

NMPRC Case No. 24-00255-UT; Bernalillo Solar Location Approval Proceeding

From Medeiros, Anthony F., PRC <Anthony.Medeiros@prc.nm.gov>

Date Wed 12/11/2024 8:01 AM

To dnajjar@virtuelaw.com <dnajjar@virtuelaw.com>; mkurnik@orionrenewables.com <mkurnik@orionrenewables.com>; jeisen@orionrenewables.com <jeisen@orionrenewables.com>; Fitting, Sean, DOT <Sean.Fitting@dot.nm.gov>; Bogatko, John, PRC <John.Bogatko@prc.nm.gov>; Friedman, Ryan , PRC <Ryan.Friedman@prc.nm.gov>; Rilkoff, Ed , PRC <Ed.Rilkoff@prc.nm.gov>; Sidler, Jack, PRC <Jack.Sidler@prc.nm.gov>; Orland Whitney, PRC <orland.whitney@prc.nm.gov>; Martinez-Rael, Peggy, PRC <Peggy.Martinez-Rael@prc.nm.gov>; Ramirez, Elizabeth, PRC <Elizabeth.Ramirez@prc.nm.gov>; Records, PRC, PRC <PRC.Records@prc.nm.gov>; Kippenbrock, Ana, PRC <Ana.Kippenbrock@prc.nm.gov>; Fisk, Russell, PRC <Russell.Fisk@prc.nm.gov>; Santillanes, LaurieAnn , PRC <LaurieAnn.Santillanes@prc.nm.gov>

1 attachment (500 KB)

24-00255-UT-12-11-2024-Order Amending Procedural Schedule to Consider Uncontested Stipulation.pdf;

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION FOR)	
THE LOCATION OF THE BERNALILLO SOLAR)	
AND BATTERY ENERGY STORAGE SYSTEM AND)	
GEN-TIE SYSTEM IN BERNALILLO COUNTY)	Case No. 24-00255-UT
PURSUANT TO THE PUBLIC UTILITY ACT,)	
NMSA 1978, §§ 62-9-3 AND 62-9-3.2)	
)	
BERNALILLO SOLAR LLC,)	
)	
Applicant.)	
)	

Good morning,

Please find attached for service and entry in the record the *Order Amending Procedural Schedule to Consider Uncontested Stipulation* issued by the Hearing Examiner in the above-reference case on this date.

Anthony F. Medeiros
Chief Hearing Examiner
(505) 629-2604
anthony.medeiros@prc.nm.gov



BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION FOR)	
THE LOCATION OF THE BERNALILLO SOLAR)	
AND BATTERY ENERGY STORAGE SYSTEM AND)	
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PURSUANT TO THE PUBLIC UTILITY ACT,)	
NMSA 1978, §§ 62-9-3 AND 62-9-3.2)	
)	
BERNALILLO SOLAR LLC,)	
)	
Applicant.)	
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**ORDER AMENDING PROCEDURAL SCHEDULE
TO CONSIDER UNCONTESTED STIPULATION**

THIS MATTER comes before the Hearing Examiner upon the Joint Motion to Amend Procedural Schedule (“Joint Motion”) filed by the Applicant in this proceeding, Bernalillo Solar LLC (“Bernalillo Solar”), the New Mexico Department of Transportation (“DOT”), and the Utility Division Staff (“Staff”) of the New Mexico Public Regulation Commission (“Commission”). Bernalillo Solar, DOT, and Staff are referred to in this Order collectively as the “Joint Movants.” Being duly informed, the Hearing Examiner **FINDS** and **CONCLUDES** as follows:

1. The Joint Movants move the Hearing Examiner to amend the procedural schedule in the above-captioned proceeding to allow for the parties to file an uncontested stipulation agreeing to the Commission’s granting the location approval sought by the Applicant, subject to certain enumerated conditions.

2. The Procedural Order issued by the Hearing Examiner in this case on October 25, 2024 (“Procedural Order”) set a deadline of November 26, 2024 for any protests to the Application and for motions to intervene. No protests were subsequently filed. The DOT filed a timely intervention. No other motions to intervene were filed in this case. Hence, the parties to this case are Bernalillo Solar, the DOT, and Commission Staff.

3. The Joint Motion states that after the period for intervention established in the Procedural Order expired, the Joint Movants engaged in good faith discussions to identify all outstanding issues. Based on their discussions, the Joint Movants believe they have reached agreement on all issues arising in this proceeding.

