

FIRST JUDICIAL DISTRICT COURT  
COUNTY OF SANTA FE  
STATE OF NEW MEXICO

NEW MEXICO PUBLIC REGULATION COMMISSION;  
PUBLIC SERVICE COMPANY OF NEW MEXICO;  
WESTMORELAND COAL COMPANY; and  
BHP BILLITON NEW MEXICO COAL, INC.

Plaintiffs and Defendants on Counterclaim,

v.

No. D-101-CV-201501823

THE NEW MEXICAN, INC.,

Defendant and Counterclaimant,

JURY DEMANDED

v.

S. VINCENT MARTINEZ; PATRICK LOPEZ; KAREN L. MONTOYA;  
PATRICK H. LYONS; VALERIA ESPINOZA; LYNDA LOVEJOY;  
SANDY JONES; PRC PERSONS 1 THROUGH 5;  
PNM PERSONS 1 THROUGH 5;  
WESTMORELAND PERSONS 1 THROUGH 5; and  
BHP PERSONS 1 THROUGH 5,

Additional Defendants on Counterclaim.

**SECOND AMENDED ANSWER AND COUNTERCLAIM  
BY THE NEW MEXICAN, INC.**

1. For its answer to the complaints filed by the plaintiffs Public Regulation Commission (“PRC”), Public Service Company of New Mexico (“PNM”), Westmoreland Coal (“Westmoreland”), and BHP Billiton New Mexico Coal, Inc. (“BHP”), and for its counterclaim against each of the plaintiffs, The New Mexican, Inc. (“The New Mexican”) alleges and states:
2. The New Mexican is filing this Second Amended Answer and Counterclaim as a matter of course.

3. All of the allegations herein are part of The New Mexican's Answer, and also part of its Counterclaim. Depending on the context, the original plaintiffs are sometimes referred to as "defendants", meaning defendants on the counterclaim. The PRC defendants have settled with The New Mexican but remain as parties to this case.

4. PARTIES

5. The Public Regulation Commission is an agency or instrumentality of the State of New Mexico, acting under authority of state law and color of state law.

6. At relevant times S. Vincent Martinez was the chief of staff at the PRC. He participated in the wrongful acts against The New Mexican. He resigned or was discharged from the PRC on or about August 19.

7. Patrick Lopez is the director of the legal division of the PRC. He is an attorney. He participated in the wrongful acts against The New Mexican. See Exhibit 1, Emails from Lopez to Steve Terrill and to Benjamin Phillips.

8. Karen L Montoya, Patrick H. Lyons, Valeria Espinosa, Linda Lovejoy, and Sandy Jones are the PRC Commissioners. They participated in, ratified, or acquiesced in the wrongful acts against The New Mexican.

9. PRC persons 1 through 5 are additional persons at the PRC, not yet identified, who participated in the wrongful acts against The New Mexican.

10. The term "PRC defendants" refers to the Public Regulation Commission; Martinez; Lopez; Montoya; Lyons; Espinosa; Lovejoy; Jones; and PRC persons 1 through 5. The New Mexican and the PRC reached a settlement which was adopted by the Court on February 17, 2016. That settlement includes all of the PRC defendants.

11. The PRC defendants are sued in their official capacity for injunctive, declarative, and equitable relief, and in their individual capacities for damages.

12. Benjamin Phillips is Associate General Counsel at PNM. He is an attorney. He participated in the wrongful acts against The New Mexican. See Exhibit 1. Mr. Phillips is not named as a defendant on this counterclaim, but The New Mexican reserves the right to name him and others as defendants on the counterclaim, depending upon the results of discovery.

13. PNM persons 1 through 5 are additional persons at PNM, not yet identified, who participated in the wrongful acts against The New Mexican.

14. The term “PNM defendants” is used herein to refer to PNM; Phillips; and PNM persons 1 through 5.

15. Westmoreland persons 1 through 5 are additional persons at Westmoreland, not yet identified, who participated in the wrongful acts against The New Mexican.

16. The term “Westmoreland defendants” is used herein to refer to Westmoreland; and Westmoreland persons 1 through 5.

17. BHP persons 1 through 5 are additional persons at BHP, not yet identified, who participated in the wrongful acts against The New Mexican.

18. The term “BHP defendants” is used herein to refer to BHP; and BHP persons 1 through 5.

19. References to government entities like the PRC or corporate entities like PNM, Westmoreland, and BHP include the divisions, subsidiaries, staff, employees, and affiliates of those entities, and any persons acting as agents for those entities.

20. Defendant and Counterclaimant The New Mexican, Inc. (“The New Mexican”) is a New Mexico domestic corporation whose principal place of business is in Santa Fe, New Mexico. The New Mexican, Inc. publishes a daily newspaper known as *The Santa Fe New Mexican* or *The New Mexican*.

21. The New Mexican does not yet know the identity of all the persons or entities who acted against The New Mexican, so it reserves the right to add additional parties.

22. JURISDICTION

23. The court has jurisdiction over the parties and the matters raised in this case.

24. This court has concurrent jurisdiction over claims arising under the federal constitution and civil rights laws. The plaintiffs cannot remove this case to federal court, because removal must be based on the complaint, not a counterclaim.

25. Venue is proper in this court.

26. DENIALS AND ADMISSIONS

27. Pursuant to Rule 1-008(B), The New Mexican issues a general denial of all the averments and allegations made by the plaintiffs in their complaints, exhibits, motions and other filings with the court, except that The New Mexican admits and alleges the particular matters which it states in this Answer and Counterclaim.

### **COUNTERCLAIM**

28. GENERAL ALLEGATIONS

29. The New Mexican has certain documents which the plaintiffs asked the court to prohibit The New Mexican from publishing, and to order The New Mexican to return those documents and all copies thereof.

