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Subject: [EXT] 20-00222-UT Direct Testimony of D. Garret with COS
Date: Friday, April 2, 2021 2:10:38 PM
Attachments: [20-00222-UT Direct Testimony of David Garrett with COS.pdf](#)

Hello,

Attached for filing please find the Direct Testimony of David Garrett with the Certificate of Service.

Please let me know if you have any questions.

Thank you,

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF
AVANGRID, INC., AVANGRID NETWORKS, INC.,
NM GREEN HOLDINGS, INC., PUBLIC SERVICE
COMPANY OF NEW MEXICO AND PNM
RESOURCES, INC. FOR APPROVAL OF THE
MERGER OF NM GREEN HOLDINGS, INC. WITH
PNM RESOURCES, INC.; APPROVAL OF A
GENERAL DIVERSIFICATION PLAN; AND ALL
OTHER AUTHORIZATIONS AND APPROVALS
REQUIRED TO CONSUMMATE AND IMPLEMENT
THIS TRANSACTION**

Case No. 20-00222-UT

**AVANGRID, INC., AVANGRID NETWORKS, INC.,
NM GREEN HOLDINGS, INC., PUBLIC SERVICE
COMPANY OF NEW MEXICO AND PNM
RESOURCES, INC.,**

JOINT APPLICANTS.

DIRECT TESTIMONY OF

DAVID J. GARRETT

ON BEHALF OF

**THE ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

APRIL 2, 2021

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LIST OF EXHIBITS

Exhibit DJG-1	Curriculum Vitae of David J. Garrett
Exhibit DJG-2	Financial Provisions and Code of Conduct (Redlined)
Exhibit DJG-3	Financial Provisions and Code of Conduct (Clean)

I. INTRODUCTION

1 **Q. State your name and occupation.**

2 A. My name is David J. Garrett. I am a consultant specializing in public utility regulation. I
3 am the managing member of Resolve Utility Consulting PLLC.

4 **Q. Summarize your educational background and professional experience.**

5 A. I received a B.B.A. with a major in Finance, an M.B.A., and a Juris Doctor from the
6 University of Oklahoma. I worked in private legal practice for several years before
7 accepting a position as assistant general counsel at the Oklahoma Corporation Commission
8 in 2011. At the commission, I worked in the Office of General Counsel in regulatory
9 proceedings. In 2012, I began working for the Public Utility Division as a regulatory
10 analyst providing testimony in regulatory proceedings. After leaving the commission, I
11 formed Resolve Utility Consulting PLLC, where I have represented various consumer
12 groups and state agencies in utility regulatory proceedings, primarily in the areas of cost of
13 capital and depreciation. I am a Certified Depreciation Professional with the Society of
14 Depreciation Professionals. I am also a Certified Rate of Return Analyst with the Society
15 of Utility and Regulatory Financial Analysts. A more complete description of my
16 qualifications and regulatory experience is included in my curriculum vitae.¹

17 **Q. Have you previously testified before the New Mexico Public Regulation Commission?**

18 A. Yes. As detailed in my curriculum vitae, I have testified before the New Mexico Public
19 Regulation Commission (the “Commission”) in several proceedings.

¹ Exhibit DJG-1.

1 **Q. On whose behalf are you testifying in this proceeding?**

2 A. I am testifying on behalf of the Albuquerque Bernalillo County Water Utility Authority
3 (“ABCWUA”).

4 **Q. Describe the purpose and scope of your testimony in this proceeding.**

5 A. In my testimony, I address certain issues related to the Joint Application filed by Public
6 Service Company of New Mexico (“PNM”), PNM Resources, Inc. (“PNMR”), Avangrid
7 Networks Inc. (“Networks”), and Avangrid for approval of a merger of NM Green
8 Holdings, Inc. (“NM Green”) (collectively, “Joint Applicants”) with PNMR (the
9 “Merger”), as set forth in the Agreement and Plan of Merger dated as of October 21 20,
10 2020 (the “Merger Agreement”) among PNMR, NM Green, and Avangrid. Specifically, I
11 address the various financial and regulatory oversight protections (collectively referred to
12 hereinafter as “ring-fencing protections”) outlined in the Joint Application² and in Robert
13 D. Kump’s direct testimony.³ I also address a proposed provision related to PNM’s capital
14 structure.

15 **Q. As proposed, is this application in the public interest?**

16 A. No. The proposed ring-fencing protections do not sufficiently insulate customers from the
17 risks associated with the merger. For additional testimony regarding the sufficiency of the
18 application, please see the testimony of ABCWUA witness Mark Garrett.

² See Joint Application, pp. 12-13.

³ See Direct Testimony of Robert D. Kump, p. 21-22.

1 **Q. Please summarize your recommendation to the Commission.**

2 A. The ring-fencing protections proposed by the Joint Applicants are insufficient to protect
3 PNM's customers from the potential increased risks customers could incur under the
4 proposed Merger. To address these inadequacies, the Commission should consider several
5 modifications and additions to the proposed ring-fencing protections, as further discussed
6 in my testimony. In addition, the Commission should authorize an additional condition of
7 the Merger regarding PNM's authorized capital structure. Specifically, PNM's authorized
8 equity ratio should not exceed 50% for the next ten years.

II. RING-FENCING PROTECTIONS

9 **Q. Please summarize the Joint Applicants' proposed Merger.**

10 A. PNM is a wholly-owned subsidiary of PNMR. PNMR entered into the Merger Agreement
11 with Avangrid and NM Green. Pursuant to the Merger Agreement, PNMR will merge with
12 NM Green, with PNMR continuing as the surviving corporation. As a result of the Merger,
13 PNMR will become a wholly-owned subsidiary of Avangrid. Promptly after the Merger,
14 Avangrid will transfer 100% ownership of PNMR to Networks – a wholly-owned
15 subsidiary of Avangrid (together with the Merger, this transaction is referred to hereinafter
16 as the "Proposed Transaction"). Avangrid is 81.5% owned by Iberdrola, S.A. ("Iberdrola")
17 – a corporation organized under the Laws of the Kingdom of Spain. The result of the
18 Merger is that Networks, Avangrid, and Iberdrola will each become indirect public utility

