

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. S-1-SC35697

NEW ENERGY ECONOMY, INC.,

SUPREME COURT OF NEW MEXICO  
FILED

Appellant,

AUG 2 -- 2016

v.

NEW MEXICO PUBLIC REGULATION COMMISSION, 

Appellee,

and

PUBLIC SERVICE COMPANY OF NEW MEXICO,  
NEW MEXICO INDUSTRIAL ENERGY CONSUMERS, and  
WESTERN RESOURCE ADVOCATES,

Intervenors-Appellees.

IN THE MATTER OF THE APPLICATION OF PUBLIC SERVICE  
COMPANY OF NEW MEXICO FOR APPROVAL TO ABANDON SAN  
JUAN GENERATING STATION UNITS 2 AND 3, ISSUANCE OF  
CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR  
REPLACEMENT POWER RESOURCES, ISSUANCE OF ACCOUNTING  
ORDERS AND DETERMINATION OF RELATED RATE-MAKING  
PRINCIPLES AND TREATMENT,  
NMPRC Case No. 13-00390-UT.

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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## **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

The 38 Amici Curiae identified below respectfully move, pursuant to Rule 12-215(A) NMRA, for leave to file the attached brief in support of two issues raised by Appellant New Energy Economy in its Statement of Issues.

First, Amici request that they be allowed to provide this Court with crucial arguments and evidence not contained in Appellant's brief regarding the causal relationship between coal-generated electricity and climate change, the environmental, public health, and economic risks of climate change, and the current and future effects of climate change on New Mexicans. These are matters of great public importance and legal consequence that the New Mexico Public Regulation Commission ("PRC") improperly ignored in this quasi-judicial administrative proceeding.

Second, in this case in which the PRC decision will have harmful effects on climate change and the environment, economy, and public health of New Mexico, Amici urge this Court to protect the public interest in the integrity of the PRC by invalidating the PRC's decision. Compelling record evidence creates an objective appearance that the PRC prejudged this case in favor of the Public Service Company of New Mexico ("PNM") before hearing any evidence.

Amici include the City of Santa Fe and national, Native American, regional, state, and community-based nonprofit organizations that share a common interest

in the immediate mitigation of the causes and catastrophic effects of climate change. Amici represent a coalition of organizations and communities with diverse memberships and missions and include environmental, renewable energy, and public health organizations; Native American communities; cultural and educational organizations; faith communities; civil rights, social justice, and peace organizations; and organizations devoted to sustainable energy and economic development. A quick perusal of the list of Amici below will demonstrate to this Court the intense public concern about the issues addressed in the amicus brief.

1. **350 New Mexico (Albuquerque, NM)** is the New Mexico chapter of 350.org, an international grassroots organization committed to building a global climate movement.
2. **Albuquerque Center for Peace and Justice (Albuquerque, NM)** provides space and resources to grassroots groups and individuals working on social justice issues to network with one another, share information, and learn from each other's work.
3. **Alliance of Nurses for Healthy Environments (Mount Rainier, MD)** is a nationwide network of thousands of nurses whose mission is to promote healthy people and healthy environments by educating and leading the nursing profession, advancing research, incorporating evidence-based practice, and influencing policy.
4. **The Center for Biological Diversity (Washington, DC)** is a nonprofit organization working to secure a future for all species, great and small, hovering on the brink of extinction, through science, law, and creative media, with a focus on protecting the lands, waters, and climate that species need to survive.
5. **The Chaco Alliance (Nageezi, Navajo Nation)** is a grassroots citizens' group dedicated to protecting and preserving the high desert climate and Chaco Culture National Historical Park, a World Heritage Site, from climate change.