30. The PNM, Westmoreland, and BHP defendants conspired with and caused the PRC to violate The New Mexican's constitutional rights of free speech and freedom of the press. The PNM, Westmoreland, and BHP defendants used the PRC as their agent against The New Mexican, using the color of state law and PRC authority under state law as a weapon against The New Mexican. PNM, Westmoreland, and BHP acted as agents for the PRC. The actions by PNM, Westmoreland, and BHP are state actions because their actions were coerced or encouraged by the PRC. The PRC so far insinuated itself into a position of interdependence with PNM, Westmoreland, and BHP that they were all joint participants in the enterprise against The New Mexican. All four plaintiffs were "intertwined in a symbiotic relationship" to injure The New Mexican and infringe its constitutional rights. While the actions by PNM, Westmoreland, and BHP constitute "state action", those three defendants do not have any of the immunities which might apply to government officials or entities. *Dennis v. Sparks*, 449 U.S. 24 (1980).

31. All of the defendants also acted under color of state law by invoking the "judicial" or "quasi-judicial" powers of the PRC against The New Mexican.

32. All of the defendants also acted under color of state law by invoking the powers of the judicial branch against The New Mexican. The State of New Mexico has waived sovereign immunity by suing The New Mexican.

33. This lawsuit is part of a conspiracy and joint action by the PRC and PNM and Westmoreland and BHP to violate and chill the First Amendment rights of The New Mexican. It is also a conspiracy against the rights of citizens to petition the government for a redress of grievances, which citizens can only do if they have pertinent information. See

Exhibit 1 attached and incorporated herein. The following email in Exhibit 1 shows some of the origins of the joint action against The New Mexican:

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**From:** "Lopez, Patrick, PRC" <Patrick.Lopez@state.nm.us>  
**Date:** August 6, 2015 at 10:55:58 AM MDT  
**To:** "Phillips, Ben" <Ben.Phillips@pnmresources.com>  
**Cc:** "Martinez, Vincent, PRC" <VMartinez@state.nm.us>, "Smith, Michael C, PRC" <MichaelC.Smith@state.nm.us>  
**Subject:** FW: IPRA REQUESTS

Here is Steve's latest response. I believe PNM and PRC OGC should pursue some kind of injunctive relief, either together or separately. Please keep me in the loop and let me know if I can do anything.

**From:** Steve Terrell [mailto:sterrell@sfnewmexican.com]  
**Sent:** Thursday, August 6, 2015 10:48 AM  
**To:** Lopez, Patrick, PRC  
**Subject:** Re: IPRA REQUESTS

Hey Patrick

I won't be back at my office (where discs are) until later today.

You should know though, I copied both discs to my computer (and I'm not going to give you that!)

And before I give up anything, I'm going to have to talk to my editors.

Steve Terrell  
Santa Fe New Mexican  
202 Marcy St. Santa Fe NM St. Santa Fe NM 87501  
505-470-9823  
<http://www.santafenewmexican.com>  
My political blog: <http://tinyurl.com/terrellpoliticsblog>  
My music blog: <http://www.steveterrellmusic.com>

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34. The complaints, motions, and other papers filed by the plaintiffs sought to impose an unconstitutional prior restraint on The New Mexican.

35. The plaintiffs sought to prohibit The New Mexican from publishing information relating to the restructuring of public utilities, power plants, coal suppliers.

36. The PRC and the other plaintiffs asked the court to impose a blatantly unconstitutional prior restraint on the press, in violation of the free speech and petition clauses of the First Amendment, and the related provisions of the New Mexico Constitution. Any person seeking to obtain a court order preventing the press from publishing has a virtually insurmountable burden under the constitutions of the United States and of New Mexico. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 551-62 (1976). See also *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) – also known as the Pentagon Papers case.

37. At all times the law was well established that The New Mexican and other members of the press had an almost absolute First Amendment right against prior restraints. Prior restraints against the press are almost always unconstitutional, even when prior restraints are sought to protect other constitutional provisions, such as national defense, see the Pentagon Papers case, or the right to a fair trial, see *Nebraska Press Ass'n*.

38. The New Mexican is protected by an almost absolute constitutional immunity against prior restraints. The defendants knew this before they acted against The New Mexican, but they acted anyway.

39. The conduct of all the defendants violates clearly established statutory or constitutional rights which a reasonable person would have known.

40. Plaintiffs have no valid legal or factual basis for the relief which they seek against The New Mexican.

41. All of the defendants acted with willful or knowing disregard for The New Mexican's rights, and with deliberate indifference or reckless disregard for those rights.

42. On August 6, 2015, the PRC sent a threatening letter to Tom Cross, Publisher of The New Mexican; Ray Rivera, Editor; and Steve Terrell, political reporter and columnist. The letter demanded that The New Mexican not publish the information which it had, and demanded the return of all copies. Exhibit 2.

43. The information in question is inherently public, because the *Public Service Company* of New Mexico, a *public* utility, is asking the *Public Regulation Commission* to issue a certificate of *public* necessity and convenience. The public ultimately pays the costs or gains the benefits of the proposed transactions.

44. The threats and demands and other actions by defendants damaged The New Mexican's news reporting. These threats and demands chilled and impaired the newspaper's reporting – its core business – by forcing The New Mexican to deal with the demand letter and subsequent lawsuit, impeding the newspaper's examination and reporting of the actual information in the documents, and diverting time and resources which otherwise would have been spent generating revenue for The New Mexican.

45. The PRC does not have jurisdiction over The New Mexican.

46. The legislature has not authorized the PRC to regulate the press.

47. The PRC hearing examiner has no legal authority over The New Mexican. First, The New Mexican is not a party to Case No. 13-00390-UT. Second, the hearing examiner has no legal authority to issue "confidentiality" orders that would be binding on The New

Mexican. Third, the hearing examiner is not an Article VI judge, so he does not have the powers of the judicial branch.

48. The plaintiffs claimed that The New Mexican is prohibited from publishing by the order which the PRC hearing examiner issued on February 21, 2014. This claim was false. The hearing examiner never ruled that these documents are actually “confidential” or “trade secrets”.

