

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF NEW ENERGY)
ECONOMY’S COMPLAINT AGAINST)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO REGARDING ITS FAILURE TO)
TIMELY DISCLOSE ITS PARENT)
COMPANY’S AND SUBSIDIARY’S)
AGREEMENTS IN CONNECTION WITH)
THE PURCHASE OF THE SAN JUAN COAL)
MINE BY WESTMORELAND SAN JUAN,)
LLC AND THE COAL AGREEMENTS)
BETWEEN PUBLIC SERVICE COMPANY)
OF NEW MEXICO, WESTMORELAND)
COAL COMPANY AND OTHER PARTIES)
)
)
)
NEW ENERGY ECONOMY,)
)
Complainant)
_____)**

Case No. 16-00078-UT

AFFIDAVIT OF DAVID A. SCHLISSEL

David A. Schlissel, being duly sworn, deposes and states as follows:

1. My name is David A. Schlissel. My business address is 45 Horace Road, Belmont, MA 02478.
2. I am over the age of eighteen and have personal knowledge of the matters set forth in this affidavit.
3. I am the Director for Resource Planning Analysis at the Institute for Energy Economics and Financial Analysis (IEEFA).
4. I have degrees in Astronautical Engineering from the Massachusetts Institute of Technology (MIT) and Stanford University. I also have a Juris Doctor degree from

Stanford University School of Law. In addition, I have studied nuclear engineering and project management at MIT.

5. I have 44 years of experience working as an attorney and an expert on utility, energy, and environmental issues. I have testified as an expert witness in over 130 proceedings before regulatory commissions in more than 30 states and before the Federal Energy Regulatory and Nuclear Regulatory Commissions. I also have testified as an expert witness in state and federal court proceedings.
6. My clients have included state regulatory commissions in Kansas, California, Arizona, Arkansas and New Mexico, state attorneys general, large cities, municipally-owned utilities, merchant power plant owners, investors in the energy industry, industrial and residential electricity customers, and consumer and environmental groups.
7. A copy of my current resume is included as Exhibit 1 to this Affidavit.
8. I have prepared this affidavit on behalf of New Energy Economy (NEE) and in consultation with my colleague Seth Feaster, an IEEFA energy data consultant. Mr. Feaster's resume is included as Exhibit 2 to this Affidavit.
9. We have read PNM's letter of February 1, 2016 to the New Mexico Public Regulation Commission and the attached February 1, 2016 Form 8-K Report by PNM Resources to the US Securities and Exchange Commission, attached to NEE's Motion, as Exhibit 3.
10. Our work yields the conclusion that Westmoreland Coal, a publicly-traded company has been showing signs of severe financial difficulty.
11. The following financial market indicators support this conclusion.
12. Westmoreland Coal's stock price has lost most of its value.
 - 93% over 1 year (Jan. 23, 2017 to Jan 23, 2018)
 - 97% since its peak (Aug. 8, 2014 to Jan. 23, 2018)
 - 88% over 5 years (Jan. 25, 2013 to Jan 23, 2018)

-89% over 10 years (Jan. 18, 2008 to Jan 23, 2018)



13. On Nov. 16, 2017, Standard & Poor's downgraded the credit rating of Westmoreland Coal Company to CCC; Negative from CCC+; Negative.
14. According to S&P Global Market Intelligence on Nov. 17, 2017, the ratings agency "said the company had approximately \$1.6 billion of adjusted consolidated debt outstanding as of Sept. 30," and that "it will be difficult for Westmoreland to refinance its heavy debt load and significant maturities in 2018." The ratings agency also cited the operating challenges Westmoreland is facing, including contract terminations, low realized prices due to the decline in demand for coal-fired power generation, competition from natural gas, and mild weather.
15. Standard & Poor's rating agency indicated the possibility of a Westmoreland default, saying, "we estimate the company will likely breach its minimum fixed charge coverage

ratio covenant in the next year, which would cause a cross default with its term loan and senior notes,' according to S&P Global Market Intelligence on Nov. 17, 2017, and "gave Westmoreland a negative outlook, reflecting its view that the company could default or pursue a distressed exchange or other restructuring in the next 12 months."