6. **Chainbreaker Collective (Santa Fe, NM)** works to expand access to affordable transportation and supports economically and environmentally sustainable communities for low-income people in Northern New Mexico.
7. **Citizens for Fair Rates and Environment (Silver City, NM)** is an association of residential ratepayers of PNM that support renewable energy options because these cost ratepayers less than coal or nuclear power and are environmentally responsible.
8. **City of Santa Fe, NM**
9. **Climate Change Leadership Institute (Santa Fe, NM)** is a nonprofit organization dedicated to addressing climate change, uplifting our community, and promoting clean energy.
10. **The Climate Trust (Portland, OR)** is committed to staving off a disastrous rise in global temperatures by accelerating the pace of carbon mitigation through increased and focused deployment of investment.
11. **Diné Citizens Against Ruining our Environment—Diné CARE (Winslow, AZ)** is an organization by and for the Diné, the People. Diné CARE's members strive to maintain a relationship with Mother Earth based on balance and harmony that has been handed down to us from our ancestors.
12. **Dooda Desert Rock (Newcomb, Navajo Nation)** is a Native-led organization that successfully opposed a 1,500 megawatt mine-mouth coal plant slated for the Four Corners Region of the Navajo reservation. Building on that success, Dooda Desert Rock continues to challenge fossil-based and nuclear extraction.
13. **Earth Care (Santa Fe, NM)** is an organization that works with youth to create healthy, just, and sustainable communities through youth leadership programs, sustainability education, and youth-led community organizing and food justice work.
14. **Earthworks (Washington, DC)** is a national nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions.

15. **Food & Water Watch (Albuquerque, NM)** promotes healthy food and clean water for all, stands up to corporations that put profits before people, and advocates for a democracy that improves people's lives and protects our environment.
16. **Four Corners Idle No More (Gallup, NM)** is part of an international movement started in Canada to support grassroots organizations in creating their own forums to learn about indigenous rights, to honor indigenous sovereignty, to protect the land and water, and to advocate for government and industry to protect the environment.
17. **Gallup Solar (Gallup, NM)** is a community-based organization that collaborates with community members, elected representatives, utilities, and industry to bring solar power to members of the Gallup-McKinley County area and to promote renewable energy.
18. **Global Warming Express (Santa Fe, NM)** is a climate change education and advocacy organization created by kids for kids.
19. **Honor Our Pueblo Existence (Santa Clara Pueblo)** is a community-based organization that addresses environmental and health issues for the Pueblo and promotes sustainability and traditional life ways.
20. **Indigenous Life Ways (Navajo Nation)** is an indigenous-focused organization that facilitates opportunities for individuals and community groups to utilize traditional knowledge, ceremonies, and a deep understanding of our communities to continue the preservation of indigenous culture and our sacred sites; engages proactively with climate adaptation; cultivates sustainable development; and builds individual and community capacity.
21. **Interfaith Workers Justice-New Mexico (Santa Fe, NM)** is a statewide network of people of faith and conscience who use their moral, ethical, and spiritual values to advocate for economic justice and workers' rights.
22. **Inter-Tribal Territories Recovery Institute (Wagon Mound, NM)** was founded for the purpose of co-managing U.S. Forest Service and Bureau of Land Management lands within tribal territories nationwide, to restore the natural balance of and protect these lands from fossil fuel development.

23. **Las Vegas Peace & Justice Center (Las Vegas, NM)** is a community-based grassroots organization located in North Eastern New Mexico providing social, economic, and environmental justice services to the people of New Mexico.
24. **Multicultural Alliance for a Safe Environment (Albuquerque, NM)** represents uranium-impacted communities in New Mexico, and works to restore and protect the natural and cultural environment and to develop and strengthen sustainable ways of working and living that promote public health and well-being.
25. **New Mexico Environmental Law Center (Santa Fe, NM)** is a Santa Fe-based nonprofit public interest law firm that provides free and low-cost legal services to protect New Mexico's environment, communities, and cultures, and to ensure clean air, land, water, and environmental justice for all New Mexicans.
26. **New Mexico Hispano Round Table (Albuquerque, NM)** works to promote a more equitable social, cultural, and economic future for Hispano Americans.
27. **New Mexico Interfaith Power and Light—NMIPL (Albuquerque, NM)** works with faith communities and individual people of faith to make the spiritual and ethical connections needed in a world facing climate change. NMIPL engages communities, people of faith, and faith leaders through interfaith prayers, education, energy conservation, promotion of renewable energy, and support of local food and civic action. NMIPL member faith communities throughout the state represent all of the major religious traditions.
28. **New Mexico League of United Latin American Citizens—NM LULAC (Rio Rancho, NM)** is New Mexico's oldest, largest, and most respected Latino civil rights advocacy organization.
29. **Northern New Mexico Climate Activists—NNMCA (Santa Fe, NM)** is a grassroots group of citizens from throughout northern New Mexico, concerned about the environment and the effects of a changing climate on New Mexico.
30. **Physicians for Social Responsibility-New Mexico (Santa Fe, NM)** is the New Mexico chapter of the largest physician-led organization (40,000 members nationwide) working to protect the public from

threats of nuclear proliferation, climate change, environmental toxins, and other threats to global survival.

