno is intervening in this proceeding to offer testimony on whether AMI will harm health and community wellbeing. Bruno is not granted intervenor status to raise those arguments.

NATURE OF THE EVIDENCE

Six years have passed since the public hearings in Case 15-00058 were held. In the intervening years, smart meters have been deployed much more widely both in rural parts of New Mexico and in the rest of the world, and the evidence of harm has accumulated. This evidence is of two types: “public comments” filed with the PRC directly by members of the public, and sworn testimonies (“direct testimonies”) filed by expert or lay witnesses on behalf of one of the parties.

A. The Public Comments

To date, 329 public comments²⁴ have been filed, all but one opposed to smart meters for reasons of health and/or environment. Public comments, according to the PRC’s rules, “shall not be considered by the Commission as evidence.” 1.2.2.23(F) NMAC. However, the number of such comments, their widespread provenance, their consistency, and their implication of Constitutional rights are facts relevant to this proceeding. Most of the public comments do not come from New Mexico residents for the reason that most of urban New Mexico

²³ *Id.* ¶ 7.

²⁴ Case 22-00058-UT, Document ID 1216076.

has not had smart meters until now. However, public comments have come from Taos, from Kirtland Air Force Base, and from New Mexicans who have experienced smart meters in other states. Other public comments have come from the rest of the US, and from other countries. These are a few representative *health* effects alleged by these people:

- headaches, brain fog, and internal burning (Jennifer Andree, Kirtland Air Force Base)²⁵
- suspected Parkinson’s disease, the symptoms of which disappeared when the meter was removed. (Persephone Maywald, California)²⁶
- hair loss, leukemia and a lifelong allergy to electricity (Deirdre Novella, New York and Santa Fe)²⁷
- sickness that began two weeks after a smart meter was installed and lasted five years until the meter was removed (Margaretha Tierney, Australia)²⁸
- “My mother died of a massive brain tumor caused by a row of six Smart Meters outside her condo, on the wall where the head of her bed was.” (Jeanne Thompson, California)²⁹

²⁵ *Id.*, pp 319-321 of 538.

²⁶ *Id.*, p. 64.

²⁷ *Id.*, p. 69.

²⁸ *Id.*, p. 133.

²⁹ *Id.*, p. 20.

- “I was jolted awake every night, feeling like what it would be like to be hit with defibrillator paddles.” (Arlene Griffin, Santa Fe)³⁰
- “My late husband died of a brain tumor (glioma) 10 years ago, after a row of smart meters were put in place outside the wall where his head was as we slept.” (Wendy Lang, California)³¹
- “I was experiencing a mild form of electrocution throughout my body every time I laid down at night... I soon discovered that smart meters for the two units were on the outside wall to my bedroom.” (Kelly McMenimen, California)³²
- A smart meter was installed on the well house while she was gone. When she returned home, “it felt like a sledge hammer hit me in the chest, my face felt like it was on fire, I began to shake uncontrollably, heart rate dropped very quickly... While watering my plants with a watering can I turned to my left to water closer to the potted plant when I was thrown right to the ground.” (Sharon Casjens, Arizona)³³

³⁰ *Id.*, p. 298.

³¹ *Id.*, p. 413.

³² *Id.*, pp. 433-4.

³³ *Id.*, p. 452.

- “Unbeknownst to us, there were smart meters being installed all around. I just kept getting sicker. I woke one morning and the room was spinning and I had to literally crawl to the bathroom.” (Rita Blommer, Nebraska)³⁴
- She incurred inner ear damage, sleeplessness, anxiety, non-stop heart palpitations, and migraines, and fled her home after two months to save her life. All her pets got cancer and died. (Karen Blomquist, California)³⁵

These are a few representative *environmental* effects alleged by these people:

- Since a smart meter was installed, there have been almost no hummingbirds at her feeders and a decrease in caterpillars in her garden. (Simone St. Clare, California)³⁶
- While she had a smart meter she could not sleep and there were no birds; when the smart meter was removed, the birds came back. (Rebeca Randle)³⁷
- Chickens in a yard near smart meters had huge tumors and laid eggs of odd shapes and colors. (Sema Kelly)³⁸
- A smart meter gave his family headaches, caused the animals, birds and insects to disappear and caused a fire that burned down his house. (Andre Fayolle)³⁹

³⁴ *Id.*, pp. 456-7.

³⁵ *Id.*, p. 227.

³⁶ *Id.*, p. 66.

³⁷ *Id.*, p. 79.

³⁸ *Id.*, p. 105.

- He has been unable to hatch fertile chicken eggs in an incubator in his house since the smart meter was installed. (Dino DeBenetti, Ontario, Canada)⁴⁰
- All the bats disappeared. (Tim Cada, Florida)⁴¹
- Hundreds of frogs disappeared. All the house sparrows and starlings disappeared. Squirrels were suddenly tame and lying down. (Elizabeth Foley Walsh, North Carolina)⁴²
- Any plants put in a room next to a smart meter died. (Ellen Habeck)⁴³
- She experienced severe headaches, arrhythmias, tachycardia, and closed angle glaucoma requiring surgery. “In all my life, I have never seen so many dead birds... I also observed that the insect population had radically decreased.” (Susan Michetti, Wisconsin)⁴⁴

B. The Sworn Testimonies

Eleven Direct Testimonies testimonies were filed on behalf of NMUS on February 27, 2023—five by expert witnesses and six by lay witnesses. This evidence includes the following:

³⁹ *Id.*, p. 111.

⁴⁰ *Id.*, p. 144.

⁴¹ *Id.*, p. 229.

⁴² *Id.*, p. 246.

⁴³ *Id.*, pp. 293-4.

⁴⁴ *Id.*, pp. 520-22.

1. Sharon Goldberg, M.D.

Dr. Goldberg is board certified in Internal Medicine and specializes in environmentally acquired illness. Her testimony reviews the following widely reported effects of smart meters:

- Neurodegenerative Disease
- Neuropsychiatric, Behavioral and Sleep Issues
- Cancer and Immune Dysfunction
- Seizures
- Cardiac Effects

2. Joshua Hart

Joshua Hart is Director of Stop Smart Meters! His testimony reviews thousands of individual testimonials of people who have been injured, forced to leave their jobs, and forced to leave their homes. “It is astoundingly clear that smart meters cause illness and that lasting disability can result from instant exposure and/or exposure over time,” he writes.

3. Michele Hertz

Michele Hertz is President of the New York Safe Utility Meter Association. Her testimony describes widespread reports of “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” and states “this is widespread throughout New York State, wherever and whenever digital utility meters have been installed.” She testifies to the severe effects on herself of smart meters installed on her home:

- Extreme agitation
- Memory and word loss
- Inability to concentrate on my work
- Nervousness
- A mole began to grow larger on my back
- Unusual menstrual disruption
- Severe heart palpitations
- A loud and very disturbing buzzing-pulsing sound
- Interrupted sleep with nightmares
- Pains in my jaw and my teeth

When the smart meter was removed from her home, the buzzing in her head became quieter, the mole on her back dried up and fell off, she began to menstruate again, and “I felt as if I was being released from being electrocuted.” She documented 17 friends and neighbors in her small town, most of them in their 40s and 50s, who died of heart attacks, strokes, or suicides or became ill with heart

disease, early Alzheimer's disease, or high blood pressure after smart meters were installed on their homes in 2008 or 2009.

4. Eric Windheim

Eric Windheim is a certified Electromagnetic Radiation Specialist and the owner of Windheim Environmental Solutions, a California high technology and environmental health and wellness company that he founded in 1991. His testimony summarizes his knowledge from more than 1,000 visits to homes of clients ill from smart meters in 12 states including New Mexico. Removal of smart meters from his clients' homes consistently resulted in reduction or elimination of:

- insomnia, nightmares, and fatigue;
- headaches;
- cardiac irregularities;
- depression, agitation, and anxiety;
- pressure in the head;
- ringing in the ears;
- brain fog.