1 holding companies of PNM. PNM would remain a New Mexico corporation and a
2 certificated electric public utility subject to the jurisdiction of the Commission.⁴

3 **Q. Would the Proposed Transaction expose PNM’s customers to additional risks from**
4 **the other Joint Applicants?**

5 A. Yes. For example, Iberdrola’s connection with PNM would expose PNM’s customers to
6 sovereign risks due to Iberdrola’s operations in several other countries.⁵ Additionally, in
7 its 2020 Integrated Report, Iberdrola outlines numerous risks facing its company,
8 including: (1) Corporate governance risks; (2) market risks; (3) credit risks; (4) business
9 risks; (5) regulatory and political risks; (6) operational, technological, environmental,
10 social and legal risks; (7) reputational risks; (8) price and demand risks; (9) resource risks;
11 (10) financial risks; and (11) other risks.⁶ Additional protections are necessary to insulate
12 PNM’s customers from the risks imposed by its subsidiaries under the Proposed
13 Transaction. Such protections are known as “ring-fencing.”

14 **Q. Have the Joint Applicants committed to certain ring-fencing protections as part of**
15 **the Proposed Transaction?**

16 A. Yes. The Joint Applicants committed to following 15 ring-fencing protections as part of
17 the Proposed Transaction:⁷

⁴ See JA Exhibit RND-2, p. 2.

⁵ Iberdrola, “Group Companies Map,” (available at: <https://www.iberdrola.com/about-us/groupcompanies>).

⁶ Iberdrola 2020 Integrated Report, pp. 91-92 (<https://www.iberdrola.com/shareholders-investors/annual-reports>).

⁷ See Joint Application, pp. 12-13. A similar list of ring-fencing protections is included in Mr. Kump’s direct testimony at pp. 21-22; however, the revisions and additions to the ring-fencing protections discussed in my testimony will be based on the list outlined in the Joint Application.

- 1 1. PNM will maintain a separate name and logo from Avangrid,
2 Iberdrola and their respective subsidiaries and affiliates. However,
3 the Avangrid name and logo may be appended for branding
4 purposes, e.g., “An Avangrid Company” or other words to similar
5 effect.
- 6 2. Neither PNM’s assets nor revenues will be pledged by any affiliates
7 for the benefit of any entity other than PNM.
- 8 3. PNM will not lend to or borrow funds from any affiliates, other than
9 as permitted by the Commission.
- 10 4. PNM will not share credit facilities with any affiliates, other than as
11 approved by the Commission.
- 12 5. PNM will not include in any of its debt or credit agreements any
13 cross-default provisions relating to any affiliates.
- 14 6. The Joint Applicants will take such actions as necessary to ensure
15 the existence of PNM’s stand-alone bond credit and debt ratings.
- 16 7. PNM will maintain accurate, appropriate, and detailed books,
17 financial records and accounts, including checking and other bank
18 accounts, and custodial and other securities safekeeping accounts
19 that are separate and distinct from those of any other entity.
- 20 8. PNM will not pay dividends, except for contractual tax payments, at
21 any time that PNM’s debt rating is below investment grade with any
22 one of the credit agencies rating PNM, absent Commission
23 approval.
- 24 9. PNM will provide at least 15 days’ notice to the Commission before
25 making any dividend payments.
- 26 10. PNM will not acquire or transfer any material assets from or to any
27 affiliates, except in an arm’s length transaction and in accordance
28 with the Commission’s affiliate transaction standards and
29 requirements.
- 30 11. Joint Applicants commit that PNM will not, directly or indirectly,
31 seek to recover in any future rate case, any acquisition premium,
32 transaction costs, or merger transition costs resulting from the
33 Proposed Transaction and allocated to PNM.

- 1 12. Neither PNM nor PNMR will take on any new debt in conjunction
2 with the Proposed Transaction.
- 3 13. The Commission and its staff will have access to the books, records,
4 accounts or documents of PNM, its corporate subsidiaries and its
5 holding companies, including PNMR, Networks, Avangrid, and
6 Iberdrola, pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19.
- 7 14. Commission jurisdiction over PNM remains and will not be
8 adversely affected in any manner by the Proposed Transaction, as
9 PNM will continue to abide and to be bound by existing applicable
10 NMPRC rules, regulations, and orders.
- 11 15. PNM will continue to abide and be bound by the commitments set
12 forth in all stipulations that are currently in effect until the
13 commitments expire on their own accord or the Commission enters
14 orders that supersede such commitments.

15 My recommended revisions and additions to the ring-fencing protections proposed by the
16 Joint Applications are further discussed below.

17 **Q. Do you agree with the proposed ring-fencing protections as presented by the Joint**
18 **Applicants?**

19 A. No. The ring-fencing protections proposed by the Joint Applications provide some
20 protections to PNM’s customers, but they are inadequate.

21 **Q. Did Avangrid and NM Green recently agree to more robust ring-fencing protections**
22 **in a similar proceeding before the Public Utility Commission of Texas?**

23 A. Yes. In November 2020, Texas-New Mexico Power Company (“TNMP”), NM Green, and
24 Avangrid filed an application before the Public Utility Commission of Texas (the “Texas
25 Proceeding”) for approval of a transaction substantially similar to the Proposed Transaction

1 in this proceeding.⁸ Also in the Texas Proceeding, the applicants proposed ring-fencing
2 protections substantially similar to those proposed by the Joint Applicants in this
3 proceeding.⁹

4 **Q. Did parties in the Texas Proceeding reach a settlement that includes ring-fencing**
5 **protections more robust than those proposed by the Joint Applicants in this**
6 **proceeding?**

7 A. Yes. The applicants in the Texas Proceeding, along with all parties to that docket, reached
8 a settlement that included “Financial Protections and Code of Conduct” with more robust
9 ring-fencing protections than those proposed by the Joint Applicants in this case.¹⁰

10 **Q. Are you proposing modified ring-fencing protections in this case that reflect the more**
11 **robust ring-fencing protections agreed to by the parties in the Texas Proceeding?**

12 A. Yes. In my attached exhibits, I present redlined revisions to the ring-fencing protections
13 proposed by the Joint Applicants in this proceeding that reflect the more robust ring-
14 fencing protections agreed to by the parties in the Texas Proceeding.¹¹ I also present a
15 clean (non-redlined) version of my proposed ring-fencing protections in my exhibits.¹²

16 **Q. Are you proposing any additional provisions that warrant further discussion?**

17 A. Yes. Included in my proposed ring-fencing list is a condition that would prevent PNM
18 from requesting an authorized equity ratio above 50% for a period of 10 years following

⁸ PUC Docket No. 51547 before the Public Utility Commission of Texas, Joint Report and Application of Texas-New Mexico Power Company, NM Green holdings, Inc., and Avangrid, Inc. for Regulatory Approvals under PURA §§ 14.101, 39.262, and 39.915.

