

# Statement to Constituents on PNM Rate Case 2010/11

## Commissioner Jason Marks

*Updated April 5, 2011*

Last June, PNM filed an application with the PRC for increases to its electric rates. PNM requested an average rate increase of 22% for North and Central N.M. customers and 20% for former TNMP customers in Southern N.M. (Silver City and Alamogordo). In the June 2010 request, rates for residential customers would increase by more than the system average – about 25% in both zones. PNM also requested other changes including a higher fixed customer charge each month and a surcharge of \$0.08 per kilowatt-hour for customers that have new solar systems installed on their homes.

On February 3, 2011, a proposed stipulated settlement was filed jointly by PNM, Attorney General Gary King, PRC Utility Division Staff, and four other parties representing large energy users. (By law, the Attorney General represents the interests of residential and small commercial consumers before the PRC; PRC Staff act autonomously from the Commissioners in litigated cases and advocate for positions that staff believe to be in the public interest, considering both the interests of the company and consumers.) Key provisions in the proposed settlement are the reduction of the overall rate increase to (a claimed) 10.82%, implemented in two phases; limiting or deferring rate recovery of certain fuel costs and costs for compliance with state renewable energy and energy efficiency programs; a request for a July 1, 2012 rate rider to recover costs for a particular PNM solar project; and withdrawal of the proposed \$0.08 surcharge for customer-owned renewable systems for the time being.

The settlement is opposed by several parties representing commercial consumers, low income residential consumers, and environmental interests. In preliminary statements, these parties argue the rate increase is still higher than justified (and is higher than the 10.82% that has been claimed), the rate increase harms low income customers, and rate changes that would help more energy efficiency should not have been deferred to a future rate case. The parties in opposition also object to the manner in which the settlement was reached.

**Procedural Schedule:** A public hearing will be held over several days beginning on May 9 in the Commission's offices in Santa Fe to take testimony from both the proponents and opponents of the stipulation. Based on the testimony and other evidence, the Commission will make a determination as to whether the settlement is in the public interest. If the Commission accepts the settlement, the case is over and the provisions of the stipulated settlement go into effect until the next rate case. If the Commission rejects the proposed settlement, then the rate case will likely be "fully litigated," with parties reverting to their pre-settlement positions; i.e., PNM like argue in support of their original 22% increase proposal. In considering the settlement, I will try to estimate the range of likely outcomes in a fully litigated case and see where the settlement falls in that range.

Complicating things considerably, the settling parties agreed among themselves that the first phase of the increase must be effective May 15, 2011. This did not provide enough time for opposing parties to

prepare for a hearing, and for the Commission to evaluate evidence and legal arguments it receives and make a final determination. The settling parties proposed in the alternative, the Commission approve an interim rate increase of about 5%, based on the first phase of their proposal, again beginning May 15. On March 31, the Commission considered PNM's interim rate petition and determined that PNM had not met the legal requirements for interim rates. The PRC's decision on interim rates did not consider whether or not a 5% increase was justified, only whether there was sufficient grounds to depart from the normal practice of waiting until after a final commission order before rate increases take effect.

**My promise to you:** Today, our country is experiencing the worst financial conditions since the Great Depression. Many in New Mexico are out of work, working less hours, or earning less pay. Others are on fixed incomes. I know that many households will have trouble absorbing another large PNM rate increase, and I will keep this in mind as the case proceeds. By law, the PRC must allow utilities an opportunity to recover through rates their reasonable and prudently-incurred costs of providing services and constructing facilities. I promise to closely scrutinize the facts and figures that are offered in support of the proposed settlement, as well as the information put forward by opponents. I will not support granting one dollar more than the law requires - under today's circumstances, we can't afford to give PNM the benefit of the doubt.

**Some details:** This is PNM's third rate case in as many years. As a result of the prior cases, electric rates are up about 25%. (In the 2007/08 rate case, I voted for a 6% base rate increase but against the fuel clause, which was about a 9% increase; I also voted against a 9.7% increase in 2009.) So, what is PNM's rationale for another 22%?

First of all, this request is based on a "future test year." Since the start of utility regulation in New Mexico, utility rates have been set based on a historic test year, generally the year immediately preceding the filing of the rate application. If traditional practices had been followed, we would be determining PNM's rates based on its actual cost of service during calendar year 2009, with minimal adjustments for subsequent events that are known and measurable. But, following a law (SB 477) passed by our Legislature at utilities' request in 2009, PNM proposed in their original filing that the Commission set its rates based on projections for operating costs and capital investments through December 2011. PNM and the other utilities felt they needed this change to address what they call "regulatory lag" – the delay between the time they experience cost increases and investment requirements, and the time they are able to pass them on to ratepayers.

Logically, it makes sense to set rates based on expected costs during the period in which the rates will be charged; however, this change may upset the delicate balance among all the other principles of utility rate regulation that have arisen along-side the historical test year. Another major concern that could be raised with the future test year is the validity of the various projections that are involved.

Taking advantage of the future test year, PNM told the Commission in its original request that it planned \$444 million in additional capital investments by December 2011, consisting of almost 500 separate items and projects ranging from \$5,695 for bar code readers to \$24 million for a transmission line upgrade. PNM is also sought a higher rate of return on its equity capital investments – 11.75% versus

the 10.1% the Commission granted in 2008. By my calculations, the claimed future capital additions, along with the proposed higher rate of return on all capital (in-the-ground and hypothetical), account for about one-half of the original 22% rate increase. Other significant contributing factors that PNM identified are claimed increases in employee benefits and maintenance costs.

The stipulated settlement is a “block-box” agreement in which the parties agree on the results but do not necessarily agree on specific items and principles, such as the proper way to implement a future test year. The settlement does provide for a “Plant Additions” rate rider to be collected beginning January 1, 2013 to recover up to \$20 million from customers for capital projects put in service between July 1, 2010 and December 31, 2012.

The customers are welcome to attend all public hearings, and may give oral comment into the official case record at the hearings or may share their thoughts written and email comments.