5. Arthur Firstenberg

Arthur Firstenberg is president of NMUS, a research scientist, and author of *The Invisible Rainbow: A History of Electricity and Life* (White River Junction, VT: Chelsea Green 2020), which has been published in ten languages. He attached

and reviewed the public comments that were in the record at the time he filed his testimony. He explains why smart meters cause so much more damage to health and environment than other RF-emitting devices:

- 1) They are more powerful.
- 2) Exposure is involuntary.
- 3) They pulsate up to 240,000 times a day.
- 4) Your house wiring and the entire power grid become polluted with their pulsations which surround you wherever you go.

All these expert witnesses have been prohibited by Hearing Examiner Ryan from testifying at the public hearing, and their written testimonies have all been stricken. In addition, Hearing Examiner Ryan has prohibited all of NMUS's lay witnesses, who describe their own injuries from smart meters, from testifying at the public hearing, and their written testimonies have been stricken as well. They include:

6. Melissa Chalmers

Melissa Chalmers is an Air Canada pilot whose health was destroyed, and her career ended, by a smart meter.

7. Jeanne Ford

Jeanne Ford is a retired realtor who was forced to move from California to Tennessee to escape smart meters.

8. Jeromy Johnson

Jeromy Johnson is an engineer who had a successful career in Silicon Valley until a smart meter destroyed his health.

9. Charlotte Kikel

Charlotte Kikel, a New Mexico nutritionist and herbalist, moved from Colorado to Santa Fe, New Mexico to escape smart meters.

10. Ann Mattingley

Ann Mattingley is a former magazine publisher and editor whose daughter was permanently injured by a smart meter in another state.

11. Sirpa Autio, M.D.

Sirpa Autio, M.D. is a physician who lives in Texas and owns property in New Mexico. She became so disabled by a smart meter that she vacated her apartment on January 16, 2023 and has moved into an Airbnb.

ISSUES PRESENTED

A. Due Process

Hearing Examiner Ryan's exclusion from this case of any and all evidence and testimony from people who allege deprivation of life, liberty and property by AMI violates due process. NMUS has been prohibited by the Hearing Examiner from presenting its case.

“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.

The Hearing Examiner in the present case has similarly violated due process. He has admitted into evidence abundant testimony and documents 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.

The claims and documents from PNM addressing the *health effects* of smart meters already admitted into evidence in the present case include:

- PNM’s October 3, 2022 application, p. 16, addressing “health and safety concerns over AMI meters”;
- Direct Testimony of Laura E. Sanchez, p. 12, addressing “health and safety concerns over AMI meters”;

- PNM Exhibit LES-9, p. 1, addressing “health risks to consumers”;
 - PNM Exhibit JAR-2, p. 5, addressing “EMF and health factors”;
 - *Id.*, p. 12, line 2, addressing claims that “[t]he microwave radiation emitted will cause multiple health issues”;
 - *Id.*, p. 27, on “educational communication” about “EMF safety”;
 - PNM Exhibit JAR-6, p. 13, addressing “Radio Frequency (RF) Emissions” and asserting “concerns around health impacts and interference with other wireless devices” are “unfounded”;
 - Direct Testimony of Jonathan C. Hawkins, p. 1, line 23, addressing “health concerns over AMI meters”;
 - *Id.*, p. 33, lines 4-20, addressing “concerns related to the electromagnetic field aspects of the AMI solution radio frequency (‘RF’) communications” and alleging facts about RF emissions and safety of AMI;
 - PNM Exhibit JCH-2, pp. 18-19, stating “Applicable Laws include, without limitation, Environmental Laws,” including laws relating to “public health”;
- The claims and evidence from PNM about the *environmental effects* of AMI

already admitted into evidence include:

- Executive Summary to PNM’s Application, p. 3, summarizing the “Environmental Benefits” of grid modernization;
- Direct Testimony of Laura E. Sanchez, p. 24, line 2 about “valuing the

environment”;

- *Id.*, pp. 33-35, arguing PNM’s proposal “supports New Mexico’s environmental goals” and provides “environmental benefits”;
- PNM Exhibit LES-2, p. 4, claiming PNM’s project is “built on a foundation of *environmental*, social and governance principles”;
- *Id.*, p. 18, claiming the plan is “for the environment”;
- *Id.*, p. 18, n. 25, providing “[a]dditional details on benefits to customers/environment”;
- PNM Exhibit LES-5, PNM’s Environmental Justice Review Process (5 pages with references);
- Direct Testimony of Julia A. Rowey, pp. 7-8, stating “reliability and environmental attributes” are the attributes of smart meters ranking highest among PNM’s customers;
- *Id.*, p. 12, line 15 through p. 13, line 12, asserting that among PNM’s goals is to “[e]nable achievement of customers’ environmental interests and state environmental policy goals...”;
- *Id.*, p. 16, line 7, about PNM meeting its “objective” regarding the “environment”;
- PNM Exhibit JAR-2, p. 5, stating “smart meter[s]” will “benefit the environment”;

- *Id.*, p. 7, profiling residential customers as “environmentally friendly”;
- *Id.*, p. 15, stating the percentage of residential customers who believe smart meters “benefit the environment”;
- *Id.*, p. 16, stating the percentage of commercial customers who believe smart meters “benefit the environment”;
- *Id.*, p. 24, stating the percentage of customers who ask “how my smart meter helps the environment”;
- *Id.*, p. 27, on “educational communication” about “environmental benefits” of smart meters;
- *Id.*, p. 27, stating “smart meters” “help[] the environment”;
- *Id.*, p. 34, on “improving the environment” and “environmental sustainability”;
- Direct Testimony of Mario A. Cervantes, p. 2, line 16, stating PNM’s project will help meet “the state’s environmental goals”;
- Direct Testimony of Omni B. Warner, p. 5, lines 3-7, stating PNM’s project supports “customers’ environmental interests” and “state and PNM environmental policy goals”;
- *Id.*, p. 36, line 10 through p. 37, line 14 on “environmental justice”;
- PNM Exhibit OBW-2, p. 8 on “Energy environmental and conservation benefits”;

- PNM Exhibit JCH-2, p. 3 on “environmental sustainability” and “environmental stewardship”;
- PNM Exhibit JCH-2, pp. 18-19, stating “Applicable Laws include, without limitation, Environmental Laws” relating to “protection of the environment.”

The complete denial of the right of NMUS or any other party alleging deprivation of life, liberty and property to present their case, or even to present *any* evidence contrary to that already presented by PNM, is an egregious denial of due process.

On February 18, 2023, the House Energy, Environment and Natural Resources Committee of the New Mexico Legislature considered House Bill 243, an amendment to the Grid Modernization Act. Chair Matthew McQueen asked the bill’s sponsor, Representative Tara Lujan:⁴⁵

10:27:30 AM CHAIR MCQUEEN: Representative, there have been concerns expressed about health, safety, and welfare. Will health, safety and welfare be taken into consideration in the rulemaking process?

REPRESENTATIVE LUJAN: Mr. Chair, it is my belief that through the process and through public commenting and, and there, this has been taken up with the PRC and I believe that’s the proper place for that to be taken up.

⁴⁵ <https://sg001-harmony.sliq.net/00293/Harmony/en/PowerBrowser/PowerBrowserV2/20230220/-1/71943>

This is additional evidence that the legislature has not addressed the impacts of grid modernization on health, safety and welfare, and that in passing the Grid Modernization Act it intended the PRC to take up those issues.

B. Due Process Requires Impartial Decision Makers

New Mexico law provides that a hearing examiner must recuse himself when there is reasonable doubt about his impartiality or when he “has prejudged a disputed evidentiary fact involved in a proceeding prior to hearing.” NMSA 1978, § 62-19-7(A)(1).