⁹ See PUC Docket No. 51547 before the Public Utility Commission of Texas, Direct Testimony of Robert D. Kump, Exhibit RDK-1, p. 1.

¹⁰ See PUC Docket No. 51547 before the Public Utility Commission of Texas, Unanimous Stipulation and Agreement.

¹¹ Exhibit DJG-2.

¹² Exhibit DJG-3.

1 completion of the Proposed Transaction.¹³ This provision would not restrict PNM’s actual
2 debt or equity ratio. I discuss this capital structure provision in more detail below.

III. CAPITAL STRUCTURE PROVISION

3 **Q. Describe in general the concept of a company’s capital structure.**

4 A. “Capital structure” refers to the way a company finances its overall operations through
5 external financing. The primary sources of long-term, external financing are debt capital
6 and equity capital. Debt capital usually comes in the form of contractual bond issues that
7 require the firm to make payments, while equity capital represents an ownership interest in
8 the form of stock. Because a firm cannot pay dividends on common stock until it satisfies
9 its debt obligations to bondholders, stockholders are referred to as “residual claimants.”
10 The fact that stockholders have a lower priority to claims on company assets increases their
11 risk and the required return relative to bondholders. Thus, equity capital has a higher cost
12 than debt capital. Firms can reduce their weighted average cost of capital (“WACC”) by
13 recapitalizing and increasing their debt financing. In addition, because interest expense is
14 deductible, increasing debt also adds value to the firm by reducing the firm’s tax obligation.

15 **Q. Is it true that, by increasing debt, competitive firms can add value and reduce their**
16 **WACC?**

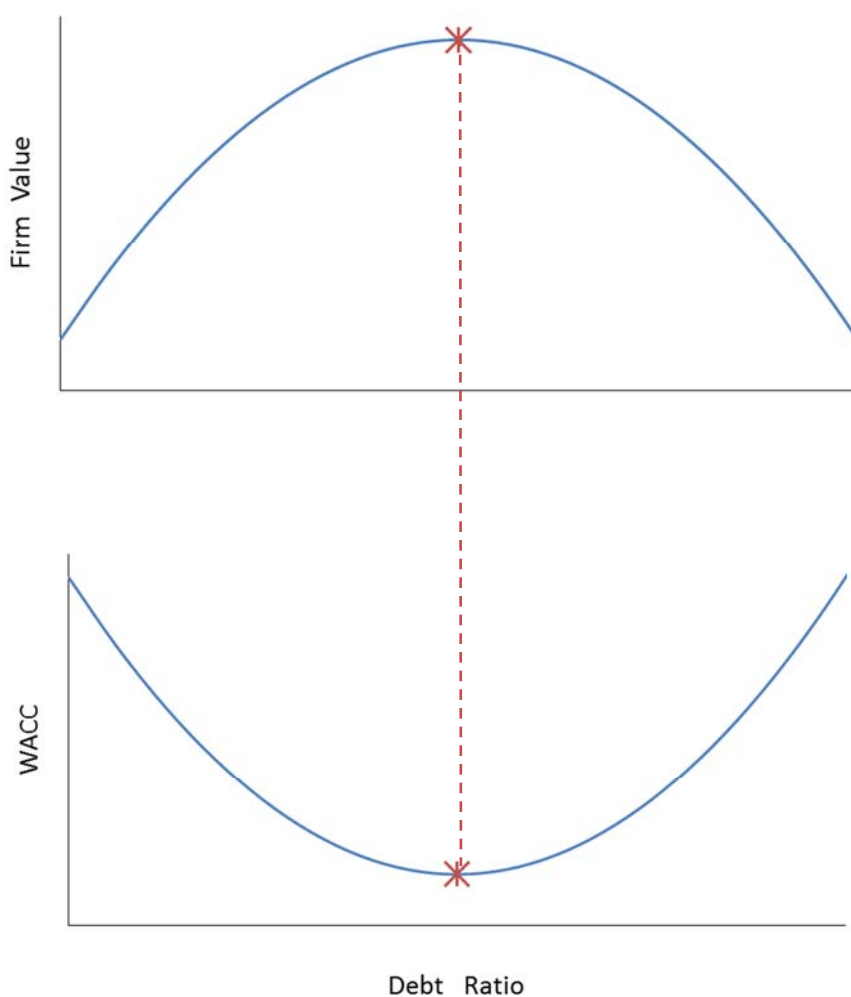
17 A. Yes, it is. A competitive firm can add value by increasing debt. After a certain point,
18 however, the marginal cost of additional debt outweighs its marginal benefit. This is

¹³ See Exhibit DJG-3, No. 22.

1 because the more debt the firm uses, the higher interest expense it must pay, and the
2 likelihood of loss increases. This also increases the risk of non-recovery for both
3 bondholders and shareholders, causing both groups of investors to demand a greater return
4 on their investment. Thus, if debt financing is too high, the firm's WACC will increase
5 instead of decrease. The following figure illustrates these concepts.