16. Westmoreland Coal has experienced extensive business problems across several regions, including:
 - A. Contract terminations.
 - (1) Contract termination and closure of Jewett lignite mine in Texas.
In 2016, NRG terminated its minemouth coal contract with Westmoreland's Jewett Mine two years early; the mine closed at the end of 2016. The mine had served NRG's Limestone power plant; the plant switched to Powder River Basin coal from other companies.
 - (2) Contract termination at its Beulah lignite mine in North Dakota.
In May 2016, Westmoreland's Beulah lignite mine lost its contract serving the Coyote power plant. (NACCO got the contract), leaving the mine with only one customer (R.M. Heskett, a contract that expires in 2021), and the mine had an operating loss of \$700,000 for 2016 according to Westmoreland financial filings.
 - B. Declining customer base and diminishing coal sales at a number of mines, due in part to coal plant retirements.
 - (1) Westmoreland's Rosebud mine's only customer, the Colstrip power plant, has set retirement for units 1 and 2 in 2022, and it was announced in early December 2017 that a plan is in place to shut units 3 and 4 by 2027. The mine is in the Northern Powder River Basin. The company also said in recent financial filings that its renewed contracts for units 1 and 2 of the Colstrip plant have had a negative financial impact.
 - (2) The Absaloka mine is down to only one customer. In 2017, the mine, in the Northern Powder River Basin, had only one customer, the Sherburne County plant (Sherco) in Minnesota. Of the three units at this plant, one is scheduled to retire in 2023 (682 MW), and another in 2026 (680 MW).
 - (3) One previous Absaloka customer announced its probable retirement in 2018. On Nov. 15, 2017, The Hardin Generator Project, a 107 MW coal-fired plant in Big Horn county, Montana announced it would close in Q1 or Q2 2018. The merchant plant which started operating in 2006 had been an Absaloka mine customer for up to 550,000 tons of coal a year, but had not purchased any coal from Absaloka (or anywhere else) in 2017, citing competitive pressures.

- (4) Retirement of coal-fired units 2 and 3 at the San Juan power plant has sharply cut production and revenue for Westmoreland at the San Juan mine. The closure of the units took place in December. The plant is the mine's only customer.
- C. Write-downs, closures, and difficulty selling assets.
- (1) Closure of Roanoke Valley (ROVA) coal-fired power generating units. In March 2017, Westmoreland officially closed its money-losing, 230-MW Roanoke Valley (ROVA) coal units in Weldon, N.C. Opened in [1994-95](#), Westmoreland had written them off for \$133 million at the end of 2015; in the summer of 2017, the facility was sold for \$5 million.
 - (2) According to Westmoreland's third-quarter report filed with the Securities and Exchange Commission, for the period ended Sept. 30, 2017, the company has faced delays and difficulty selling its Coal Valley mine in Canada; it had been "anticipating either a sale or shutdown fo the mine in 2017." As a result, the company had to make a significant investment in maintenance and to extend the life of the mine. Westmoreland said "this resulted in lower yields, lower revenues and increased costs" in 2017. The company cites their "ability to consummate a sale of the Coal Valley facilities on reasonable terms or at all" as the first item in a list of possible events that "could cause results or performance to differ materially" from their forward-looking statements.
 - (3) Westmoreland's Genesee, Sheerness, Paintearth and Vesta coal mines in Alberta, Canada will be impacted by the province's Climate Leadership Plan, which will phase out coal-fired electricity generation by.
17. Westmoreland's CEO, Kevin Paprzycki, stepped down, effective immediately, on Nov 28, 2017. The company said an interim CEO was appointed while a search was being conducted for a permanent replacement. As of Jan. 23, no replacement had been announced.
 18. The recent sale of two Powder River Basin coal mines owned by Contura Energy, Belle Ayr and Eagle Butte, for up to \$50 million in deferred compensation and the elimination of reclamation obligations, appears to indicate that some Western coal mines may have very low market values.
 19. It is our conclusion that these issues warrant a public review of PNM ratepayer risk created by PNM's association with Westmoreland Coal.

David A. Schlissel,

upon being duly sworn, deposes and states: I have written and read this affidavit and it is true and correct to the best of my knowledge, information and belief.

Signed this 27 day of January, 2018.

David A. Schlissel
DAVID A. SCHLISSEL

January 27, 2018
DATE

Subscribed and sworn to before me by **David A. Schlissel** on this the 27th day of January, 2018.

Torry Khakali
Notary Public

My Commission Expires: 09/07/2023