The PRC’s rules embody the same standard: “Hearing examiners shall have the following duties: ... (2) to disqualify themselves at any point where their impartiality might be or is reasonably questioned.” 1.2.2.9(D) NMAC.

“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).

Christopher Ryan’s bias is unmistakable. He has prejudged this case. He decided prior to the hearings and prior to the intervention of any parties that PNM’s application for AMI will be granted. He has granted full party status to all intervenors who support the deployment of AMI, and has denied party status or

granted conditional party status to all intervenors who oppose the deployment of AMI. He has admitted into evidence abundant testimony and documents filed by PNM addressing the health and environmental impacts of AMI, and has stricken all contrary testimony addressing the health and environmental impacts of AMI.

Hearing Examiner Ryan's excuse for admitting all evidence submitted by PNM and excluding all evidence contrary to that presented by PNM *on the same issue* does not stand up to the most basic scrutiny. His statements that the legislature has concluded AMI is safe cannot be true unless the legislature held hearings and took evidence on the subject, which it did not do.

Mr. Ryan has shown his bias, not only by prejudging this case; not only by his admitting all evidence on health and environment that are favorable to AMI and excluding all evidence on health and environment that are unfavorable to AMI; not only by his misreading of the law to justify his prejudice; but by his blatant disrespect toward opponents of AMI which extends even to the procedural aspects of his conduct in this proceeding.

For example, NMUS is represented in this proceeding by its president, Arthur Firstenberg, who is not an attorney. This is permitted by 1.2.2.9(F)(2) NMAC. In its Motion to Intervene, NMUS also requested that Kathleen Burke (kathleenmariaburke@yahoo.com), an officer of NMUS, be added to the service list. This request has been honored by all parties in this case, but not by Hearing

Examiner Ryan. He refuses to serve Ms. Burke with his orders and emails, and in his certificates of service lists Mr. Firstenberg, incorrectly, as “Pro Se” although Mr. Firstenberg represents an organization and not himself. Attached as Exhibit A is a recent email from Hearing Examiner Ryan to his service list. Attached as Exhibit B is a recent order from Hearing Examiner Ryan, which includes his certificate of service.

Hearing Examiner Ryan showed so much disrespect toward Isabel Boldizsár (centaury@fastmail.com) that he did not even bother to serve her with his order denying her motion to intervene. Attached as Exhibit C is his email to his service list containing his order denying her motion. Most recently, on February 25, 2023, he issued an order commanding Julian Gresser, Esq. (Juliangresser77@gmail.com) to respond by March 1, 2023 to PNM’s motion to strike Mr. Gresser’s direct testimony, which is about the health and environmental effects of smart meters. Hearing Examiner Ryan did not serve this order on Mr. Gresser. Attached as Exhibit D is his email to his service list containing this order. Attached as Exhibit E is Mr. Gresser’s email stating that he was not served.

C. Public Health

Exclusion by the Commission of evidence that AMI damages the public health is a violation of law.

“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-NMSA-024 ¶ 8, 86 N.M. 113, 520 P. 2d 269 (1974). Thus:

The following are the objects and purposes of this act

(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.

(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*.

(emphases added). NMSA 1978 § 62-3-2(A). To interpret the Grid Modernization Act, NMSA 1978 § 62-8-13, which is part of the Public Utility Act, as prohibiting consideration of the public health, safety and welfare is a violation of New Mexico law that, if not reversed, will cause irreparable harm to this state.

RELIEF REQUESTED

WHEREFORE, Petitioner New Mexicans for Safe Utilities respectfully requests this Court to issue a Writ prohibiting Respondents from further refusing to consider the health and environmental effects of AMI, and to grant any other relief the Court deems necessary. NMUS requests the Court to act before the beginning of the public hearing on March 17, 2023, or to stay the proceedings.

Respectfully submitted,

NEW MEXICANS FOR UTILITY SAFETY

/s/ Theresa Kraft

Theresa Dawn Truitt Kraft, *pro hac vice*
Counsel for New Mexicans for Utility Safety
133 Porter Parkway
Fruitland, MD 21826
603-568-2464
tkraft@theresakraft.com

/s/ Jonathan M. Diener

Jonathan M. Diener
Local Counsel for New Mexicans for Utility Safety
P.O. Box 27
Mule Creek, NM 88051
575-388-1754

March 3, 2022

VERIFICATION

I, Theresa Dawn Truitt Kraft, *pro hac vice* attorney for Petitioner, being duly sworn upon my oath, state that I have read this *Emergency Petition for a Writ of Mandamus or Superintending Control, and Request for Stay*, and that the factual statements it contains are true and correct to the best of my knowledge, information, and belief.

Date: March 3, 2023

/s/ Theresa Dawn Truitt Kraft
Theresa Dawn Truitt Kraft

CERTIFICATE OF COMPLIANCE

As required by Rule 12-504(H), I certify that this Petition is prepared using a proportionally-spaced font and contains 5,998 words. The word count was obtained from a word-processing program which is Word 2010.

