Statement on Dissenting Votes in the PNM Electric Rate and Resource Stipulation Cases

Commissioner Jason Marks

The Electric Rate Case

Last year, PNM filed an application seeking an approximately 18 percent or $123 million overall increase in rates and a 23.4 percent increase in residential rates. PNM also proposed to continue to recover certain of its fuel and purchased power cost through a Fuel and Purchased Power Cost Adjustment Clause along with the proposed new rates. Then in March, PNM and 11 parties to the case representing public and consumer interests filed a stipulated settlement that reduced the amount of the increase to $77 million. Under the settlement, which the Commission adopted on a 3 – 2 vote on May 28, rates for residential and small commercial customers (general power) will go up by 4.6% in July and another 5.1% next April. Although residential and small commercial rates go up by a total of 9.7%, large commercial and industrial customers will see 0% or 1% increases. **I did not believe the allocation of the rate increase to the customer classes was fair, and I voted against the order approving the settlement.**

The largest factor behind the new rate increase, which follows the previous increase by only a year, is load growth and the resulting need to bring on new generation plants. Power from new plants is much more expensive than the average cost of electric supply on the PNM system, which is brought down by the presence of plants built in the 1970s and now mostly paid off. PNM also sought to recover costs incurred to clean up emissions at its San Juan coal plant, and general increases in their costs of equipment and materials. Fuel costs have declined from the projections used to set last year's rates, and this (and an SO2 credit mechanism) served to offset some of the non-fuel cost increases.

While I voted against allowing $10 million in plant-related costs in a separate case (see discussion below on the Resource Stipulation case) and continue to disagree with 100% pass-through of fuel and purchased power cost risk to customer, the overall increase was otherwise reasonable given the legal standards we are required to use as utility commissioners. (The law requires us to allow utilities to recover the costs they *reasonably* incur to build necessary plant and provide services to customers. I don't believe in allowing rates that are one dollar more than this legal minimum, but I can't legally vote against a rate increase when costs are justified simply because of the hardship to customers.) In particular, by delaying half the increase for nine months, PRC staff, the Attorney General, and consumer parties in the settlement obtained a significant cost-saving benefit for consumers that the Commission would not have been able to impose in a litigated (non-settled) case.

What I did not find reasonable was the allocation of the rate increase to the customer classes. Overall, after the second phase, the average rate increase will be 5.6%. No customer class, however, gets anything close to the average – residential and small commercial customers effectively pay almost all the net rate increase and large industrial commercial customers pay almost none of it. (Technically, large customers get an increase on the non-fuel portion of their

rates, but this is offset by fuel cost decreases and an SO2 credit mechanism.) The rationale for this distribution is a statistic called "MARR" (marginally allocated revenue requirement), which purports to show that residential and small commercial customers, with a MARR of around 0.85 pay too little relative to the costs they cause on "the system" and the large customers, with MARRs of 1.25 to 1.6 (UNM has the highest MARR) pay too much.

Although I understand the concept and application of MARR enough to debate its fine points with the experts, I also understand the ordinary common sense view of fairness and equity that tells me, if there's a rate increase that needs to be borne, it shouldn't be solely on the backs of the least powerful groups of consumers. That's why **I proposed that the PRC condition approval of the settlement on the rate increase being reallocated** so that every class had an increase of at least 2.5%, with the additional revenue used to reduce the increase to residential, small commercial, and irrigation customers to 8%.

I know that customers would like even more narrowing of the spread, but this is what I thought was legally and factually supported. I also believed that an adjustment on this order had a likelihood of being accepted by the industrial consumers, who had the right to drop out of the settlement and make it a litigated case, if they were unwilling to accept Commission modifications to the settlement. **My amendment was defeated 4 – 1**. On the other hand, four members of the Commission supported an amendment to give special treatment to the irrigation customer class, eliminating their entire rate increase, taking $140,000 from PNM's pocket. Curiously, PNM didn't register even a mild protest.

After debate, the Commission did accept a minor amendment I put forward to increase the first block of residential rates, with the lowest price per kilowatt-hour, from 200 kwh to 300 kwh. This change, which was revenue-neutral to PNM and did not affect the other rate classes, will moderate bills by about 20 cents a month for almost all residential customers, while setting a goal for energy efficient and fixed income customers that is actually achievable.

While I am pleased that the Commission supported the block-size amendment, I was still unable to vote for a final order that was not fair to residential and small commercial customers. Commissioner Block joined me in voting against approving the settlement and the rate increase. He did not elaborate on his vote.

The Resource Stipulation Case

As mentioned, the rate case was partly driven by resource additions. These additions were actually the subject of a concurrent case that also had a stipulated settlement –**also approved over my opposing vote**. Resource additions were as follows: Conversion of PNM's lease interest for a 30 MW chunk of the capacity of the Palo Verde nuclear into an ownership interest; approval of power purchase agreement (PPA) PNM entered into for a new gas fired plant in Valencia County; and the conversion of PNM's two remaining unregulated merchant plants, Luna and Lordsburg, to regulated assets whose capital costs are paid by customers.

This case concerned only a portion of PNM's interest in the Palo Verde plant (and had nothing to do with the desirability of new nuclear plants as supply option for New Mexico). Although the short-term costs of ownership are higher than the lease payment for the next few years, the evidence was persuasive that PNM's purchase of this lease was a smart deal for customers over the remaining life of the plant.

The big problem with the resource agreement is that it results in expensive, excess capacity for the next few years, while undercutting our state policy of energy efficiency. Evidence I used at the April 8 Hearing demonstrated that PNM's electricity demand through 2016 could be met with pre-existing sources, plus the Valencia PPA, and the Luna plant. The 80 MW Lordsburg peaker plant, which will cost ratepayers almost $10 million, is not needed. Moreover, just last week, the Commission approved a PNM energy efficiency plan for 2009 that includes $4.8 million recovered through a rate rider for Demand Response (peak-shaving) Programs delivering the equivalent of 45 MW of peak supply. I question how this particular program is still needed or justified in light of excess supply capacity.

Energy efficiency and demand-response, which are the lowest cost means of reducing greenhouse gas emissions in the electricity sector, are also – in theory – cost savers to all consumers because they eliminate or defer the need for expensive new generating plants. In practice, our programs worked to defer the need for a Lordsburg type plant until at least 2016, but we bought it anyway.

PRC staff recommended the adoption of the agreement on the grounds that the company made sufficient monetary concession in other aspects of the agreement to outweigh the cost of the unneeded Lordsburg plant. This position, which I believe the Commission majority relied up in deciding to approve the Resource Stipulation, is not unsupported. But my analysis took me to a different result that compelled me to vote no. In addition to Lordsburg and over-capacity, allegations were made and never resolved as to whether PNM's dealings with the owners of the Valencia gas plant resulted in costs to ratepayers being inflated by $65 million over the life of the agreement. On the plus side, the Luna plant is a very cost-effective addition to the PNM retail system, but I differ from Staff and my colleagues in concluding that the benefits related to the treatment of Luna in the Resource Stipulation do not outweigh the other concerns. I have filed a formal dissent in the case that is available upon request.