

March 1, 2022

Sandra Ely
Environmental Protection Division Director
New Mexico Environment Department
1190 St. Francis Drive
PO Box 5469
Santa Fe, New Mexico

CC: Andrew Knight, Elizabeth Kuehn, Mark Jones, Michael Baca

Subject: Request for NMED to require PNM to submit four-factor analysis for San Juan Generating Station

Dear Ms. Ely:

The undersigned conservation organizations write to request that the New Mexico Environment Department (“NMED”) require Public Service Company of New Mexico (“PNM”) to submit a four-factor analysis for the San Juan Generating Station (“SJGS”) for consideration in New Mexico’s upcoming second planning period Regional Haze State Implementation Plan (“SIP”) that incorporates the expected closure date for San Juan Unit 1 of June 30, 2022 and September 30, 2022 for San Juan Unit 4.¹ If PNM will not submit such a four-factor analysis, we request that New Mexico prepare the analysis incorporating the Units 1 and 4 retirement dates as the compliance mechanism for the second planning period at SJGS. For the reasons stated below, NMED’s failure to require and incorporate such a four-factor analysis for SJGS would render NMED’s upcoming regional haze SIP deficient, arbitrary and capricious, and inconsistent with EPA requirements that the owner/operator submit the analysis.

NMED cannot rely on a hypothetical operator’s (Enchant) hypothetical operating scenario (CCUS) at the SJGS. The Clean Air Act contemplates that “owners and operators” of emitting sources are legally responsible for regional haze commitments in a SIP. 42 U.S.C. § 7491(c)(2); *see also* 40 C.F.R. § 51.308(e)(2)(vi). Further, EPA’s regional haze regulations and NMED’s practice specific to SJGS have routinely required PNM, as the “owner/operator,” to be legally responsible for regional haze legal obligations. 40 C.F.R. § 52.1628. As the current majority owner/operator of SJGS, PNM must likewise be legally responsible for regional haze compliance in the second planning period.

PNM is the majority owner and operator of San Juan Generating Station. PNM has announced its intent to cease operating SJGS Unit 1 on June 30, 2022, and cease operating the Unit 4 by September 2022, at the latest. It is our understanding that NMED requested a four-factor analysis from PNM.² It is likewise our understanding that PNM has not submitted a four-factor analysis for SJGS. In the absence of a four-factor analysis, NMED requested a four-factor analysis from Enchant Energy Corporation (“Enchant”) and the City of Farmington, which have

¹ We are aware that PNM applied for and the Public Regulation Commission has granted a three-month extension to run SJGS Unit 4 through September 30, 2022.

² Enchant/Farmington Four-Factor Analysis, July 9, 2020, p. 2.

proposed to operate a carbon capture utilization and storage (“CCUS”) control system at SJGS Units 1 and 4.³ Importantly, to date none of the other SJGS owners nor any other third party (including Enchant) has acquired the right to own and/or operate the SJGS after PNM ceases to operate the plant. Accordingly, NMED must either obtain a four-factor analysis from PNM, or conduct its own analysis, that must be based on the current operating scenario of retirement of Units 1 and 4 in 2022 as a means of complying with the regional haze second planning period obligations. Failure to include such a four-factor analysis would render NMED’s second planning period SIP arbitrary and capricious.

To date, there is no evidence in NMED’s administrative record that PNM has actually transferred operational control of SJGS to Enchant/Farmington, or that any contracts have been executed to transfer full ownership and control of SJGS to Enchant/Farmington at any future date. As such, NMED must require a four-factor analysis from PNM for the second planning period. Given PNM’s publicly stated intention to cease operating Unit 1 on June 30, 2022 and Unit 4 by September 30, 2022, it appears very likely that PNM’s four-factor analysis would rely on retirement as its compliance mechanism for the second planning period. EPA’s regional haze regulations specifically acknowledge source retirement as a legally valid compliance mechanism for the second planning period provided it is accompanied by a federally enforceable retirement date. 40 C.F.R. § 51.308(d)(3)(v)(D) and 51.308(f)(2)(iv)(C).

In summary, NMED cannot rely on Enchant’s purely hypothetical four-factor analysis for SJGS. Instead, NMED must either obtain a four-factor analysis from PNM, the current owner/operator, or conduct its own analysis utilizing PNM’s publicly announced retirement date of June 30, 2022 for Unit 1 and September 30, 2022 for Unit 4 as the compliance mechanism at SJGS for the second planning period.

Thank you for the opportunity to engage with NMED on this process. We look forward to seeing your response.

Sincerely,

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National Parks Conservation Association

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Senior Attorney
Sierra Club Environmental Law Program

Mike Eisenfeld
Energy and Climate Program Manager
San Juan Citizens Alliance

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³ *Id.*

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