This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential Material. This Order shall not be construed as a ruling on the confidentiality of any document or other information.

Hearing Examiner Order at 3, Exhibit A to PRC Petition.

49. In essence, the four plaintiffs claimed in their filings that the PRC hearing examiner issued an *ex parte* gag order against The New Mexican on February 21, 2014. If so, then the PRC issued an unconstitutional prior restraint against The New Mexican, without notice, without an opportunity to be heard, and without jurisdiction.

50. The complaints by the four plaintiffs violated the PRC’s own order of June 24, 2015, which supersedes any prior orders. On June 24, the PRC entered the following order:

D. Hearings pertaining to the acquisition of replacement resources for San Juan Units 2 & 3 shall be conducted in public. (See NMSA 1978, §62-1 0-5). The Commission also expects that all evidence pertaining to the acquisition of replacement resources and agreements will be presented in the public record. (See NMSA 1978, §62-6-1 7(C)).

51. The PRC did not properly authorize the lawsuit against The New Mexican. The PRC is a collective public body, so it can act only by a majority vote of a quorum of the commissioners, NMSA 1978, § 8-8-4(D), and in compliance with the Open Meetings Act, NMSA 1978, §§ 10-15-1 *et seq.* Upon information and belief, a majority of the PRC did not

vote in a proper open meeting to file this lawsuit. The four plaintiffs acted in concert to violate § 8-8-4(D) and the Open Meetings Act. *See New Mexico State Investment Council v. Weinstein*, Nos. 33,878; 34,042; 34,077, slip op. ¶¶ 71-74 (N.M. Ct. App. Apr. 28, 2016).

52. If the PRC had complied with the Open Meetings Act by holding an open meeting with proper notice, a proper agenda, and a proper quorum, it is probable that someone – a commissioner, a member of staff, or a member of the audience – would have pointed out that the planned lawsuits clearly violated the constitution.

53. None of the exhibits filed by the four plaintiffs are admissible in this case as evidence against The New Mexican. *Inter alia*,

A. The affidavits and contracts are inadmissible hearsay under Rule 11-801(C), because they are out of court statements by the PRC or other plaintiffs, offered to prove the truth of the matters asserted. PNM, PRC, Westmoreland, and BHP are engaged in quoting themselves, as if that were admissible evidence.

B. The affidavits are speculative and not based on personal knowledge as required by Rule 11-602.

C. Many parts of the exhibits and affidavits have anonymous unidentified authors.

D. The affidavits were submitted in a different proceeding, an administrative proceeding, not a judicial proceeding under Article VI of the New Mexico Constitution, so they are not admissible against The New Mexican. Without these protections, the PRC and PNM could try The New Mexican *in absentia*, in their own cozy forum.

54. PNM falsely stated in its court filings that PNM is not a party to the stock purchase agreement between BHP and Westmoreland. See “AFFIDAVIT OF CHRIS M. OLSEN IN SUPPORT OF APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO FOR PRELIMINARY INJUNCTIONS PROHIBITING PUBLIC DISCLOSURE OF CONFIDENTIAL AND TRADE SECRET MATERIALS.” Exhibit B to PNM’s application for preliminary injunction. Mr. Olsen identifies himself as “Vice President, Generation” for PNM. In paragraph 8 of his affidavit, Mr. Olsen makes the following statement under oath:

PNM is not a party to the Stock Purchase Agreement and only has the agreement pursuant to confidentiality agreements with the signatory parties.

Both parts of this statement are untrue.

55. PNM actually is a party to the stock purchase agreement, and PNM played an essential role in setting the terms of the stock purchase agreement. See Confidential PNM Exhibit CMO-7, the final Stock Purchase Agreement between BHP and Westmoreland, dated as of July 1, 2015. This is one of the documents “inadvertently” released to The New Mexican. This document consists of 321 pdf pages, including the cover sheet with “confidential” warnings. On pdf page 58, section 9.14 states as follows:

**9.14 Intended Third Party Beneficiary.** PNM is an express, intended third-party beneficiary of Sections 2.2, 2.3, 5.4, 5.6, 5.7, 5.19, 8.1, 8.2, 9.2, 9.3, 9.5, 9.7, 9.11, and 9.14, and as it relates to enforcement of any of the foregoing sections, Section 9.17 of this Agreement. As to the Purchaser, PNM shall have all rights and remedies available at law or in equity with regard to the sections of this Agreement set forth in the preceding sentence. As to Seller, PNM shall have only the right to request and obtain specific performance with regard to those sections of this Agreement set forth in the first sentence of this Section 9.14, in accordance with Section 9.17 (and no other rights or

remedies at law or in equity). PNM and the Parties shall request AAA to appoint a single arbitrator to preside over any arbitration commenced by PNM. Subject to Section 9.18, except as otherwise provided in this Section 9.14: (a) nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person or corporation, other than the Parties and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement; (b) nothing in this Agreement, whether express or implied, shall be construed to give to any Person or entity other than the Parties any legal or equitable right, remedy, interest, or claim under, pursuant to, or in respect of this Agreement; and (c) a Person or entity who is not a Party to this Agreement shall have no right to bring any claim or cause of action to enforce any term or condition of this Agreement, or to pursue any redress or recourse against any of the Parties to this Agreement in connection with, pursuant to, or in respect of this Agreement.

56. In short, although PNM did not sign the contract, PNM was a party to the contract, that is, “an express, intended third-party beneficiary” who has enforceable rights under the contract. Under the Restatement (Second) of Contracts, PNM is an “intended beneficiary” under § 302 (1), with the right of specific performance under § 307.

57. PNM had a hand in drafting and placing section 9.14 into the contract. PNM participated in the process that determined the contents of the stock purchase agreement. PNM’s agreement to the stock purchase agreement was an essential element of the restructuring.

