

**PNM EXHIBIT RND-9**

**Consisting of 4 pages**

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STATE OF NEW MEXICO  
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 13-02(R)

IN THE MATTER OF PROPOSED REVISIONS  
TO THE STATE IMPLEMENTATION PLAN  
FOR THE SAN JUAN GENERATING STATION  
BEST AVAILABLE RETROFIT TECHNOLOGY  
DETERMINATION

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 5th day of  
September, 2013, the above-entitled matter came on for  
hearing before the New Mexico Environmental Improvement  
Board, taken at San Juan College, Room 7103, 4601  
College Boulevard, Farmington, New Mexico, at the hour  
of 9:20 a.m.

1           Equally important is the fact that the state  
2 entered into a bilateral agreement with PNM in order to  
3 take care of some of the economic consequences resulting  
4 from a two-unit shutdown.

5           That agreement with PNM ensures that there  
6 will be no layoffs as a result of unit retirements. It  
7 also provides for economic development in the Navajo  
8 Nation and in the Four Corners region. It also requires  
9 the construction of a natural gas plant in this region,  
10 which will provide construction jobs.

11           Now, this isn't to say that the alternative,  
12 including the agreement that the state entered with PNM  
13 in order to defray some of the economic consequences  
14 resulting from this, is -- is perfect. But it is the  
15 best path -- in our opinion, it is the best path forward  
16 in a very difficult situation.

17           And I'll explain now why I believe in more  
18 detail it is the best path forward in a -- in what I  
19 mentioned was a difficult situation that we all  
20 inherited in 2011, when the Board first took up a state  
21 plan submitted by the New Mexico Environment Department.

22           In the Tenth Circuit, one of the things -- I  
23 want to talk a little bit about some of the factors that  
24 the Department considered in the Tenth Circuit and what  
25 motivated us to settle.

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1           In the Tenth Circuit, what was at issue was  
2 the EPA's failure to consider the State Implementation  
3 Plan before promulgating the federal rule. I do not  
4 believe there would have been an outcome in the Tenth  
5 Circuit in which the court would have ordered EPA to  
6 adopt the State Implementation Plan that was submitted.  
7 I think that's a really important point.

8           It wasn't -- the court wasn't considering two  
9 choices, we're going to either affirm the federal rule  
10 or we're going to adopt the state rule. The court was  
11 considering whether EPA had properly followed the Clean  
12 Air Act in adopting a federal rule without considering  
13 the state's rule.

14           As I mentioned, we were prejudiced by the fact  
15 that the state was three-and-a-half years late, and EPA  
16 repeatedly emphasized this point.

17           We still believe that the state plan was worth  
18 fighting for, and we believe we had a strong case in  
19 court. However, if the Tenth Circuit ultimately decided  
20 with the state and with PNM, I do believe it is highly  
21 unlikely that EPA would have done anything other than go  
22 back and review the State Implementation Plan that was  
23 submitted and ultimately make the same decision.

24           So I think the best outcome we could have  
25 expected in the Tenth Circuit is for the court to strike

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1 down the federal rule and say EPA erred when it failed  
2 to consider the State Implementation Plan and then  
3 required EPA to go back and engage in another  
4 rulemaking, and this time considering the State  
5 Implementation Plan.

6           And EPA very well could have gone back then,  
7 created a new record and explained again what they had  
8 made clear repeatedly, which was they would not approve  
9 the state plan and adopted the same federal proposal all  
10 over again.

11           And so we would have been delaying, in my  
12 opinion, the inevitable. If EPA wanted that federal  
13 rule to become a rule, I think they would have  
14 eventually been able to make it a federal rule that the  
15 state would then be forced to comply with.

16           I believe the -- and PNM will be here, and  
17 they can testify as to cost considerations. I will not  
18 be testifying that -- providing policy testimony in that  
19 regard this morning.

20           I will, though, testify about kind of the  
21 broader contexts in which this dispute was occurring,  
22 and specifically the transition away from coal-fired  
23 generation to other forms of power.

24           There's been a national trend away from  
25 coal-fired generation, and this is -- this has been

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