6
7

**Figure 1:
Optimal Debt Ratio**



1 As shown in this figure, a competitive firm's value is maximized when the WACC is
2 minimized. In both graphs, the debt ratio is shown on the x-axis. By increasing its debt
3 ratio, a competitive firm can minimize its WACC and maximize its value. At a certain
4 point, however, the benefits of increasing debt do not outweigh the costs of the additional
5 risks to both bondholders and shareholders, as each type of investor will demand higher
6 returns for the additional risk they have assumed.¹⁴

7 **Q. Does the rate base rate of return model effectively incentivize utilities to operate at**
8 **the optimal capital structure?**

9 A. No. While it is true that competitive firms maximize their value by minimizing their
10 WACC, this is not the case for regulated utilities. Under the rate base rate of return model,
11 a higher WACC results in higher rates, all else held constant. The basic revenue
12 requirement equation is as follows:

13 **Equation 1:**
14 **Revenue Requirement for Regulated Utilities**

15
$$RR = O + d + T + r(A - D)$$

where:

<i>RR</i>	=	<i>revenue requirement</i>
<i>O</i>	=	<i>operating expenses</i>
<i>d</i>	=	<i>depreciation expense</i>
<i>T</i>	=	<i>corporate tax</i>
<i>r</i>	=	<i>weighted average cost of capital (WACC)</i>
<i>A</i>	=	<i>plant investments</i>
<i>D</i>	=	<i>accumulated depreciation</i>

¹⁴ See John R. Graham, Scott B. Smart & William L. Megginson, *Corporate Finance: Linking Theory to What Companies Do* 440-41 (3rd ed., South Western Cengage Learning 2010).

1 As shown in this equation, utilities can increase their revenue requirement by increasing
2 their WACC, not by minimizing it. Thus, because there is no incentive for a regulated
3 utility to minimize its WACC, a commission standing in the place of competition must
4 ensure that the regulated utility is operating at the lowest reasonable WACC.

5 **Q. Can utilities generally afford to have higher debt levels than other industries?**

6 A. Yes. Because regulated utilities have large amounts of fixed assets, stable earnings, and
7 low risk relative to other industries, they can afford to have relatively higher debt ratios (or
8 “leverage”). As aptly stated by Dr. Damodaran:

9 Since financial leverage multiplies the underlying business risk, it stands to
10 reason that firms that have high business risk should be reluctant to take on
11 financial leverage. It also stands to reason that firms that operate in stable
12 businesses should be much more willing to take on financial leverage.
13 Utilities, for instance, have historically had high debt ratios but have not
14 had high betas, mostly because their underlying businesses have been stable
15 and fairly predictable.¹⁵

16 Note that the author explicitly contrasts utilities with firms that have high underlying
17 business risk. Because utilities have low levels of risk and operate a stable business, they
18 should generally operate with relatively high levels of debt to achieve their optimal capital
19 structure.

20 **Q. How can utility regulatory commissions help overcome the fact that utilities do not**
21 **have a natural financial incentive to minimize their cost of capital?**

22 A. While under the rate base rate of return model utilities do not have a natural financial
23 incentive to minimize their cost of capital, competitive firms, in contrast, can and do

¹⁵ Aswath Damodaran, *Investment Valuation: Tools and Techniques for Determining the Value of Any Asset* 196 (3rd ed., John Wiley & Sons, Inc. 2012).

1 maximize their value by minimizing their cost of capital. Competitive firms minimize their
2 cost of capital by including a sufficient amount of debt in their capital structures. They do
3 not do this because it is required by a regulatory body, but rather because their shareholders
4 demand it in order to maximize value. Acting as a surrogate to competition, regulatory
5 commissions should authorize capital structures similar to what would be appropriate in a
6 competitive environment.

7 **Q. Describe PNM's anticipated capital structure.**

8 A. According to PNM's 2021 General Diversification Plan ("2021 GDP"), PNM expects its
9 equity ratio range to remain above 50% over the next 5 years.¹⁶

10 **Q. Is PNM's anticipated equity ratio higher than equity ratios you have recently**
11 **observed among other utilities in the industry?**

12 A. Yes. I have recently observed average equity ratios among utility proxy groups ranging
13 from 46% - 49%.¹⁷

14 **Q. Is PNM's anticipated equity ratio also notably higher than PNMR's historical equity**
15 **ratio?**

16 A. Yes. In contrast to PNM's anticipated equity ratio of above 50%, PNMR's historical equity
17 ratio has ranged from only 35-40%.¹⁸

¹⁶ See JA Exhibit RND-2, p. 10.

¹⁷ See Case No. 20-00104-UT, Direct Testimony of David J. Garrett, Exhibit DJG-16 (equating to a debt ratio of 51%); see also Docket No. 20000-578-ER-20 before the Wyoming Public Service Commission, Direct Testimony and Exhibits of David J. Garrett, WIEC Exhibit No. 301.18.

¹⁸ See JA Exhibit RND-2, p. 10.

1 **Q. What is your proposed provision related to PNM's capital structure?**

2 A. I propose that for a period of 10 years following completion of the Proposed Transaction,
3 PNM agrees that it will not seek approval from the Commission an authorized equity ratio
4 in excess of 50%. This provision does not restrict PNM's actual debt or equity ratio. This
5 provision would help promote an authorized equity ratio for PNM that is more reflective
6 of the equity ratios observed in the industry.

IV. CONCLUSION RECOMMENDATION

7 **Q. Please summarize your recommendation to the Commission.**

8 A. I recommend the Commission adopt a list of Financial Protections and Code of Conduct
9 that is reflective of the list I have set forth in Exhibit DJG-3, as well as any additional
10 protections for ratepayers deemed appropriate by the Commission.

11 **Q. Does this conclude your testimony?**

12 A. Yes. To the extent I have not addressed an issue or position stated in the Joint Application
13 or direct testimonies of the Joint Applications does not constitute my agreement with the
14 same.

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Oklahoma City, OK 73102

DAVID J. GARRETT

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EDUCATION

University of Oklahoma Master of Business Administration Areas of Concentration: Finance, Energy	Norman, OK 2014
University of Oklahoma College of Law Juris Doctor Member, American Indian Law Review	Norman, OK 2007
University of Oklahoma Bachelor of Business Administration Major: Finance	Norman, OK 2003

PROFESSIONAL DESIGNATIONS

Society of Depreciation Professionals
Certified Depreciation Professional (CDP)

Society of Utility and Regulatory Financial Analysts
Certified Rate of Return Analyst (CRRA)

The Mediation Institute
Certified Civil / Commercial & Employment Mediator

WORK EXPERIENCE

Resolve Utility Consulting PLLC <u>Managing Member</u> Provide expert analysis and testimony specializing in depreciation and cost of capital issues for clients in utility regulatory proceedings.	Oklahoma City, OK 2016 – Present
Oklahoma Corporation Commission <u>Public Utility Regulatory Analyst</u> <u>Assistant General Counsel</u> Represented commission staff in utility regulatory proceedings and provided legal opinions to commissioners. Provided expert analysis and testimony in depreciation, cost of capital, incentive compensation, payroll and other issues.	Oklahoma City, OK 2012 – 2016 2011 – 2012

Perebus Counsel, PLLC

Managing Member

Represented clients in the areas of family law, estate planning, debt negotiations, business organization, and utility regulation.