58. To conceal these facts from the public, and the court, and The New Mexican, PNM, BHP, and Westmoreland designated the stock purchase agreement as “confidential”. If The New Mexican had not received and looked at this “secret” document, this deception might have succeeded.

59. In furtherance of this deception, PNM, BHP, and Westmoreland conspired with the PRC to seek an unconstitutional prior restraint against The New Mexican, in violation of 42 U.S.C. § 1983 and § 1985.

60. PNM's misleading claim that it was not a party to the stock purchase agreement was part of an attempt by PNM, BHP, and Westmoreland and their lawyers to reduce or evade regulation by the PRC.

61. The documents are not trade secrets. The information in the documents does not meet the statutory definition of trade secret in NMSA 1978, § 57-3A-2(D). For example, salaries are not trade secrets. *Campbell v. Marion Cnty. Hosp.*, 580 S.E.2d 163, 169 (S.C. Ct. App. 2003); *Iowa Film Prod. Serv. v. Iowa Dep't of Econ. Dev.*, 818 N.W.2d 207 (Iowa 2012); *Swoboda v. Clear Channel Commc'ns*, No. L-02-1149, 2003 WL 22739622, ¶ 17 (Ohio Ct. App. Nov. 14, 2003).

62. The four plaintiffs keep using shifting terms to describe the documents, like "confidential"; "business sensitive"; "competitively sensitive"; "Some of these documents contain confidential, proprietary or commercially sensitive information . . . ." These amorphous adjectives have no clearly defined meaning in the law. And the plaintiffs keep mixing their adjectives. And they use the disjunctive "or", so that one cannot tell whether the information is "proprietary" or "confidential", or what.

63. The four plaintiffs assert that the documents are confidential because they say so. In the law, this is called *ipse dixit* reasoning. *Ipse dixit* is Latin, meaning "he himself said it". In English, it's called bootstrap reasoning. The law recognizes that *ipse dixit* reasoning is fallacious, for any number of reasons. For one thing, *ipse dixit* is circular. Also, *ipse dixit*

reasoning is a form of self-quotation, which violates the hearsay rule. And *ipse dixit* is often a cover for a lack of personal knowledge.

64. The plaintiffs use a common form of *ipse dixit* reasoning in their affidavits and briefs, when they state a bald legal conclusion, without support. In this case, the four plaintiffs repeatedly assert that the documents are “trade secrets”, without presenting any specific facts. “Affidavits consisting only of conclusions are insufficient to raise an issue of fact.” *Dailey v. Albertson’s, Inc.*, 83 S.W.3d 222, (Tex. App. 2002) (quoting *Brownlee v. Brownlee*, 665 S.W.2d 111, 112 (Tex. 1984)). See also *Iowa Film Prod. Serv. v. Iowa Dep’t of Econ. Dev.*, 818 N.W.2d 207, 222 (Iowa 2012) (“While affidavits and testimony by . . . provide opinions concerning the deleterious effects disclosure will have on . . ., such evidence is self-serving and does not contain hard facts.”).

65. The interlocking agreements on coal supply and restructuring and stock purchases cannot be secret, because PNM customers will directly or indirectly pay the costs of those contracts, or receive the benefits of those contracts. These contracts are inherently public.

66. Government mistakes and leaks do not create a right to muzzle the press. The inadvertent disclosure of documents does not create a right to impose restrictions on the press, or to recover the documents.

67. The documents are public records under New Mexico’s Inspection of Public Records Act, NMSA 1978, § 14-2-1 *et seq.* (“IPRA”). They are “public records” as defined in § 14-2-

6(G):

“public records” means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any

public body and relate to public business, whether or not the records are required by law to be created or maintained.

68. The documents do not come within any recognized exception to IPRA. In *Republican Party of New Mexico v. New Mexico Taxation & Revenue Dep't (Republican Party II)*, 2012-NMSC-26, ¶ 42, 283 P.3d 853, the Supreme Court held that courts should restrict their analysis to whether disclosure under IPRA may be withheld because of a specific exception contained within IPRA, or statutory or regulatory exceptions, or privileges adopted by the Supreme Court. The Court ruled that there is no “rule of reason” exception to IPRA. In *Edenburn v. New Mexico Dep't of Health*, 2013-NMCA-045, 299 P.3d 424, the Court of Appeals held that: (1) there was no deliberative-process privilege under New Mexico law that could prevent DOH from disclosing requested email string; (2) DOH could not assert communications privilege with respect to requested email string; (3) designation of draft documents as “non-records” under regulations promulgated pursuant to Public Records Act (PRA) had no impact on status of draft documents as public records under the IPRA; and (4) new rule announced in *Republican Party II*, overruling cases that applied the “rule of reason” as justification for withholding records requested under IPRA and limiting exemptions under IPRA, applied retroactively to render DOH liable for withholding requested draft letter.

69. The PRC is not entitled to deference and a presumption that it has acted properly. Under IPRA, there is no such presumption. In *San Juan Agricultural Water Users Ass'n v. KNME*, 2011-NMSC-011, ¶ 33, 150 N.M. 64, Justice Daniels and a unanimous court rejected any such contention:

Defendants [state agencies] argue that such hypothetical situations are speculative and improperly assume that public entities will act in bad faith. While we hope that all public servants will act in good faith in complying with their statutory obligations under IPRA, “New Mexico’s policy of open government is intended to protect the public from having to rely solely on the representations of public officials that they have acted appropriately.” *City of Farmington v. The Daily Times*, 2009-NMCA-057, ¶ 17, 146 N.M. 349, 210 P.3d 246. The very fact that IPRA provides a remedy for wrongful withholding of public documents reflects a legislative expectation that there will be occasions when public officials will fail to follow the law.

70. The plaintiffs waived any claim of confidentiality by voluntarily disclosing significant parts of the supposedly confidential documents. See Rule 11-511:

A person who possesses a privilege against disclosure of a confidential matter or communication waives the privilege if the person voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This rule does not apply if the disclosure is a privileged communication.