Date: March 3, 2023

/s/ Theresa Dawn Truitt Kraft
Theresa Dawn Truitt Kraft

22-00058-UT**EXHIBIT A**

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

To: [AE@Jalblaw.com <AE@Jalblaw.com>](mailto:AE@Jalblaw.com), [akharriger@sawvel.com <akharriger@sawvel.com>](mailto:akharriger@sawvel.com),
[Amer, Judith, PRC <Judith.Amer@prc.nm.gov>](mailto:Amer.Judith@prc.nm.gov),
[Andrew.Teague@walmart.com <Andrew.Teague@walmart.com>](mailto:Andrew.Teague@walmart.com),
[bearstar@fastmail.fm <bearstar@fastmail.fm>](mailto:bearstar@fastmail.fm),
[Borman, Bradford, PRC <Bradford.Borman@prc.nm.gov>](mailto:Bradford.Borman@prc.nm.gov),
[Brian.buffington@pnm.com <Brian.buffington@pnm.com>](mailto:Brian.buffington@pnm.com),
[Caitlin.evans@westernresources.org <Caitlin.evans@westernresources.org>](mailto:Caitlin.evans@westernresources.org),
[Carey.Salaz@pnm.com <Carey.Salaz@pnm.com>](mailto:Carey.Salaz@pnm.com),
[cfitzhenry@consultbai.com <cfitzhenry@consultbai.com>](mailto:cfitzhenry@consultbai.com),
[ckolberg@abcwua.org <ckolberg@abcwua.org>](mailto:ckolberg@abcwua.org),
[clane@synapse-energy.com <clane@synapse-energy.com>](mailto:clane@synapse-energy.com),
[Clare.valentine@westernresources.org <Clare.valentine@westernresources.org>](mailto:Clare.valentine@westernresources.org),
[Ctcolumbia@aol.com <Ctcolumbia@aol.com>](mailto:Ctcolumbia@aol.com),
[Cydney.beadles@westernresources.org <Cydney.beadles@westernresources.org>](mailto:Cydney.beadles@westernresources.org),
[Dahlharris@hotmail.com <Dahlharris@hotmail.com>](mailto:Dahlharris@hotmail.com),
[Desaillan.ccae@gmail.com <Desaillan.ccae@gmail.com>](mailto:Desaillan.ccae@gmail.com),
[dtbaker61@gmail.com <dtbaker61@gmail.com>](mailto:dtbaker61@gmail.com),
[dterwilliger@wbkllaw.com <dterwilliger@wbkllaw.com>](mailto:dterwilliger@wbkllaw.com),
[email@longkomer.com <email@longkomer.com>](mailto:email@longkomer.com), [gelliott@nmag.gov <gelliott@nmag.gov>](mailto:gelliott@nmag.gov),
[gmeyer@consultbai.com <gmeyer@consultbai.com>](mailto:gmeyer@consultbai.com), [JA@jalblaw.com <JA@jalblaw.com>](mailto:JA@jalblaw.com),
[Waite, Jacqueline, EMNRD <Jacqueline.Waite@emnrd.nm.gov>](mailto:Jacqueline.Waite@emnrd.nm.gov),
[jane.cambio@gmail.com <jane.cambio@gmail.com>](mailto:jane.cambio@gmail.com),
[jdauphinais@consultbai.com <jdauphinais@consultbai.com>](mailto:jdauphinais@consultbai.com),
[Jdittmer@utilitech.net <Jdittmer@utilitech.net>](mailto:Jdittmer@utilitech.net), [jenniferlucero@cabq.gov <jenniferlucero@cabq.gov>](mailto:jenniferlucero@cabq.gov),
[Jkylercohn@BKLawfirm.com <Jkylercohn@BKLawfirm.com>](mailto:Jkylercohn@BKLawfirm.com),
[jlesky@leskylawoffice.com <jlesky@leskylawoffice.com>](mailto:jlesky@leskylawoffice.com),
[Joan.drake@modrall.com <Joan.drake@modrall.com>](mailto:Joan.drake@modrall.com),
[jonmdiener@gmail.com <jonmdiener@gmail.com>](mailto:jonmdiener@gmail.com), [jpark@cabq.gov <jpark@cabq.gov>](mailto:jpark@cabq.gov),
[JSmith@synapse-energy.com <JSmith@synapse-energy.com>](mailto:JSmith@synapse-energy.com),
[Kboehm@BKLawfirm.com <Kboehm@BKLawfirm.com>](mailto:Kboehm@BKLawfirm.com),
[kelly@thegouldlawfirm.com <kelly@thegouldlawfirm.com>](mailto:kelly@thegouldlawfirm.com),
[kgedko@nmag.gov <kgedko@nmag.gov>](mailto:kgedko@nmag.gov),
[kherrmann@stelznerlaw.com <kherrmann@stelznerlaw.com>](mailto:kherrmann@stelznerlaw.com),
[Khiggins@energystrat.com <Khiggins@energystrat.com>](mailto:Khiggins@energystrat.com),
[Kippenbrock, Ana, PRC <Ana.Kippenbrock@prc.nm.gov>](mailto:Ana.Kippenbrock@prc.nm.gov),
[lawoffice@jasonmarks.com <lawoffice@jasonmarks.com>](mailto:lawoffice@jasonmarks.com),
[lb@tahoeeconomics.com <lb@tahoeeconomics.com>](mailto:lb@tahoeeconomics.com),
[leslie.padilla@pnmresources.com <leslie.padilla@pnmresources.com>](mailto:leslie.padilla@pnmresources.com),
[Leyba-Tercero, Elisha, PRC <Elisha.Leyba-Tercero@prc.nm.gov>](mailto:Elisha.Leyba-Tercero@prc.nm.gov),
[lynch.cara.nm@gmail.com <lynch.cara.nm@gmail.com>](mailto:lynch.cara.nm@gmail.com),
[Mariel@seedsbeneaththesnow.com <Mariel@seedsbeneaththesnow.com>](mailto:Mariel@seedsbeneaththesnow.com),
[Mark.Fenton@pnm.com <Mark.Fenton@pnm.com>](mailto:Mark.Fenton@pnm.com),
[Mauldin, Jonah, PRC <Jonah.Mauldin@prc.nm.gov>](mailto:Jonah.Mauldin@prc.nm.gov),
[moreilly@raponline.org <moreilly@raponline.org>](mailto:moreilly@raponline.org), [ndowney@bernco.gov <ndowney@bernco.gov>](mailto:ndowney@bernco.gov),
[nlong@nrdc.org <nlong@nrdc.org>](mailto:nlong@nrdc.org), [Noble.ccae@gmail.com <Noble.ccae@gmail.com>](mailto:Noble.ccae@gmail.com),
[nwinter@stelznerlaw.com <nwinter@stelznerlaw.com>](mailto:nwinter@stelznerlaw.com),
[office@thegouldlawfirm.com <office@thegouldlawfirm.com>](mailto:office@thegouldlawfirm.com),
[peter@thegouldlawfirm.com <peter@thegouldlawfirm.com>](mailto:peter@thegouldlawfirm.com),
[racarter@tecoenergy.com <racarter@tecoenergy.com>](mailto:racarter@tecoenergy.com),

ralvidrez@mstlaw.com <ralvidrez@mstlaw.com>,
Ramona.blaber@sierraclub.org <Ramona.blaber@sierraclub.org>,
rbartell@montand.com <rbartell@montand.com>, rcavanah@nrdc.org <rcavanah@nrdc.org>,
Rcmertz7@outlook.com <Rcmertz7@outlook.com>, rgifford@wbklaw.com <rgifford@wbklaw.com>,
 Rilkoff, Ed , PRC <Ed.Rilkoff@prc.nm.gov>, Ryan, Christopher, PRC <Christopher.Ryan@prc.nm.gov>,
 Sidler, Jack, PRC <Jack.Sidler@prc.nm.gov>, sricdon@earthlink.net <sricdon@earthlink.net>,
sshaheen@montand.com <sshaheen@montand.com>,
Stacey.goodwin@pnmresources.com <Stacey.goodwin@pnmresources.com>,
Stephen.Chriss@walmart.com <Stephen.Chriss@walmart.com>,
Stephen.Chriss@Wal-Mart.com <Stephen.Chriss@Wal-Mart.com>,
swright@nmag.gov <swright@nmag.gov>, tkraft@theresakraft.com <tkraft@theresakraft.com>,
 Tupler, Marc, PRC <Marc.Tupler@prc.nm.gov>,
vecinosunited2@gmail.com <vecinosunited2@gmail.com>,
wbruno@gmail.com <wbruno@gmail.com>,
wtempleman@cmtisantafe.com <wtempleman@cmtisantafe.com>

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

Subject: 22-00058-UT

Date: Tuesday, February 28, 2023 1:43 PM

Size: 281 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 notice attached.

Records, please file.

Christopher P. Ryan
 Hearing Examiner
 New Mexico Public Regulation Commission
christopher.ryan@prc.nm.gov
 (505) 670-7421

22-00058-UT-02-28-2023-Notice of Errata.pdf 185 KB

EXHIBIT B

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

ORDER SCHEDULING PREHEARING

This matter comes before Christopher P. Ryan, hearing examiner for the New Mexico Public Regulation Commission, on his own motion. The hearing examiner **FINDS AND CONCLUDES** as follows. There has been substantial motion practice in this proceeding. To ensure all prehearing motions are addressed and hearing time is used in a maximally efficient way, it is necessary to schedule a prehearing conference after the deadline for prehearing motions and responses. At that prehearing, the examination of witnesses and any other details about the hearing will be addressed. For these reasons, **IT IS ORDERED:**

- A. A prehearing conference will occur on Thursday, March 16, 2023, at 1:00 p.m.
- B. The prehearing will be conducted via Zoom. An invitation to the Zoom proceedings will be issued separately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this **1st** day of **March 2023**.



NEW MEXICO PUBLIC REGULATION COMMISSION

A handwritten signature in black ink, appearing to read "C. P. Ryan", is written over a solid black horizontal line.

Christopher P. Ryan
Hearing Examiner

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)
_____)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the order above was sent via email to the following parties on the date indicated below.