4. Joint Movants therefore request that the Hearing Examiner issue an order modifying the procedural schedule and allowing for the parties to submit for consideration an uncontested stipulation recommending approval of the relief sought by Bernalillo Solar in this proceeding subject to certain enumerated conditions.

5. Joint Movants thus propose certain modifications to the procedural schedule set in the Procedural Order. The Hearing Examiner finds the Joint Movants' proposed modifications reasonable and, accordingly, he will amend the procedural schedule along the lines suggested by the Joint Movants to accommodate consideration of their stipulation, which is yet to be filed, and subject to the condition set forth below that the six-month period for Commission consideration of the Application on the merits under Sections 62-9-3(K) and 62-9-3.2(F) of the Public Utility Act ("PUA")¹ is tolled in accord with the Commission's tolling policy applied to consideration of stipulations in base rate proceedings under the PUA.²

¹ NMSA 1978, §§ 62-9-3 and 62-9-3.2. In its October 9, 2024 Order, the Commission determined consistent with Sections 62-9-3(K) and 62-9-3.2(F) that the six-month deadline for issuance of a final order in this matter is, based on the Application's September 27, 2024 filing date, March 27, 2025.

² See, e.g., *Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 625*, Case No. 24-00089-UT, Order on Notice and Motion (Nov. 22, 2024), at 5-7 (concluding, at 6, ¶¶ 24-25, that "it must be that the legislative line drawing that is the suspension-period statute is subject to tolling that permits the Commission to exercise the discretion statutorily conferred on it and to address the rights of all parties to a proceeding. . . . *Conditioning treatment of the stipulation on the parties' concomitant willingness to toll the running of the suspension period resolves the possibility that the adjudication of a stipulation could result in a circumstance where there is no time to hear and consider the as-filed application.*") (emphasis in italics and bold added).

IT IS THEREFORE ORDERED:

- A. The Joint Motion is GRANTED subject to the conditions set forth hereunder.
- B. On or before Monday, **December 23 2024**, Joint Movants shall file their stipulation.
- C. Bernalillo Solar, the DOT, and Staff shall each file testimony in support of the stipulation on or before Wednesday, **January 8, 2025**.
- D. Any response or rebuttal testimony shall be filed no later than Monday, **January 13, 2025**.
- E. The public hearing on the uncontested stipulation shall be held on Thursday, **January 16, 2025** and will continue on successive days until completed as determined to be necessary by the Hearing Examiner. Each hearing session shall commence at 10:00 a.m. Mountain Time (“MT”) unless otherwise ordered. The evidentiary hearing will be conducted via the Zoom videoconference platform. Access to and participation in the evidentiary hearing shall be limited to party-participants (i.e., counsel and witnesses), the Commissioners, and other essential Commission personnel. The Zoom hearing will be livestreamed through YouTube and will be displayed on the Commission’s website at <https://www.nm-prc.org>. Persons not participating in the evidentiary hearing as an attorney or witness may view the hearing on the Commission’s website and shall not join the hearing via Zoom except to provide oral comment as allowed below.
- F. The Hearing Examiner may vacate the public hearing if he finds in his discretion that a hearing on the stipulation is not necessary.³

³ See 1.2.2.20(A)(3) NMAC (the presiding officer “may forego a public hearing” on an uncontested stipulation “in extraordinary cases, for good cause shown[.]”); *Southwestern Public Service Company’s Application for Authorization of Large Customer Renewable*Connect Program and Tariff and Other Associated Relief*, Case No. 23-00271-UT, Order Vacating Hearing (Apr. 8, 2024), at 3-4 (foregoing public hearing on uncontested stipulation for good cause shown, stating in particular, at 3, ¶ 11 that, “[h]aving considered, among other things, the record developed in the proceeding to date, Staff’s recommendation in this case, and the parties’ unanimous support for the instant motion to vacate the hearing, the Hearing Examiner [finds] that a public

G. Interested persons who are not affiliated with a party may make oral or written comment as allowed by Rule 1.2.2.23(F) NMAC. Oral comment, if any, shall be taken at shortly after the beginning of the evidentiary hearing on January 16, 2025, and commenters will be limited to 3 minutes per comment. As part of the public hearing, public comment will be taken via the Zoom platform; therefore, persons wishing to make an oral public comment must register in advance, not later than 9:00 a.m. MT on January 16, 2025, by e-mailing Ana Kippenbrock at ana.kippenbrock@prc.nm.gov. Written public comments may be submitted before the Commission takes final action by sending the comment, which shall reference NMPRC Case No. 24-00255-UT, to prc.records@prc.nm.gov. Public comments, whether oral or written, shall not be considered as evidence in this proceeding.