71. Each of the four plaintiffs initiated judicial proceedings against The New Mexican; using improper means and misrepresentations as set forth herein; for the primary purposes of (a) deceiving The New Mexican and the public about the restructuring, and (b) chilling The New Mexican’s scrutiny and reporting; misusing the judicial process to accomplish these illegitimate ends; and damaging The New Mexican in the process.

72. Each of the four plaintiffs filed a complaint and motions against The New Mexican without probable cause.

73. Each plaintiff filed a complaint and motions with irregularities and misrepresentations and improprieties that suggest extortion, delay, or harassment.

74. After The New Mexican filed its Answer and Counterclaim on August 12, 2015, the defendants tried to voluntarily dismiss their complaints without prejudice, even though they

have no right to do so under Rule 1-041(A). This is a maneuver by defendants to leave The New Mexican exposed to another lawsuit by one or more of the defendants. This tactic creates a threat that hangs over The New Mexican and damages its ability to cover the news.

75. On August 17, 2015, PNM continued the defendants' conspiracy by filing a "MOTION FOR ENTRY OF PROTECTIVE ORDER" with the PRC. Exhibit 3. This motion seeks to impose invalid "confidentiality" requirements on materials which PNM intends to submit in its rate case. PNM did not notify the court or The New Mexican about this filing, even though it uses the same tactics which the defendants used earlier in this litigation. The court should issue permanent declaratory and injunctive relief against these tactics, which are intended to chill press coverage of the PRC hearings by The New Mexican.

76. The PNM, BHP, and Westmoreland defendants engaged in unfair or deceptive practices in the conduct of their trade or commerce, injuring The New Mexican in its trade or commerce, which is reporting the news as accurately and completely as possible. For example, these defendants deceived The New Mexican about PNM's status as a party to the stock purchase agreement. These defendants also engaged in unfair or deceptive practices by claiming trade secrets and IPRA exemptions where none existed, and by filing suit against The New Mexican.

77. All of the allegations and exhibits in this answer and counterclaim are realleged and incorporated in each of the following claims, as though fully set forth therein.

#### COUNT I

##### THE DEFENDANTS COMMITTED MALICIOUS ABUSE OF PROCESS.

78. The defendants committed malicious abuse of process against The New Mexican.

COUNT II

THE DEFENDANTS VIOLATED THE FIRST AND FOURTEENTH  
AMENDMENT RIGHTS OF THE NEW MEXICAN.

79. The PRC and the other defendants jointly participated in violating The New Mexican's constitutional rights under the First Amendment, which the Fourteenth Amendment makes applicable to the states. The PRC did so in conspiracy with the other defendants, and at their request. The defendants acted in retaliation against The New Mexican for exercising its First and Fourteenth Amendment rights

COUNT III

THE DEFENDANTS VIOLATED THE NEW MEXICAN'S  
DUE PROCESS RIGHTS.

80. The defendants violated the substantive and procedural due process rights of The New Mexican. They did so as part of a conspiracy and joint action against The New Mexican.

COUNT IV

THE DEFENDANTS VIOLATED 42 U.S.C. § 1983.

81. The defendants violated 42 U.S.C. § 1983. Under color of the statutes, regulations, customs and usages of the State of New Mexico, the defendants subjected The New Mexican to the deprivation of rights, privileges, or immunities secured by the Constitution and laws, including the privileges and immunities which the First and Fourteenth Amendments accord the press.

COUNT V

THE DEFENDANTS PARTICIPATED IN A CONSPIRACY  
IN VIOLATION OF 42 U.S.C. § 1985(3).

82. The PNM and Westmoreland and BHP defendants conspired with the PRC defendants to interfere with and deprive The New Mexican of its civil and constitutional rights, in violation of 42 U.S.C. 1985(3). The defendants acted with animus towards a constitutionally protected class: the press. The New Mexican is a member of that protected class. The press was initially protected by the First Amendment in 1793, and years later by the Fourteenth Amendment, which made the First Amendment applicable to the states. One of the reasons for the plaintiffs' animus toward the press is that the press sometimes publishes information which the plaintiffs don't like. The press creates enmity whenever it exposes wrongdoing, or causes embarrassment, humiliation, loss of face, or public ridicule. As the journalist H. L. Mencken is reputed to have said, "News is what somebody doesn't want to see in print. Everything else is just unpaid advertising."

COUNT VI

THE DEFENDANTS VIOLATED THE NEW MEXICO CONSTITUTION.

83. The defendants violated the Constitution of the State of New Mexico, including the Bill of Rights, article II, section 2 [popular sovereignty], section 3 [right of self-government], section 4 [inherent rights], section 17 [freedom of speech and press], section 18 [due process and equal protection], section 23 [reserved rights]; article III, section 1 [separation of powers]; article XI, section 1 [public regulation commission is a collective body of five members]; section 2 [public regulation commission does not regulate the press].

COUNT VII

THE DEFENDANTS ENGAGED IN A CONSPIRACY  
UNDER NEW MEXICO LAW.

84. The PNM and Westmoreland and BHP defendants conspired, combined, and acted in concert with the PRC defendants to interfere with and deprive The New Mexican of its civil and constitutional rights; to interfere with the core business of The New Mexican in reporting the news; to violate the state common law and statutes; and to commit wrongful and tortious acts against The New Mexican, including the wrongful acts enumerated in this count.

COUNT VIII

THE DEFENDANTS VIOLATED THE INSPECTION OF PUBLIC RECORDS ACT.

85. The defendants violated the Inspection of Public Records Act. As part of their conspiracy, the PNM and Westmoreland and BHP defendants caused the PRC defendants to violate IPRA.

COUNT IX

THE DEFENDANTS VIOLATED THE OPEN MEETINGS ACT.