31. **Red Nation (Albuquerque, NM)** is a council of Indigenous and non-Indigenous activists, educators, students, and community organizers advocating Indigenous liberation, which includes the repatriation of Indigenous life and land, and the protection of our land and water.
32. **Renewable Taos (Taos, NM)** is dedicated to promoting and facilitating a full transition to renewable energy and energy efficiency in Taos County and the surrounding region.
33. **Securing Economic and Energy Democracy of Southwest New Mexico (Silver, City)** is an organization that aims to achieve energy democracy for an economically, socially, and environmentally sustainable future for the citizens of Grant County.
34. **Southwest Indigenous Uranium Forum—SIUF (Chichiltah, Navajo Nation)** is made up of members primarily from the Navajo, Havasupai, Zuni, Yaqui, Dakota Sioux, Ute, and Hopi tribes and Laguna and Acoma Pueblos and is focused on the environmental and health impacts of uranium development in the Grants Mineral Belt on indigenous peoples. SIUF promotes the wise and practical uses of renewable energy such as solar, wind, and tidal and the pursuit of soft energy paths and applications based on traditional ecological knowledge and practices.
35. **Southwest Organizing Project (Albuquerque, NM)** empowers low-income communities of color to gain community control of land and resources through direct grassroots organizing campaigns.
36. **Tewa Women United (Española, NM)** is a collective of tribal women in the Tewa homelands of Northern New Mexico promoting educational, social, and benevolent purposes, especially the end of violence against Native Women and Mother Earth, and peace in New Mexico.
37. **Veterans for Peace Chapter 055 (Santa Fe, NM)** is the Santa Fe Chapter of Veterans for Peace, Inc., a national organization founded by veterans of several wars who seek to serve by helping our nation move toward peace and justice rather than war and exploitation.

38. **Wagon Mound Development Association (Wagon Mound, NM)** is dedicated to sustainable business development and the promotion of alternative energy development in the Village of Wagon Mound and the surrounding area of Mora County in northern New Mexico.

The amicus brief will assist this Court because it offers extensive scientific evidence not contained in Appellant's brief or the Record Proper, including work published since the PRC's Final Order. This work includes a June 2016 peer-reviewed paper published by Professor David Gutzler, a University of New Mexico Climatologist, which documents and explains increasing regional and New Mexico temperature and aridity trends, decreasing precipitation trends, and the harmful current and long-term impacts of climate change on New Mexico's environment and water supplies. The research done by Dr. Gutzler and his colleagues is based on statistical downscaling of the 18 global climate models generally accepted in the international scientific community. Amici offer this broader discussion of climate science and climate change to assist the Court in analyzing the legal and regulatory issues in this complex case and to provide a context for the record testimony of Dr. Michael McCally. Dr. McCally is a public health physician and environmental health scientist who presented expert testimony and multiple scientific studies on climate change and its impacts on the public health and economy of New Mexico. Neither the PRC Order nor Appellant's brief mention Dr. McCally's testimony. The amicus brief also presents relevant portions of the 2014 Report by the Intergovernmental Panel on



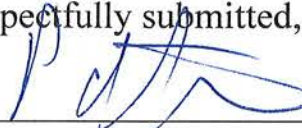
Climate Change (“IPCC”), which is based on several decades of collaborative work by thousands of the world’s leading climatologists and environmental scientists.

Additionally, Amici present legal authority, argument, and citations to the Record Proper in support of their requested remedy that this Court invalidate the PRC’s Final Order because four PRC Commissioners prejudged this case in favor of PNM. Amici submit the only remedy that will protect the public interest and ensure that PRC policy decisions impacting climate change and the environment are made impartially and competently is to invalidate the decision of the PRC.

Amici Curiae requested that counsel for the parties consent to the filing of this motion on July 14, 2016. Appellant New Energy Economy consents to the filing of this motion. Appellee PRC and Interveners-Appellees PNM and Western Resource Advocates intend to oppose this motion. Amici received no response from Appellee-Intervener New Mexico Industrial Energy Consumers.

DATED: this 2nd day of August 2016

Respectfully submitted,



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## CERTIFICATE OF SERVICE

On this the 2nd day of August, 2016, a true and correct copy of the above and foregoing was forwarded to all counsel of record, listed below, via email.

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