<i>PNM</i> <u>Leslie Padilla</u> <u>Stacey Goodwin</u> <u>Mark Fenton</u> <u>Carey Salaz</u> <u>Brian Buffington</u> <u>Debra M. Terwilliger</u> <u>Richard Alvidrez</u> <u>Raymond L. Gifford</u>	leslie.padilla@pnmresources.com ; Stacey.goodwin@pnmresources.com ; Mark.Fenton@pnm.com ; Carey.Salaz@pnm.com ; Brian.buffington@pnm.com ; dterwilliger@wbklaw.com ; ralvidrez@mstlaw.com ; rgifford@wbklaw.com ;
<i>ATTORNEY GENERAL</i> <u>Keven Gedko</u> <u>Gideon Eliot</u> <u>Sydnee Wright</u> <u>Andrea Crane</u> <u>Courtney Lane</u> <u>Jack Smith</u>	kgedko@nmag.gov ; gelliot@nmag.gov ; swright@nmag.gov ; Ctcolumbia@aol.com ; clane@synapse-energy.com ; JSmith@synapse-energy.com ;
<i>ABCWUA</i> <u>Nann M. Winter</u> <u>Keith Herrmann</u> <u>Dahl Harris</u> <u>Charles W. Kolberg</u> <u>Andrew Harriger</u>	nwinter@stelznerlaw.com ; kherrmann@stelznerlaw.com ; Dahlharris@hotmail.com ; ckolberg@abcwua.org ; akharriger@sawvel.com ;
<i>WAL-MART, INC.</i> <u>Randy S. Bartell</u> <u>Sharon T. Shaheen</u> <u>Steve W. Chriss</u>	rbartell@montand.com ; sshaheen@montand.com ; Stephen.Chriss@walmart.com ;

<u>Andrew D. Teague</u>	Andrew.Teague@walmart.com ;
<i>CITY OF ALBUQUERQUE</i> <u>Julie Park</u> <u>Jennifer Lucero</u> <u>Larry Blank</u>	jpark@cabq.gov ; jenniferlucero@cabq.gov ; lb@tahoeconomics.com ;
<i>NM AREA</i> <u>Peter Gould</u> <u>Kelly Gould</u> <u>Katrina Reid</u> <u>James Dauphinais</u> <u>Brian Andrews</u>	peter@thegouldlawfirm.com ; kelly@thegouldlawfirm.com ; office@thegouldlawfirm.com ; jdauphinais@consultbai.com ; Bandrews@consultbai.com ;
<i>CCAE</i> <u>Cara Lynch</u> <u>Charles de Saillan</u>	Lynch.cara.nm@gmail.com ; Desaillan.ccae@gmail.com ;
<i>BERNCO</i> <u>Jeffrey H. Albright</u> <u>Amanda Edwards-Adrian</u> <u>Natalia Sanchez Downey</u>	JA@jalblaw.com ; AE@Jalblaw.com ; ndowney@bernco.gov ;
CELLULAR PHONE TASK FORCE <u>Jonathon M. Diener</u> <u>Theresa Dawn Truitt Kraft</u> <u>Kathleen Burke</u> <u>Arthur Firstenberg</u>	jonmdiener@gmail.com ; tkraft@theresakraft.com ; kathleenmariaburke@yahoo.com ; bearstar@fastmail.fm ;
<i>BAKER PRO SE</i> <u>Daniel T. Baker</u>	dtbaker61@gmail.com ;
<i>BRUNO PRO SE</i> <u>William Bruno</u>	wbruno@gmail.com ;
<i>NMUS PRO SE</i> <u>Arthur Firstenberg</u>	bearstar@fastmail.fm ;
<i>VECINOS UNITED</i> <u>Andres Valdez</u>	vecinosunited2@gmail.com ;
<i>WRA</i> <u>Cydney Beadles</u> <u>Caitlin Evans</u>	Cydney.beadles@westernresources.org ; Caitlin.evans@westernresources.org ;

<u>Clare Valentine</u>	Clare.valentine@westernresources.org;
IBEW Justin Lesky	jlesky@leskylawoffice.com ;
UTILITY STAFF Jack Sidler <u>Marc Tupler</u> Ed Rilkoff Elisha Leyba-Tercero Bradford Borman <u>Jonah Mauldin</u> Judith Amer Arthur O'Donnell Christopher Ryan, Hearing Examiner Ana Kippenbrock	Jack.Sidler@prc.nm.gov; Marc.tupler@prc.nm.gov; Ed.Rilkoff@prc.nm.gov; Elisha.leyba-Tercero@prc.nm.gov; Bradford.borman@prc.nm.gov ; Jonah.Mauldin@prc.nm.gov; Judith.amer@prc.nm.gov ; Arthur.O'donnell@prc.nm.gov; Christopher.Ryan@prc.nm.gov ; Ana.Kippenbrock@prc.nm.gov ;
OTHERS Jim Dittmer Kurt Boehm Jody Kyler Cohn Bill Templeman Kevin Higgins Steve W. Chriss Nancy Long Charles F. Noble Ramona Blaber Megan A. O'Reilly Don Hancock Noah Long Ralph Cavanagh Jason Marks Jane Yee Mariel Nanasi Richard C. Mertz Rebecca Carter Greg Meyer Colin Fitzhenry Jacqueline Waite Joan Drake Julian Gresser	Jdittmer@utilitech.net ; Kboehm@BKLawfirm.com; Jkylercohn@BKLawfirm.com; wtempleman@cmtisantafe.com; Khiggins@energystrat.com; Stephen.Chriss@Wal-Mart.com; email@longkomer.com; Noble.ccae@gmail.com; Ramona.blaber@sierraclub.org; moreilly@raponline.org; sricdon@earthlink.net; nlong@nrdc.org; rcavanah@nrdc.org; lawoffice@jasonmarks.com; jane.cambio@gmail.com ; Mariel@seedsbeneaththesnow.com; Rcmertz7@outlook.com ; racarter@tecoenergy.com; gmeyer@consultbai.com; cfitzhenry@consultbai.com ; jacqueline.waite@state.nm.us ; Joan.drake@modrall.com ; Juliangresser77@gmail.com

MARCH 1, 2023
NEW MEXICO PUBLIC REGULATION COMMISSION

A handwritten signature in black ink, appearing to read 'C. Ryan', written over a horizontal line.