86. As part of their conspiracy, the PNM and Westmoreland and BHP defendants caused the PRC defendants to violate the Open Meetings Act. The PRC filed a lawsuit against The New Mexican without complying with the Act.

COUNT X

THE DEFENDANTS VIOLATED THE LAW REQUIRING THE PRC  
TO ACT WITH A QUORUM AND A MAJORITY VOTE.

87. As part of their conspiracy, the PNM and Westmoreland and BHP defendants caused the PRC defendants to violate the quorum requirement and the majority vote requirement of the commission.

COUNT XI

THE DEFENDANTS VIOLATED THE TRADE SECRETS ACT.

88. The defendants violated the New Mexico Trade Secrets Act by claiming misappropriation in bad faith. See NMSA 1978, § 57-3A-5.

COUNT XII

DEFENDANTS VIOLATED THE UNFAIR PRACTICES ACT.

89. [Note: This count has been dismissed by the Court, but it is set forth here for clarity and for appellate review if necessary.] The PNM and BHP and Westmoreland defendants have engaged in unfair or deceptive trade practices against The New Mexican, in violation of NMSA 1978, § 57-12-3 of the Unfair Practices Act. The court should issue an injunction against defendants, along with the other remedies set forth in § 57-12-10.

COUNT XIII

THE DEFENDANTS COMMITTED PRIMA FACIE TORTS.

90. Each of the defendants committed prima facie torts against The New Mexican.

PRAYER FOR RELIEF

WHEREFORE, The New Mexican prays:

- A. That the complaints of the plaintiffs be dismissed with prejudice, and that plaintiffs take nothing by them;
- B. That The New Mexican be awarded actual and compensatory damages in amounts to be determined by a jury, if one is requested, or by the court;
- C. That The New Mexican be awarded punitive damages in amounts to be determined by a jury, if one is requested, or by the court;
- D. That The New Mexican be awarded declaratory relief, that the defendants violated the laws cited herein;
- E. That The New Mexican be granted a temporary restraining order and a preliminary injunction and a permanent injunction against the defendants;
- F. That The New Mexican be awarded attorneys fees, costs, and expenses, as provided in IPRA; the Open Meetings Act; the Trade Secrets Act; the Unfair Practices Act; 42 U.S.C. §§ 1983, 1985, and 1988; or other applicable law; and
- G. That The New Mexican be awarded such other and further relief as may be appropriate.

Respectfully submitted,

VICTOR R. MARSHALL & ASSOCIATES, P.C.

By /s/ Victor R. Marshall

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I hereby certify that a true and correct copy of the foregoing was efiled and served via Odyssey File and Serve to all counsel of record on July 27, 2016.

/s/ Victor R. Marshall  
Victor R. Marshall

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**NEW MEXICO PUBLIC REGULATION  
COMMISSION,**

**Petitioner/Counterdefendant,**

vs.

**Case No. D-101-CV-2015-01823**

**THE NEW MEXICAN, INC.,**

**Respondent/Counterclaimant.**

vs.

**S. VINCENT MARTINEZ, et al.,**

**Counterdefendants.**

**PNM'S ANSWER TO SECOND AMENDED ANSWER AND  
COUNTERCLAIM BY THE NEW MEXICAN, INC.**

Public Service Company of New Mexico (“PNM”) through its attorneys of record Miller Stratvert P.A. (Rick Alvidrez and Dylan O’Reilly), and for its Answer to The New Mexican, Inc.’s Second Amended Answer and Counterclaim (“Counterclaim”), states as follows.;

**First DEFENSE**

Paragraphs 1 through 27 of the Counterclaim appear to be The New Mexican’s answer, to which no response from PNM is required; however to the extent any of those paragraphs are incorporated into The New Mexican’s Counterclaim, they are answered as follows:

1. Paragraph 1 does not contain allegations which require a response; to the extent that paragraph 1 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

2. PNM denies the allegations contained in paragraph 2 of the Counterclaim.

3. Paragraph 3 does not contain allegations which require a response; to the extent that paragraph 1 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

4. PARTIES. (Counterclaimant's heading is inserted here to maintain numbering.).

5. PNM admits the allegations of paragraph 5 of the Counterclaim.

6. PNM admits that Mr. Martinez was formerly chief of staff o the Public Regulation Commission ("PRC"), but PNM is without sufficient knowledge or information with which either to admit or to deny the remaining allegations of paragraph 6 of the Counterclaim, and therefore denies them.

7. PNM admits that Mr. Lopez was formerly an attorney with the PRC Utility Division Staff, but PNM is without sufficient knowledge or information with which either to admit or to deny the remaining allegations of paragraph 7 of the Counterclaim, and therefore denies them.

8. PNM admits that Ms. Montoya, Mr. Lyons, Ms. Espinosa, Ms. Lovejoy and Mr. Jones are PRC Commissioners, but PNM is without sufficient knowledge or information with which either to admit or to deny the remaining allegations of paragraph 8 of the Counterclaim, and therefore denies them.

9. PNM is without sufficient knowledge or information with which either to admit or to deny the allegations of paragraph 9 of the Counterclaim, and therefore denies them.

10. PNM is without sufficient knowledge or information with which either to admit or to deny the allegations of paragraph 10 of the Counterclaim, and therefore denies them.

11. PNM denies the allegations of paragraph 11 of the Counterclaim.

12. As for the allegations contained in paragraph 12 of the Counterclaim, PNM admits that Benjamin Phillips is an Associate General Counsel for PNM, and that he is an attorney; PNM denies that Mr. Phillips participated in any wrongful acts against The New Mexican; the remaining allegations in paragraph 12 of the Counterclaim are denied.