Oklahoma City, OK
2009 – 2011

Moricoli & Schovanec, P.C.

Associate Attorney

Represented clients in the areas of contracts, oil and gas, business structures and estate administration.

Oklahoma City, OK
2007 – 2009

TEACHING EXPERIENCE

University of Oklahoma

Adjunct Instructor – “Conflict Resolution”

Adjunct Instructor – “Ethics in Leadership”

Norman, OK
2014 – Present

Rose State College

Adjunct Instructor – “Legal Research”

Adjunct Instructor – “Oil & Gas Law”

Midwest City, OK
2013 – 2015

PUBLICATIONS

American Indian Law Review

“Vine of the Dead: Reviving Equal Protection Rites for Religious Drug Use”
(31 Am. Indian L. Rev. 143)

Norman, OK
2006

VOLUNTEER EXPERIENCE

Calm Waters

Board Member

Participate in management of operations, attend meetings, review performance, compensation, and financial records. Assist in fundraising events.

Oklahoma City, OK
2015 – 2018

Group Facilitator & Fundraiser

Facilitate group meetings designed to help children and families cope with divorce and tragic events. Assist in fundraising events.

2014 – 2018

St. Jude Children’s Research Hospital

Oklahoma Fundraising Committee

Raised money for charity by organizing local fundraising events.

Oklahoma City, OK
2008 – 2010

PROFESSIONAL ASSOCIATIONS

Oklahoma Bar Association	2007 – Present
Society of Depreciation Professionals <u>Board Member – President</u> Participate in management of operations, attend meetings, review performance, organize presentation agenda.	2014 – Present 2017
Society of Utility Regulatory Financial Analysts	2014 – Present

SELECTED CONTINUING PROFESSIONAL EDUCATION

Society of Depreciation Professionals “Life and Net Salvage Analysis” Extensive instruction on utility depreciation, including actuarial and simulation life analysis modes, gross salvage, cost of removal, life cycle analysis, and technology forecasting.	Austin, TX 2015
Society of Depreciation Professionals “Introduction to Depreciation” and “Extended Training” Extensive instruction on utility depreciation, including average lives and net salvage.	New Orleans, LA 2014
Society of Utility and Regulatory Financial Analysts 46th Financial Forum. “The Regulatory Compact: Is it Still Relevant?” Forum discussions on current issues.	Indianapolis, IN 2014
New Mexico State University, Center for Public Utilities Current Issues 2012, “The Santa Fe Conference” Forum discussions on various current issues in utility regulation.	Santa Fe, NM 2012
Michigan State University, Institute of Public Utilities “39th Eastern NARUC Utility Rate School” One-week, hands-on training emphasizing the fundamentals of the utility ratemaking process.	Clearwater, FL 2011
New Mexico State University, Center for Public Utilities “The Basics: Practical Regulatory Training for the Changing Electric Industries” One-week, hands-on training designed to provide a solid foundation in core areas of utility ratemaking.	Albuquerque, NM 2010
The Mediation Institute “Civil / Commercial & Employment Mediation Training” Extensive instruction and mock mediations designed to build foundations in conducting mediations in civil matters.	Oklahoma City, OK 2009

Utility Regulatory Proceedings

Regulatory Agency	Utility Applicant	Docket Number	Issues Addressed	Parties Represented
Railroad Commission of Texas	Texas Gas Services Company	GUD 10928	Depreciation rates, service lives, net salvage	Gulf Coast Service Area Steering Committee
Public Utilities Commission of the State of California	Southern California Edison	A.19-08-013	Depreciation rates, service lives, net salvage	The Utility Reform Network
Massachusetts Department of Public Utilities	NSTAR Gas Company	D.P.U. 19-120	Depreciation rates, service lives, net salvage	Massachusetts Office of the Attorney General, Office of Ratepayer Advocacy
Georgia Public Service Commission	Liberty Utilities (Peach State Natural Gas)	42959	Depreciation rates, service lives, net salvage	Public Interest Advocacy Staff
Florida Public Service Commission	Florida Public Utilities Company	20190155-El 20190156-El 20190174-El	Depreciation rates, service lives, net salvage	Florida Office of Public Counsel
Illinois Commerce Commission	Commonwealth Edison Company	20-0393	Depreciation rates, service lives, net salvage	The Office of the Illinois Attorney General
Public Utility Commission of Texas	Southwestern Public Service Company	PUC 49831	Depreciation rates, service lives, net salvage	Alliance of Xcel Municipalities
South Carolina Public Service Commission	Blue Granite Water Company	2019-290-WS	Depreciation rates, service lives, net salvage	South Carolina Office of Regulatory Staff
Railroad Commission of Texas	CenterPoint Energy Resources	GUD 10920	Depreciation rates and grouping procedure	Alliance of CenterPoint Municipalities
Pennsylvania Public Utility Commission	Aqua Pennsylvania Wastewater	A-2019-3009052	Fair market value estimates for wastewater assets	Pennsylvania Office of Consumer Advocate
New Mexico Public Regulation Commission	Southwestern Public Service Company	19-00170-UT	Cost of capital and authorized rate of return	The New Mexico Large Customer Group; Occidental Permian
Indiana Utility Regulatory Commission	Duke Energy Indiana	45253	Cost of capital, depreciation rates, net salvage	Indiana Office of Utility Consumer Counselor
Maryland Public Service Commission	Columbia Gas of Maryland	9609	Depreciation rates, service lives, net salvage	Maryland Office of People's Counsel
Washington Utilities & Transportation Commission	Avista Corporation	UE-190334	Cost of capital, awarded rate of return, capital structure	Washington Office of Attorney General