Christopher P. Ryan
Hearing Examiner
Christopher.ryan@prc.nm.gov

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

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

To: [AE@Jalblaw.com <AE@Jalblaw.com>](mailto:AE@Jalblaw.com), [akharriger@sawvel.com <akharriger@sawvel.com>](mailto:akharriger@sawvel.com),
[Amer, Judith, PRC <Judith.Amer@prc.nm.gov>](mailto:Amer.Judith@prc.nm.gov),
[Andrew.Teague@walmart.com <Andrew.Teague@walmart.com>](mailto:Andrew.Teague@walmart.com),
[bearstar@fastmail.fm <bearstar@fastmail.fm>](mailto:bearstar@fastmail.fm),
[Borman, Bradford, PRC <Bradford.Borman@prc.nm.gov>](mailto:Bradford.Borman@prc.nm.gov),
[Brian.buffington@pnm.com <Brian.buffington@pnm.com>](mailto:Brian.buffington@pnm.com),
[Caitlin.evans@westernresources.org <Caitlin.evans@westernresources.org>](mailto:Caitlin.evans@westernresources.org),
[Carey.Salaz@pnm.com <Carey.Salaz@pnm.com>](mailto:Carey.Salaz@pnm.com),
[cfitzhenry@consultbai.com <cfitzhenry@consultbai.com>](mailto:cfitzhenry@consultbai.com),
[ckolberg@abcwua.org <ckolberg@abcwua.org>](mailto:ckolberg@abcwua.org),
[clane@synapse-energy.com <clane@synapse-energy.com>](mailto:clane@synapse-energy.com),
[Clare.valentine@westernresources.org <Clare.valentine@westernresources.org>](mailto:Clare.valentine@westernresources.org),
[Ctcolumbia@aol.com <Ctcolumbia@aol.com>](mailto:Ctcolumbia@aol.com),
[Cydney.beadles@westernresources.org <Cydney.beadles@westernresources.org>](mailto:Cydney.beadles@westernresources.org),
[Dahlharris@hotmail.com <Dahlharris@hotmail.com>](mailto:Dahlharris@hotmail.com),
[Desaillan.ccae@gmail.com <Desaillan.ccae@gmail.com>](mailto:Desaillan.ccae@gmail.com),
[dtbaker61@gmail.com <dtbaker61@gmail.com>](mailto:dtbaker61@gmail.com),
[dterwilliger@wbklaw.com <dterwilliger@wbklaw.com>](mailto:dterwilliger@wbklaw.com),
[email@longkomer.com <email@longkomer.com>](mailto:email@longkomer.com), [gelliott@nmag.gov <gelliott@nmag.gov>](mailto:gelliott@nmag.gov),
[gmeyer@consultbai.com <gmeyer@consultbai.com>](mailto:gmeyer@consultbai.com), [JA@jalblaw.com <JA@jalblaw.com>](mailto:JA@jalblaw.com),
[Waite, Jacqueline, EMNRD <Jacqueline.Waite@emnrd.nm.gov>](mailto:Jacqueline.Waite@emnrd.nm.gov),
[jane.cambio@gmail.com <jane.cambio@gmail.com>](mailto:jane.cambio@gmail.com),
[jdauphinais@consultbai.com <jdauphinais@consultbai.com>](mailto:jdauphinais@consultbai.com),
[Jdittmer@utilitech.net <Jdittmer@utilitech.net>](mailto:Jdittmer@utilitech.net), [jenniferlucero@cabq.gov <jenniferlucero@cabq.gov>](mailto:jenniferlucero@cabq.gov),
[Jkylercohn@BKLawfirm.com <Jkylercohn@BKLawfirm.com>](mailto:Jkylercohn@BKLawfirm.com),
[jlesky@leskylawoffice.com <jlesky@leskylawoffice.com>](mailto:jlesky@leskylawoffice.com),
[Joan.drake@modrall.com <Joan.drake@modrall.com>](mailto:Joan.drake@modrall.com),
[jonmdiener@gmail.com <jonmdiener@gmail.com>](mailto:jonmdiener@gmail.com), [jpark@cabq.gov <jpark@cabq.gov>](mailto:jpark@cabq.gov),
[JSmith@synapse-energy.com <JSmith@synapse-energy.com>](mailto:JSmith@synapse-energy.com),
[Kboehm@BKLawfirm.com <Kboehm@BKLawfirm.com>](mailto:Kboehm@BKLawfirm.com),
[kelly@thegouldlawfirm.com <kelly@thegouldlawfirm.com>](mailto:kelly@thegouldlawfirm.com),
[kgedko@nmag.gov <kgedko@nmag.gov>](mailto:kgedko@nmag.gov),
[kherrmann@stelznerlaw.com <kherrmann@stelznerlaw.com>](mailto:kherrmann@stelznerlaw.com),
[Khiggins@energystrat.com <Khiggins@energystrat.com>](mailto:Khiggins@energystrat.com),
[Kippenbrock, Ana, PRC <Ana.Kippenbrock@prc.nm.gov>](mailto:Ana.Kippenbrock@prc.nm.gov),
[lawoffice@jasonmarks.com <lawoffice@jasonmarks.com>](mailto:lawoffice@jasonmarks.com),
[lb@tahoeeconomics.com <lb@tahoeeconomics.com>](mailto:lb@tahoeeconomics.com),
[leslie.padilla@pnmresources.com <leslie.padilla@pnmresources.com>](mailto:leslie.padilla@pnmresources.com),
[Leyba-Tercero, Elisha, PRC <Elisha.Leyba-Tercero@prc.nm.gov>](mailto:Elisha.Leyba-Tercero@prc.nm.gov),
[lynch.cara.nm@gmail.com <lynch.cara.nm@gmail.com>](mailto:lynch.cara.nm@gmail.com),
[Mariel@seedsbeneaththesnow.com <Mariel@seedsbeneaththesnow.com>](mailto:Mariel@seedsbeneaththesnow.com),
[Mark.Fenton@pnm.com <Mark.Fenton@pnm.com>](mailto:Mark.Fenton@pnm.com),
[Mauldin, Jonah, PRC <Jonah.Mauldin@prc.nm.gov>](mailto:Jonah.Mauldin@prc.nm.gov),
[moreilly@raponline.org <moreilly@raponline.org>](mailto:moreilly@raponline.org), [ndowney@bernco.gov <ndowney@bernco.gov>](mailto:ndowney@bernco.gov),
[nlong@nrdc.org <nlong@nrdc.org>](mailto:nlong@nrdc.org), [Noble.ccae@gmail.com <Noble.ccae@gmail.com>](mailto:Noble.ccae@gmail.com),
[nwinter@stelznerlaw.com <nwinter@stelznerlaw.com>](mailto:nwinter@stelznerlaw.com),
[office@thegouldlawfirm.com <office@thegouldlawfirm.com>](mailto:office@thegouldlawfirm.com),
[peter@thegouldlawfirm.com <peter@thegouldlawfirm.com>](mailto:peter@thegouldlawfirm.com),
[racarter@tecoenergy.com <racarter@tecoenergy.com>](mailto:racarter@tecoenergy.com),

ralvidrez@mstlaw.com <ralvidrez@mstlaw.com>,
Ramona.blaber@sierraclub.org <Ramona.blaber@sierraclub.org>,
rbartell@montand.com <rbartell@montand.com>, rcavanah@nrdc.org <rcavanah@nrdc.org>,
Rcmertz7@outlook.com <Rcmertz7@outlook.com>, rgifford@wbklaw.com <rgifford@wbklaw.com>,
[Rilkoff, Ed , PRC <Ed.Rilkoff@prc.nm.gov>](mailto:Ed.Rilkoff@prc.nm.gov), [Ryan, Christopher, PRC <Christopher.Ryan@prc.nm.gov>](mailto:Christopher.Ryan@prc.nm.gov),
[Sidler, Jack, PRC <Jack.Sidler@prc.nm.gov>](mailto:Jack.Sidler@prc.nm.gov), sricdon@earthlink.net <sricdon@earthlink.net>,
sshaheen@montand.com <sshaheen@montand.com>,
Stacey.goodwin@pnmresources.com <Stacey.goodwin@pnmresources.com>,
Stephen.Chriss@walmart.com <Stephen.Chriss@walmart.com>,
Stephen.Chriss@Wal-Mart.com <Stephen.Chriss@Wal-Mart.com>,
swright@nmag.gov <swright@nmag.gov>, tkraft@theresakraft.com <tkraft@theresakraft.com>,
[Tupler, Marc, PRC <Marc.Tupler@prc.nm.gov>](mailto:Marc.Tupler@prc.nm.gov),
vecinosunited2@gmail.com <vecinosunited2@gmail.com>,
wbruno@gmail.com <wbruno@gmail.com>,
wtempleman@cmtisantafe.com <wtempleman@cmtisantafe.com>

Cc: Records, PRC, PRC <PRC.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

-

See the attached order.

Records, please file.