H. Since the evidentiary hearing will be conducted via Zoom, the parties and Staff will be required to electronically distribute the exhibits they intend to offer for admission into evidence at the hearing in advance of the hearing. That electronic distribution shall provide the documents to all parties, the Hearing Examiner, and the court reporter. The requirements for those and any other necessary submissions shall be set forth in a subsequent prehearing order issued by the Hearing Examiner.⁴

I. Except as expressly amended in this Order, all findings, conclusions, and requirements set forth in the Procedural Order remain in full force and effect.

hearing is not required for this case, and for the sake of administrative economy, the April 16, 2024 hearing should be vacated. The Hearing Examiner therefore finds good cause to recommend the disposition of this case to the Commission without evidentiary hearing.”).

⁴ Parties will be required to utilize Dropbox to upload and download documents. See <https://www.dropbox.com>. All parties should familiarize themselves with use of that file-sharing application.

J. The six-month period for consideration of the relief requested under the Application is **TOLLED** and, consequently, shall not run from the date on which the parties file the stipulation to the date the Commission takes final action on it.

K. This Order is effective immediately.

PERSONS WITH DISABILITIES

ANY PERSON WITH A DISABILITY REQUIRING SPECIAL ASSISTANCE TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE COMMISSION AT (505) 467-9116 OR (505) 690-4191 TO REQUEST SUCH ASSISTANCE AS SOON AS POSSIBLE, PREFERABLY AS SOON AS THE PERSON RECEIVES NOTICE OF THIS PROCEEDING TO ALLOW CONSIDERATION OF THE REQUEST AND TO ARRANGE FOR A POTENTIAL REASONABLE ACCOMMODATION.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this **11th** day of **December 2024**.



NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros

Anthony F. Medeiros
Chief Hearing Examiner

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE APPLICATION FOR)
THE LOCATION OF THE BERNALILLO SOLAR)
AND BATTERY ENERGY STORAGE SYSTEM AND)
GEN-TIE SYSTEM IN BERNALILLO COUNTY)
PURSUANT TO THE PUBLIC UTILITY ACT,)
NMSA 1978, §§ 62-9-3 AND 62-9-3.2)
BERNALILLO SOLAR LLC,)

Applicant.)
_____)

Case No. 24-00255-UT

CERTIFICATE OF SERVICE

I CERTIFY that on this date a true and correct copy of the foregoing *Order Amending Procedural Schedule to Consider Uncontested Stipulation* was e-mailed on December 11, 2024 to the parties listed below.

Bernalillo Solar LLC	
Daniel A. Najjar	dnajjar@virtuelaw.com ;
Michael Kurnik	mkurnik@orionrenewables.com ;
Jim Eisen	jeisen@orionrenewables.com ;
NM DOT	
Sean J. Fitting	Sean.Fitting@dot.nm.gov ;
NMPRC Advocacy Staff	
John Bogatko	john.bogatko@prc.nm.gov ;
Ryan Friedman	ryan.friedman@prc.nm.gov ;
Ed Rilko	ed.rilko@prc.nm.gov ;
Jack Sidler	jack.sidler@prc.nm.gov ;
Orland Whitney	orland.whitney@prc.nm.gov ;
Peggy Martinez-Rael	peggy.martinez-Rael@prc.nm.gov ;
Elizabeth Ramirez	elizabeth.ramirez@prc.nm.gov ;
NMPRC Admin. & OGC	
PRC Records Management Bureau	prc.records@prc.nm.gov ;
Ana Kippenbrock	ana.kippenbrock@prc.nm.gov ;
Russell Fisk	russell.fisk@prc.nm.gov ;
LaurieAnn Santillanes	laurieann.santillanes@prc.nm.gov ;

DATED this 11th day of December 2024.

NEW MEXICO PUBLIC REGULATION COMMISSION

Anthony F. Medeiros
Chief Hearing Examiner