Utility Regulatory Proceedings

Regulatory Agency	Utility Applicant	Docket Number	Issues Addressed	Parties Represented
Indiana Utility Regulatory Commission	Indiana Michigan Power Company	45235	Cost of capital, depreciation rates, net salvage	Indiana Office of Utility Consumer Counselor
Public Utilities Commission of the State of California	Pacific Gas & Electric Company	18-12-009	Depreciation rates, service lives, net salvage	The Utility Reform Network
Oklahoma Corporation Commission	The Empire District Electric Company	PUD 201800133	Cost of capital, authorized ROE, depreciation rates	Oklahoma Industrial Energy Consumers and Oklahoma Energy Results
Arkansas Public Service Commission	Southwestern Electric Power Company	19-008-U	Cost of capital, depreciation rates, net salvage	Western Arkansas Large Energy Consumers
Public Utility Commission of Texas	CenterPoint Energy Houston Electric	PUC 49421	Depreciation rates, service lives, net salvage	Texas Coast Utilities Coalition
Massachusetts Department of Public Utilities	Massachusetts Electric Company and Nantucket Electric Company	D.P.U. 18-150	Depreciation rates, service lives, net salvage	Massachusetts Office of the Attorney General, Office of Ratepayer Advocacy
Oklahoma Corporation Commission	Oklahoma Gas & Electric Company	PUD 201800140	Cost of capital, authorized ROE, depreciation rates	Oklahoma Industrial Energy Consumers and Oklahoma Energy Results
Public Service Commission of the State of Montana	Montana-Dakota Utilities Company	D2018.9.60	Depreciation rates, service lives, net salvage	Montana Consumer Counsel and Denbury Onshore
Indiana Utility Regulatory Commission	Northern Indiana Public Service Company	45159	Depreciation rates, grouping procedure, demolition costs	Indiana Office of Utility Consumer Counselor
Public Service Commission of the State of Montana	NorthWestern Energy	D2018.2.12	Depreciation rates, service lives, net salvage	Montana Consumer Counsel
Oklahoma Corporation Commission	Public Service Company of Oklahoma	PUD 201800097	Depreciation rates, service lives, net salvage	Oklahoma Industrial Energy Consumers and Wal-Mart
Nevada Public Utilities Commission	Southwest Gas Corporation	18-05031	Depreciation rates, service lives, net salvage	Nevada Bureau of Consumer Protection
Public Utility Commission of Texas	Texas-New Mexico Power Company	PUC 48401	Depreciation rates, service lives, net salvage	Alliance of Texas-New Mexico Power Municipalities
Oklahoma Corporation Commission	Oklahoma Gas & Electric Company	PUD 201700496	Depreciation rates, service lives, net salvage	Oklahoma Industrial Energy Consumers and Oklahoma Energy Results

Utility Regulatory Proceedings

Regulatory Agency	Utility Applicant	Docket Number	Issues Addressed	Parties Represented
Maryland Public Service Commission	Washington Gas Light Company	9481	Depreciation rates, service lives, net salvage	Maryland Office of People's Counsel
Indiana Utility Regulatory Commission	Citizens Energy Group	45039	Depreciation rates, service lives, net salvage	Indiana Office of Utility Consumer Counselor
Public Utility Commission of Texas	Entergy Texas, Inc.	PUC 48371	Depreciation rates, decommissioning costs	Texas Municipal Group
Washington Utilities & Transportation Commission	Avista Corporation	UE-180167	Depreciation rates, service lives, net salvage	Washington Office of Attorney General
New Mexico Public Regulation Commission	Southwestern Public Service Company	17-00255-UT	Cost of capital and authorized rate of return	HollyFrontier Navajo Refining; Occidental Permian
Public Utility Commission of Texas	Southwestern Public Service Company	PUC 47527	Depreciation rates, plant service lives	Alliance of Xcel Municipalities
Public Service Commission of the State of Montana	Montana-Dakota Utilities Company	D2017.9.79	Depreciation rates, service lives, net salvage	Montana Consumer Counsel
Florida Public Service Commission	Florida City Gas	20170179-GU	Cost of capital, depreciation rates	Florida Office of Public Counsel
Washington Utilities & Transportation Commission	Avista Corporation	UE-170485	Cost of capital and authorized rate of return	Washington Office of Attorney General
Wyoming Public Service Commission	Powder River Energy Corporation	10014-182-CA-17	Credit analysis, cost of capital	Private customer
Oklahoma Corporation Commission	Public Service Co. of Oklahoma	PUD 201700151	Depreciation, terminal salvage, risk analysis	Oklahoma Industrial Energy Consumers
Public Utility Commission of Texas	Oncor Electric Delivery Company	PUC 46957	Depreciation rates, simulated analysis	Alliance of Oncor Cities
Nevada Public Utilities Commission	Nevada Power Company	17-06004	Depreciation rates, service lives, net salvage	Nevada Bureau of Consumer Protection
Public Utility Commission of Texas	El Paso Electric Company	PUC 46831	Depreciation rates, interim retirements	City of El Paso

Utility Regulatory Proceedings

Regulatory Agency	Utility Applicant	Docket Number	Issues Addressed	Parties Represented
Idaho Public Utilities Commission	Idaho Power Company	IPC-E-16-24	Accelerated depreciation of North Valmy plant	Micron Technology, Inc.
Idaho Public Utilities Commission	Idaho Power Company	IPC-E-16-23	Depreciation rates, service lives, net salvage	Micron Technology, Inc.
Public Utility Commission of Texas	Southwestern Electric Power Company	PUC 46449	Depreciation rates, decommissioning costs	Cities Advocating Reasonable Deregulation
Massachusetts Department of Public Utilities	Eversource Energy	D.P.U. 17-05	Cost of capital, capital structure, and rate of return	Sunrun Inc.; Energy Freedom Coalition of America
Railroad Commission of Texas	Atmos Pipeline - Texas	GUD 10580	Depreciation rates, grouping procedure	City of Dallas
Public Utility Commission of Texas	Sharyland Utility Company	PUC 45414	Depreciation rates, simulated analysis	City of Mission
Oklahoma Corporation Commission	Empire District Electric Company	PUD 201600468	Cost of capital, depreciation rates	Oklahoma Industrial Energy Consumers
Railroad Commission of Texas	CenterPoint Energy Texas Gas	GUD 10567	Depreciation rates, simulated plant analysis	Texas Coast Utilities Coalition
Arkansas Public Service Commission	Oklahoma Gas & Electric Company	160-159-GU	Cost of capital, depreciation rates, terminal salvage	Arkansas River Valley Energy Consumers; Wal-Mart
Florida Public Service Commission	Peoples Gas	160-159-GU	Depreciation rates, service lives, net salvage	Florida Office of Public Counsel
Arizona Corporation Commission	Arizona Public Service Company	E-01345A-16-0036	Cost of capital, depreciation rates, terminal salvage	Energy Freedom Coalition of America
Nevada Public Utilities Commission	Sierra Pacific Power Company	16-06008	Depreciation rates, net salvage, theoretical reserve	Northern Nevada Utility Customers
Oklahoma Corporation Commission	Oklahoma Gas & Electric Co.	PUD 201500273	Cost of capital, depreciation rates, terminal salvage	Public Utility Division
Oklahoma Corporation Commission	Public Service Co. of Oklahoma	PUD 201500208	Cost of capital, depreciation rates, terminal salvage	Public Utility Division