Christopher P. Ryan
 Hearing Examiner
 New Mexico Public Regulation Commission
christopher.ryan@prc.nm.gov
 (505) 670-7421

22-00058-UT-02072023-Order Striking Intervention of Isabel Boldiszar.pdf 264 KB

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

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

To: [AE@Jalblaw.com <AE@Jalblaw.com>](mailto:AE@Jalblaw.com), [akharriger@sawvel.com <akharriger@sawvel.com>](mailto:akharriger@sawvel.com),
[Amer, Judith, PRC <Judith.Amer@prc.nm.gov>](mailto:Amer.Judith@prc.nm.gov),
[Andrew.Teague@walmart.com <Andrew.Teague@walmart.com>](mailto:Andrew.Teague@walmart.com),
[bearstar@fastmail.fm <bearstar@fastmail.fm>](mailto:bearstar@fastmail.fm),
[Borman, Bradford, PRC <Bradford.Borman@prc.nm.gov>](mailto:Bradford.Borman@prc.nm.gov),
[Brian.buffington@pnm.com <Brian.buffington@pnm.com>](mailto:Brian.buffington@pnm.com),
[Caitlin.evans@westernresources.org <Caitlin.evans@westernresources.org>](mailto:Caitlin.evans@westernresources.org),
[Carey.Salaz@pnm.com <Carey.Salaz@pnm.com>](mailto:Carey.Salaz@pnm.com),
[cfitzhenry@consultbai.com <cfitzhenry@consultbai.com>](mailto:cfitzhenry@consultbai.com),
[ckolberg@abcwua.org <ckolberg@abcwua.org>](mailto:ckolberg@abcwua.org),
[clane@synapse-energy.com <clane@synapse-energy.com>](mailto:clane@synapse-energy.com),
[Clare.valentine@westernresources.org <Clare.valentine@westernresources.org>](mailto:Clare.valentine@westernresources.org),
[Ctcolumbia@aol.com <Ctcolumbia@aol.com>](mailto:Ctcolumbia@aol.com),
[Cydney.beadles@westernresources.org <Cydney.beadles@westernresources.org>](mailto:Cydney.beadles@westernresources.org),
[Dahlharris@hotmail.com <Dahlharris@hotmail.com>](mailto:Dahlharris@hotmail.com),
[Desaillan.ccae@gmail.com <Desaillan.ccae@gmail.com>](mailto:Desaillan.ccae@gmail.com),
[dtbaker61@gmail.com <dtbaker61@gmail.com>](mailto:dtbaker61@gmail.com),
[dterwilliger@wbkllaw.com <dterwilliger@wbkllaw.com>](mailto:dterwilliger@wbkllaw.com),
[email@longkomer.com <email@longkomer.com>](mailto:email@longkomer.com), [gelliott@nmag.gov <gelliott@nmag.gov>](mailto:gelliott@nmag.gov),
[gmeyer@consultbai.com <gmeyer@consultbai.com>](mailto:gmeyer@consultbai.com), [JA@jalblaw.com <JA@jalblaw.com>](mailto:JA@jalblaw.com),
[Waite, Jacqueline, EMNRD <Jacqueline.Waite@emnrd.nm.gov>](mailto:Jacqueline.Waite@emnrd.nm.gov),
[jane.cambio@gmail.com <jane.cambio@gmail.com>](mailto:jane.cambio@gmail.com),
[jdauphinais@consultbai.com <jdauphinais@consultbai.com>](mailto:jdauphinais@consultbai.com),
[Jdittmer@utilitech.net <Jdittmer@utilitech.net>](mailto:Jdittmer@utilitech.net), [jenniferlucero@cabq.gov <jenniferlucero@cabq.gov>](mailto:jenniferlucero@cabq.gov),
[Jkylercohn@BKLawfirm.com <Jkylercohn@BKLawfirm.com>](mailto:Jkylercohn@BKLawfirm.com),
[jlesky@leskylawoffice.com <jlesky@leskylawoffice.com>](mailto:jlesky@leskylawoffice.com),
[Joan.drake@modrall.com <Joan.drake@modrall.com>](mailto:Joan.drake@modrall.com),
[jonmdiener@gmail.com <jonmdiener@gmail.com>](mailto:jonmdiener@gmail.com), [jpark@cabq.gov <jpark@cabq.gov>](mailto:jpark@cabq.gov),
[JSmith@synapse-energy.com <JSmith@synapse-energy.com>](mailto:JSmith@synapse-energy.com),
[Kboehm@BKLawfirm.com <Kboehm@BKLawfirm.com>](mailto:Kboehm@BKLawfirm.com),
[kelly@thegouldlawfirm.com <kelly@thegouldlawfirm.com>](mailto:kelly@thegouldlawfirm.com),
[kgedko@nmag.gov <kgedko@nmag.gov>](mailto:kgedko@nmag.gov),
[kherrmann@stelznerlaw.com <kherrmann@stelznerlaw.com>](mailto:kherrmann@stelznerlaw.com),
[Khiggins@energystrat.com <Khiggins@energystrat.com>](mailto:Khiggins@energystrat.com),
[Kippenbrock, Ana, PRC <Ana.Kippenbrock@prc.nm.gov>](mailto:Ana.Kippenbrock@prc.nm.gov),
[lawoffice@jasonmarks.com <lawoffice@jasonmarks.com>](mailto:lawoffice@jasonmarks.com),
[lb@tahoeconomics.com <lb@tahoeconomics.com>](mailto:lb@tahoeconomics.com),
[leslie.padilla@pnmresources.com <leslie.padilla@pnmresources.com>](mailto:leslie.padilla@pnmresources.com),
[Leyba-Tercero, Elisha, PRC <Elisha.Leyba-Tercero@prc.nm.gov>](mailto:Elisha.Leyba-Tercero@prc.nm.gov),
[lynch.cara.nm@gmail.com <lynch.cara.nm@gmail.com>](mailto:lynch.cara.nm@gmail.com),
[Mariel@seedsbeneaththesnow.com <Mariel@seedsbeneaththesnow.com>](mailto:Mariel@seedsbeneaththesnow.com),
[Mark.Fenton@pnm.com <Mark.Fenton@pnm.com>](mailto:Mark.Fenton@pnm.com),
[Mauldin, Jonah, PRC <Jonah.Mauldin@prc.nm.gov>](mailto:Jonah.Mauldin@prc.nm.gov),
[moreilly@raponline.org <moreilly@raponline.org>](mailto:moreilly@raponline.org), [ndowney@bernco.gov <ndowney@bernco.gov>](mailto:ndowney@bernco.gov),
[nlong@nrdc.org <nlong@nrdc.org>](mailto:nlong@nrdc.org), [Noble.ccae@gmail.com <Noble.ccae@gmail.com>](mailto:Noble.ccae@gmail.com),
[nwinter@stelznerlaw.com <nwinter@stelznerlaw.com>](mailto:nwinter@stelznerlaw.com),
[office@thegouldlawfirm.com <office@thegouldlawfirm.com>](mailto:office@thegouldlawfirm.com),
[peter@thegouldlawfirm.com <peter@thegouldlawfirm.com>](mailto:peter@thegouldlawfirm.com),
[racarter@tecoenergy.com <racarter@tecoenergy.com>](mailto:racarter@tecoenergy.com),

ralvidrez@mstlaw.com <ralvidrez@mstlaw.com>,
Ramona.blaber@sierraclub.org <Ramona.blaber@sierraclub.org>,
rbartell@montand.com <rbartell@montand.com>, rcavanah@nrdc.org <rcavanah@nrdc.org>,
Rcmertz7@outlook.com <Rcmertz7@outlook.com>, rgifford@wbklaw.com <rgifford@wbklaw.com>,
Ed.Rilkoff@prc.nm.gov <Ed.Rilkoff@prc.nm.gov>, Christopher.Ryan@prc.nm.gov <Christopher.Ryan@prc.nm.gov>,
Jack.Sidler@prc.nm.gov <Jack.Sidler@prc.nm.gov>, sricdon@earthlink.net <sricdon@earthlink.net>,
sshaheen@montand.com <sshaheen@montand.com>,
Stacey.goodwin@pnmresources.com <Stacey.goodwin@pnmresources.com>,
Stephen.Chriss@walmart.com <Stephen.Chriss@walmart.com>,
Stephen.Chriss@Wal-Mart.com <Stephen.Chriss@Wal-Mart.com>,
swright@nmag.gov <swright@nmag.gov>, tkraft@theresakraft.com <tkraft@theresakraft.com>,
Marc.Tupler@prc.nm.gov <Marc.Tupler@prc.nm.gov>,
vecinosunited2@gmail.com <vecinosunited2@gmail.com>,
wbruno@gmail.com <wbruno@gmail.com>,
wtempleman@cmtisantafe.com <wtempleman@cmtisantafe.com>

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

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.