13. PNM denies the allegations of paragraph 13 of the Counterclaim.

14. Paragraph 14 of the Counterclaim does not contain allegations of fact which require a response; to the extent that paragraph 14 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

15. PNM denies the allegations of paragraph 15 of the Counterclaim.

16. Paragraph 16 of the Counterclaim does not contain allegations of fact which require a response; to the extent that paragraph 16 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

17. PNM denies the allegations of paragraph 17 of the Counterclaim.

18. Paragraph 18 of the Counterclaim does not contain allegations of fact which require a response; to the extent that paragraph 18 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

19. Paragraph 19 of the Counterclaim does not contain allegations of fact which require a response; to the extent that paragraph 19 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

20. PNM admits the allegations of paragraph 20 of the Counterclaim.

21. PNM is without sufficient knowledge or information with which either to admit or to deny the allegations of paragraph 21 of the Counterclaim, and therefore denies them.

22. JURISDICTION.

23. PNM denies the allegations of paragraph 23 of the Counterclaim.

24. Paragraph 24 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 24 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

25. Paragraph 25 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 25 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

26. DENIALS AND ADMISSIONS

27. Paragraph 27 of the Counterclaim does not appear to contain allegations of fact against PNM; to the extent it contains any allegations against PNM, they are denied. PNM states that The New Mexican's general denial appears to be in violation of Rules 1-008(B) and – (D), 1-010(B), and its counsel's obligations under Rule 1-011(A) NMRA, as it is impossible to ascertain which of the specifically-pleaded allegations against The New Mexican have been admitted or denied.

28. GENERAL ALLEGATIONS

29. In response to the allegations on paragraph 29 of the Counterclaim, PNM states that The New Mexican has certain documents that were inadvertently provided by the PRC, that PNM had provided those documents to the PRC on a confidential basis pursuant to a protective order in a matter then pending before the PRC, and that the PRC timely sought to recover those documents from The New Mexican so that it would comply with its own protective order; the remaining allegations contained in paragraph 29 are denied.

30. PNM denies the allegations of paragraph 30 of the Counterclaim.

31. PNM denies the allegations of paragraph 31 of the Counterclaim.

32. PNM denies the allegations of paragraph 32 of the Counterclaim.

33. PNM denies the allegations of paragraph 33 of the Counterclaim.

34. PNM denies the allegations of paragraph 34 of the Counterclaim.

35. PNM denies the allegations of paragraph 35 of the Counterclaim.

36. PNM denies the allegations of paragraph 36 of the Counterclaim.

37. With regard to the allegations contained in paragraph 37 of the Counterclaim, PNM admits that The New Mexican's First Amendment rights are not absolute; PNM denies the remaining allegations contained in paragraph 37 of the Counterclaim.

38. With regard to the allegations contained in paragraph 38 of the Counterclaim, PNM admits that The New Mexican's right against prior restraint is not absolute; PNM denies the remaining allegations contained in paragraph 38 of the Counterclaim.

39. PNM denies the allegations of paragraph 39 of the Counterclaim.

40. PNM denies the allegations of paragraph 40 of the Counterclaim.

41. PNM denies the allegations of paragraph 41 of the Counterclaim.

42. With regard to the allegations contained in paragraph 42 of the Counterclaim, PNM admits that a letter was sent from the PRC to The New Mexican on or about August 6, 2015, and that the letter sought to recover documents wrongfully-disclosed to The New Mexican; PNM denies all other allegations of paragraph 42 of the Counterclaim.

43. PNM denies the allegations of paragraph 43 of the Counterclaim.

44. PNM denies the allegations of paragraph 44 of the Counterclaim.

45. Paragraph 45 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 45 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

46. Paragraph 46 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 46 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

47. Paragraph 47 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 47 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

48. PNM denies the allegations of paragraph 48 of the Counterclaim.

49. PNM denies the allegations of paragraph 49 of the Counterclaim.

50. PNM denies the allegations of paragraph 50 of the Counterclaim.

51. Paragraph 51 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 51 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

52. PNM denies the allegations of paragraph 52 of the Counterclaim.

53. PNM denies the allegations of paragraph 53 (and its subparts) of the Counterclaim.

54. PNM denies the allegations of paragraph 54 of the Counterclaim.

55. PNM denies the allegations of paragraph 55 of the Counterclaim.

56. PNM denies the allegations of paragraph 56 of the Counterclaim.

57. PNM denies the allegations of paragraph 57 of the Counterclaim.

58. PNM denies the allegations of paragraph 58 of the Counterclaim.

59. PNM denies the allegations of paragraph 59 of the Counterclaim.

60. PNM denies the allegations of paragraph 60 of the Counterclaim.

61. PNM denies the allegations of paragraph 61 of the Counterclaim.

62. PNM denies the allegations of paragraph 62 of the Counterclaim.

63. PNM denies the allegations of paragraph 63 of the Counterclaim.

64. PNM denies the allegations of paragraph 64 of the Counterclaim.

65. PNM denies the allegations of paragraph 65 of the Counterclaim.

66. Paragraph 66 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 66 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

67. Paragraph 67 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 67 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

68. Paragraph 68 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 68 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

69. Paragraph 69 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 69 of the Counterclaim contains any allegations of fact directed toward PNM, all such allegations are hereby denied.

70. PNM denies the allegations of paragraph 70 of the Counterclaim.

71. PNM denies the allegations of paragraph 71 of the Counterclaim.

72. PNM denies the allegations of paragraph 72 of the Counterclaim.

73. PNM denies the allegations of paragraph 73 of the Counterclaim.

74. PNM denies the allegations of paragraph 74 of the Counterclaim.

75. PNM denies the allegations of paragraph 75 of the Counterclaim.

76. PNM denies the allegations of paragraph 76 of the Counterclaim.

77. In response to the allegations in paragraph 77 of the Counterclaim, which realleges and incorporates all allegations in The New Mexican's Answer and Counterclaim into the following counts, PNM incorporates its responses accordingly.