Utility Regulatory Proceedings

Regulatory Agency	Utility Applicant	Docket Number	Issues Addressed	Parties Represented
Oklahoma Corporation Commission	Oklahoma Natural Gas Company	PUD 201500213	Cost of capital, depreciation rates, net salvage	Public Utility Division

Financial Protections and Code of Conduct

1. Separate Name and Logo – PNM will maintain a separate identity, name and logo that is separate and distinct from the identity, name, and logos of Avangrid, Iberdrola and their respective subsidiaries and affiliates, and any current and future retail electric providers, wholesale generation companies, and other New Mexico competitive affiliates of PNM. However, the Avangrid name and logo may be appended for branding purposes, e.g., “An Avangrid Company” or other words to similar effect—, provided that no current or future competitive affiliate with operations in New Mexico adds the Avangrid name, logo, or other brand-identifying features for branding purposes. No Avangrid or Iberdrola retail electric providers, wholesale generation companies that operate in New Mexico, or any other current or future New Mexico competitive affiliate of PNM will use the same name, trademark, brand, logo, or any other brand-identifying features such as color scheme or font style as are used by PNM.
2. Pledging of Assets – Neither PNM’s assets, stock, nor revenues will be pledged by any affiliates of PNM’s affiliates, or any entity with a direct or indirect ownership interest in PNM, for the benefit of any entity other than PNM.
3. Inter-Company Lending – PNM will not lend to or borrow funds from any affiliates, other than as permitted by the Commission.
4. Credit Facility – PNM will not share credit facilities with any affiliates, or any other entity with a direct or indirect ownership interest in PNM, other than as approved by the Commission.
5. Cross-Default Provisions – PNM will not include in any of its debt or credit agreements any cross-default provisions relating to any affiliates—, or any entity with direct or indirect ownership interest in PNM. Under no circumstances will any debt of PNM become due and payable or otherwise be rendered in default because of any cross-default, financial covenants, rating agency triggers or similar provisions of any debt or other agreement of any PNM affiliates.
6. Credit Ratings Agencies – The Joint Applicants will take such actions as necessary to ensure the existence of PNM’s stand-alone bond credit and debt ratings. PNM will, except as otherwise approved by the Commission, be registered with at least two nationally recognized statistical ratings organizations that are registered with the United States Securities and Exchange Commission, which must include two of Moody’s, Fitch, or Standard & Poor’s. The Joint Applicants must take the actions necessary to ensure that PNM’s credit ratings reflect the ring-fence provisions adopted in this proceeding such that the credit ratings agencies provide PNM with a standalone credit rating.

7. Separate Books and Records – PNM will maintain accurate, appropriate, and detailed books, financial records and accounts, including checking and other bank accounts, and custodial and other securities safekeeping accounts that are separate and distinct from those of any other entity. All documents and records, as well as the documents derived from such, including those in the annexes, will be available in English. In the event there are separate versions with both versions being deemed authentic, for legal purposes the text in English is to be given priority of interpretation.
8. Dividend Restriction – PNM will not pay dividends, except for contractual tax payments, at any time that PNM's debt rating is below investment grade with any one of the credit agencies rating PNM, absent Commission approval in a proceeding opened for that purpose. Additionally, PNM or any entity in its chain of ownership, will not issue stock or ownership interests that supersede the foregoing obligations of PNM. PNM shall notify the Commission if TNMP's credit rating from any of the agencies rating PNM falls below investment grade.
9. Dividend Notice – PNM will provide at least 15 days' notice to the Commission before making any dividend payments.
10. Affiliate Asset Transfer – PNM will not acquire or transfer any material assets, or any transmission or distribution asset worth more than \$1 million, from or to any affiliates, except in an arm's length transaction and in accordance with the Commission's affiliate transaction standards and requirements.
11. Premiums – Joint Applicants commit that PNM will not, directly or indirectly, seek to recover in any future rate case, any acquisition premium, transaction costs, or merger transition costs resulting from the Proposed Transaction and allocated to PNM. Any goodwill associated with the transaction will not be included in rates, rate base, cost of capital, or operating expenses in future PNM ratemaking proceedings. Write-downs or write-offs of goodwill associated with the transaction will not be included in the calculation of net income for dividend or other distribution payment purposes.
12. Elimination of PNMR Debt – Avangrid will extinguish all debt at PNMR – reducing it to zero – as soon as reasonably possible following the closing of the Proposed Transaction. Neither PNM nor PNMR will take on any new debt in conjunction with the Proposed Transaction.
13. Access to Books and Records – The Commission and its staff will have access to the books, records, accounts or documents of PNM, its corporate subsidiaries and its holding companies, including PNMR, Networks, Avangrid, and Iberdrola, pursuant to NMSA 1978, Sections 62-6-17 and 62-6-19.
14. Jurisdiction – Commission jurisdiction over PNM remains and will not be adversely affected in any manner by the Proposed Transaction, as PNM will continue to abide and to be bound by existing applicable NMPRC rules, regulations, and orders.