Christopher P. Ryan
 Hearing Examiner
 New Mexico Public Regulation Commission
christopher.ryan@prc.nm.gov
 (505) 670-7421

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 E**

From: [julian.juliangresser <juliangresser77@gmail.com>](mailto:julian.juliangresser@gmail.com)
To: [Arthur Firstenberg <bearstar@fastmail.fm>](mailto:bearstar@fastmail.fm), [julian.juliangresser <juliangresser77@gmail.com>](mailto:julian.juliangresser@gmail.com)
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

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> wrote:

Julian,

Were you served with this?

Arthur

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

From: "Ryan, Christopher, PRC" <Christopher.Ryan@prc.nm.gov>
 To: "AE@Jalblaw.com" <AE@Jalblaw.com>, "akharriger@sawvel.com" <akharriger@sawvel.com>, "Amer, Judith, PRC" <Judith.Amer@prc.nm.gov>, "Andrew.Teague@walmart.com" <Andrew.Teague@walmart.com>, "bearstar@fastmail.fm" <bearstar@fastmail.fm>, "Borman, Bradford, PRC" <Bradford.Borman@prc.nm.gov>, "Brian.buffington@pnm.com" <Brian.buffington@pnm.com>, "Caitlin.evans@westernresources.org" <Caitlin.evans@westernresources.org>, "Carey.Salaz@pnm.com" <Carey.Salaz@pnm.com>, "cfitzhenry@consultbai.com" <cfitzhenry@consultbai.com>, "ckolberg@abcwua.org" <ckolberg@abcwua.org>, "clane@synapse-energy.com" <clane@synapse-energy.com>, "Clare.valentine@westernresources.org" <Clare.valentine@westernresources.org>, "Ctcolumbia@aol.com" <Ctcolumbia@aol.com>, "Cydney.beadles@westernresources.org" <Cydney.beadles@westernresources.org>, "Dahlharris@hotmail.com" <Dahlharris@hotmail.com>, "Desaillan.ccae@gmail.com" <Desaillan.ccae@gmail.com>, "dtbaker61@gmail.com" <dtbaker61@gmail.com>, "dterwilliger@wbklaw.com" <dterwilliger@wbklaw.com>, "email@longkomer.com" <email@longkomer.com>, "gelliot@nmag.gov" <gelliot@nmag.gov>, "gmeyer@consultbai.com" <gmeyer@consultbai.com>, "JA@jalblaw.com" <JA@jalblaw.com>, "Waite, Jacqueline, EMNRD" <Jacqueline.Waite@emnrd.nm.gov>, "jane.cambio@gmail.com" <jane.cambio@gmail.com>, "jdauphinais@consultbai.com" <jdauphinais@consultbai.com>, "Jdittmer@utilitech.net" <Jdittmer@utilitech.net>, "jenniferlucero@cabq.gov" <jenniferlucero@cabq.gov>, "Jkylercohn@BKLawfirm.com" <Jkylercohn@BKLawfirm.com>, "jlesky@leskylawoffice.com" <jlesky@leskylawoffice.com>, "Joan.drake@modrall.com" <Joan.drake@modrall.com>, "jonmdiener@gmail.com" <jonmdiener@gmail.com>, "jpark@cabq.gov" <jpark@cabq.gov>, "JSmith@synapse-energy.com" <JSmith@synapse-energy.com>, "Kboehm@BKLawfirm.com" <Kboehm@BKLawfirm.com>

<Kboehm@BKLawfirm.com>, "kelly@thegouldlawfirm.com" <kelly@thegouldlawfirm.com>, "kgedko@nmag.gov" <kgedko@nmag.gov>, "kherrmann@stelznerlaw.com" <kherrmann@stelznerlaw.com>, "Khiggins@energystrat.com" <Khiggins@energystrat.com>, "Kippenbrock, Ana, PRC" <Ana.Kippenbrock@prc.nm.gov>, "lawoffice@jasonmarks.com" <lawoffice@jasonmarks.com>, "lb@tahoeeconomics.com" <lb@tahoeeconomics.com>, "leslie.padilla@pnmresources.com" <leslie.padilla@pnmresources.com>, "Leyba-Tercero, Elisha, PRC" <Elisha.Leyba-Tercero@prc.nm.gov>, "lynch.cara.nm@gmail.com" <lynch.cara.nm@gmail.com>, "Mariel@seedsbeneaththesnow.com" <Mariel@seedsbeneaththesnow.com>, "Mark.Fenton@pnm.com" <Mark.Fenton@pnm.com>, "Mauldin, Jonah , PRC" <Jonah.Mauldin@prc.nm.gov>, "moreilly@raponline.org" <moreilly@raponline.org>, "ndowney@bernco.gov" <ndowney@bernco.gov>, "nlong@nrdc.org" <nlong@nrdc.org>, "Noble.ccae@gmail.com" <Noble.ccae@gmail.com>, "nwinter@stelznerlaw.com" <nwinter@stelznerlaw.com>, "office@thegouldlawfirm.com" <office@thegouldlawfirm.com>, "peter@thegouldlawfirm.com" <peter@thegouldlawfirm.com>, "racarter@tecoenergy.com" <racarter@tecoenergy.com>, "ralvidrez@mstlaw.com" <ralvidrez@mstlaw.com>, "Ramona.blaber@sierraclub.org" <Ramona.blaber@sierraclub.org>, "rbartell@montand.com" <rbartell@montand.com>, "rcavanah@nrdc.org" <rcavanah@nrdc.org>, "Rcmertz7@outlook.com" <Rcmertz7@outlook.com>, "rgifford@wbklaw.com" <rgifford@wbklaw.com>, "Rilkoff, Ed , PRC" <Ed.Rilkoff@prc.nm.gov>, "Ryan, Christopher, PRC" <Christopher.Ryan@prc.nm.gov>, "Sidler, Jack, PRC" <Jack.Sidler@prc.nm.gov>, "sricdon@earthlink.net" <sricdon@earthlink.net>, "sshaheen@montand.com" <sshaheen@montand.com>, "Stacey.goodwin@pnmresources.com" <Stacey.goodwin@pnmresources.com>, "Stephen.Chriss@walmart.com" <Stephen.Chriss@walmart.com>, "Stephen.Chriss@Wal-Mart.com" <Stephen.Chriss@Wal-Mart.com>, "swright@nmag.gov" <swright@nmag.gov>, "tkraft@theresakraft.com" <tkraft@theresakraft.com>, "Tupler, Marc, PRC" <Marc.Tupler@prc.nm.gov>, "vecinosunited2@gmail.com" <vecinosunited2@gmail.com>, "wbruno@gmail.com" <wbruno@gmail.com>, "wtempleman@cmtisantafe.com" <wtempleman@cmtisantafe.com>

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

christopher.ryan@prc.nm.gov

(505) 670-7421

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Julian Gresser, Attorney/Law Office of Julian Gresser/Co-founder [BroadBand International Legal Action Network \(BB-ILAN\)](#)/CEO/Chairman/Big Heart Technologies / Office: 1-805-563-3226 | Cell: 1-805-708-1864

juliangresser77@gmail.com | www.bighearttechnologies.com | www.alliancesfordiscovery.org | www.resiliencemultiplier.com

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