15. Commitments – PNM will continue to abide and be bound by the commitments set forth in all stipulations that are currently in effect until the commitments expire on their own accord or the Commission enters orders that supersede such commitments.
16. Sole Authorized Purpose – The sole authorized purpose of PNM will be the provision of generation, transmission and distribution utility service and the performance of activities reasonably necessary and appropriate thereto.
17. Best Interest of Utility – PNM’s board of directors must have the duty to act, subject to applicable New Mexico law, in the best interests of PNM consistent with the Commission’s orders in this proceeding.
18. Non-Consolidation Legal Opinion – Avangrid will obtain a non-consolidation legal opinion that provides that, in the event of a bankruptcy of Avangrid or any affiliate of Avangrid, a bankruptcy court will not consolidate the assets and liabilities of PNM with Avangrid or any affiliate of Avangrid.
19. Arm’s-Length Relationship – The ring-fenced entity, PNM, when negotiating or entering into contracts with affiliates, will comply with the Commission’s affiliate standards applicable to PNM, maintain an arm’s-length relationship with Avangrid or Avangrid’s affiliates, or any entity with a direct or indirect ownership interest in PNM.
20. No Debt Disproportionally Dependent on PNM – Without prior approval of the Commission, neither Avangrid nor any affiliate of Avangrid (excluding PNM) will incur, guaranty, or pledge assets in respect of any incremental new debt at the closing or thereafter that is dependent on the revenues of PNM in more than a proportionate degree than the other revenues of Avangrid.
21. Commingling of Assets – Except insofar as PNM is authorized to participate in the Avangrid shared credit facilities as outlined herein, PNM must not commingle its funds, assets, or cash flows with its affiliates, subsidiaries, or any entity with a direct or indirect ownership in PNM.
22. Authorized Capital Structure – For a period of 10 years following completion of the Proposed Transaction, PNM agrees that it will not seek approval from the Commission an authorized equity ratio in excess of 50%. This provision does not restrict PNM’s actual debt or equity ratio.
23. Code of Conduct – PNM will file with the Commission for authority to amend and update its code of conduct to incorporate all applicable conditions and limitations on affiliate transactions required by these regulatory commitments.

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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF AVANGRID, INC., AVANGRID NETWORKS, INC., NM GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY OF NEW MEXICO AND PNM RESOURCES, INC. FOR APPROVAL OF THE MERGER OF NM GREEN HOLDINGS, INC. WITH PNM RESOURCES, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION

Case No. 20-00222-UT

**AVANGRID, INC., AVANGRID NETWORKS, INC.,
NM GREEN HOLDINGS, INC., PUBLIC SERVICE
COMPANY OF NEW MEXICO AND PNM
RESOURCES, INC.,**

JOINT APPLICANTS.

VERIFICATION

I, DAVID J. GARRETT, state and affirm under penalty of perjury under the laws of the State of New Mexico, that the preceding Direct Testimony of DAVID J. GARRETT, was prepared by me or under my direction, and that its contents are true and accurate to the best of my knowledge.



DAVID J. GARRETT

4-2-21

Dated:

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE JOINT APPLICATION OF)
AVANGRID, INC., AVANGRID NETWORKS, INC., NM)
GREEN HOLDINGS, INC., PUBLIC SERVICE COMPANY)
OF NEW MEXICO AND PNM RESOURCES, INC. FOR)
APPROVAL OF THE MERGER OF NM GREEN)
HOLDINGS, INC. WITH PNM RESOURCES, INC.;)
APPROVAL OF A GENERAL DIVERSIFICATION PLAN;)
AND ALL OTHER AUTHORIZATIONS AND APPROVALS)
REQUIRED TO CONSUMMATE AND IMPLEMENT THIS)
TRANSACTION)**

Case No. 20-00222-UT

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent via email to the parties listed below a true and correct copy of the Direct Testimony of David J. Garrett.

Stacey Goodwin	Stacey.Goodwin@pnmresources.com ;	Kyle J. Tisdell	tisdell@westernlaw.org ;
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Richard L. C. Virtue Daniel A. Najjar Philo Shelton Kevin Powers Robert Cummins Steven Gross Martin R. Hopper Kurt J. Boehm Bill Templeman Justin Bieber Karl F. Kumli, III Mark Detsky K. C. Cunilio Julie A. Wolfe Andrew Wernsdorfer Joel Johnson	rvirtue@virtuelaw.com ; dnajjar@virtuelaw.com ; Philo.Shelton@lacnm.us ; Kevin.Powers@lacnm.us ; Robert.Cummins@lacnm.us ; gross@portersimon.com ; mhopper@msrpower.org ; kboehm@bkllawfirm.com ; WTempleman@cmtisantafe.com ; jbieber@energystat.com ; karlk@dietzedavis.com ; mdetsky@dietzedavis.com ; kcunilio@dietzedavis.com ; julie@dietzedavis.com ; andy@berrendoenergy.com ; Joel@berrendoenergy.com ;	Camilla Feibelman Michael C. Smith Bradford Borman Peggy Martinez-Rael Elizabeth Ramirez Gilbert Fuentes Jack Sidler John Bogatko Milo Chavez Marc Tupler Elisha Leyba-Tercero Gabriella Dasheno Dhiraj Solomon John Reynolds Ana Kippenbrock	Camilla.Feibelman@sierraclub.org ; Michaelc.smith@state.nm.us ; Bradford.Borman@state.nm.us ; Peggy.Martinez-Rael@state.nm.us ; Elizabeth.Ramirez@state.nm.us ; GilbertT.Fuentes@state.nm.us ; Jack.sidler@state.nm.us ; John.Bogatko@state.nm.us ; Milo.Chavez@state.nm.us ; Marc.Tupler@state.nm.us ; Elisha.Leyba-Tercero@state.nm.us ; Gabriella.Dasheno@state.nm.us ; Dhiraj.Solomon@state.nm.us ; John.Reynolds@state.nm.us ; Ana.Kippenbrock@state.nm.us ;
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DATED this April 2, 2021.

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By: /s/ Keith W. Herrmann

NANN M. WINTER
KEITH W. HERRMANN

-AND-

PETER AUH
General Counsel for Albuquerque Bernalillo
County Water Utility Authority

*Attorneys for Albuquerque Bernalillo County
Water Utility Authority*