**COUNT I**

78. PNM denies the allegations of paragraph 78 of the Counterclaim.

**COUNT II**

79. PNM denies the allegations of paragraph 79 of the Counterclaim.

**COUNT III**

80. PNM denies the allegations of paragraph 80 of the Counterclaim.

**COUNT IV**

81. PNM denies the allegations of paragraph 81 of the Counterclaim.

**COUNT V**

82. PNM denies the allegations of paragraph 82 of the Counterclaim.

**COUNT VI**

83. PNM denies the allegations of paragraph 83 of the Counterclaim.

**COUNT VII**

84. PNM denies the allegations of paragraph 84 of the Counterclaim.

**COUNT VIII**

85. PNM denies the allegations of paragraph 85 of the Counterclaim.

**COUNT IX**

86. PNM denies the allegations of paragraph 86 of the Counterclaim.

**COUNT X**

87. PNM denies the allegations of paragraph 87 of the Counterclaim.

**COUNT XI**

88. PNM denies the allegations of paragraph 88 of the Counterclaim.

**COUNT XII**

89. To the extent that the allegations in paragraph 89 have not already been dismissed by the Court they are denied by PNM.

**COUNT XIII**

90. PNM denies the allegations of paragraph 90 of the Counterclaim.

**Second DEFENSE**

This Court lacks personal jurisdiction over this Defendant, and therefore, this action must be dismissed.

**Third DEFENSE**

PNM was not properly served, and therefore, PNM is not properly before this Court, and the action against it should be dismissed.

**Fourth DEFENSE**

The New Mexican's Counterclaim, even if all the facts alleged therein are true, fails to state a claim upon which relief can be granted, and therefore, the action should be dismissed.

**Fifth DEFENSE**

The New Mexican's lawsuit was not filed in good faith as to PNM and so the Court should exercise its discretion and award PNM its attorney's fees and costs.

**Sixth DEFENSE**

The New Mexican lacks standing.

**Seventh DEFENSE**

The New Mexican's claims are barred in whole or in part under the doctrines of estoppel, waiver, and laches.

**Eighth DEFENSE**

The New Mexican's claims are barred or limited in whole or in part because of payment.

**Ninth DEFENSE**

The New Mexican's claims are barred or limited in whole or in part because of release.

**Tenth DEFENSE**

The New Mexican's rights and claims are barred in whole or in part under the doctrine of unclean hands.

**Eleventh DEFENSE**

The New Mexican's claim for punitive damages is barred by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America, as well as Article II, Sections 4, 12, 13, 17, 18 and 19, Article III, Section 1, and Article IV, Section 1, of the Constitution of the State of New Mexico. In this case a demand for punitive damages is not justified, and an award of punitive damages would constitute a denial of equal protection, a denial of due process and/or the imposition of excessive fines.

**Twelfth DEFENSE**

The New Mexican's rights and claims are barred because of the unconscionable conduct of The New Mexican.

**Thirteenth DEFENSE**

PNM is or may be entitled to absolute immunity from The New Mexican's rights and claims in this case, and those claims are therefore barred against PNM.

**Fourteenth DEFENSE**

PNM is or may be entitled to qualified immunity from The New Mexican's rights and claims in this case, and those claims are therefore barred against PNM.

**Fifteenth DEFENSE**

PNM is or may be entitled to sovereign immunity from The New Mexican's rights and claims in this case, and those claims are therefore barred against PNM.

**Sixteenth DEFENSE**

The New Mexican's claims under the Unfair Practices Act are barred pursuant to exemption by regulatory action or transaction, as set forth in NMSA 1978, § 57-12-7 (1999), and the Court's ruling.

**Seventeenth DEFENSE**

The claim alleged by The New Mexican was proximately caused by the wrongful conduct of third parties for whom PNM is not responsible or in control of, or as a result of such conduct in conjunction with the wrongful conduct of The New Mexican.

**Eighteenth DEFENSE**

To the extent the New Mexican has suffered any injury or damages, which is denied, its claims should be reduced or barred to the extent that it failed to mitigate those damages.

**Nineteenth DEFENSE**

The New Mexican's claims are barred by the doctrine of unjust enrichment.

**Twentieth DEFENSE**

The New Mexican's claims are barred as moot.

WHEREFORE, Defendant Public Service Company of New Mexico denies that The New Mexican is entitled to judgment against it for any amount of money or other relief and further prays that The New Mexican's Counterclaim be dismissed with prejudice, that the Court award PNM its cost and attorneys fees, the affirmative relief sought by PNM in other pleadings on file with the Court, and such other further relief as the Court deems just and proper.

Respectfully submitted,

MILLER STRATVERT P.A.

By: /s/ Dylan O'Reilly

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*Attorneys for PNM*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served via the court's electronic file-and-serve system on all counsel of record on this 15th day of August, 2016.

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*/s/ Dylan O'Reilly*

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3016264

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

NEW MEXICO PUBLIC REGULATION COMMISSION;  
PUBLIC SERVICE COMPANY OF NEW MEXICO;  
WESTMORELAND COAL COMPANY; and  
BHP BILLITON NEW MEXICO COAL, INC.

Plaintiffs and Defendants on Counterclaim,

v.

No. D-101-CV-201501823

THE NEW MEXICAN, INC.,

Defendant and Counterclaimant,

v.

S. VINCENT MARTINEZ; PATRICK LOPEZ; KAREN L. MONTOYA;  
PATRICK H. LYONS; VALERIE ESPINOZA; LYNDIA LOVEJOY;  
SANDY JONES; PRC PERSONS 1 THROUGH 5;  
WESTMORELAND PERSONS 1 THROUGH 5; and  
BHP PERSONS 1 THROUGH 5,

Additional Defendants on Counterclaim.

**BHP'S ANSWER TO SECOND AMENDED ANSWER AND  
COUNTERCLAIM BY THE NEW MEXICAN, INC.**

BHP Billiton New Mexico Coal, Inc. ("BHP") through its attorneys of record Modrall  
Sperling Roehl Harris & Sisk, P.A. (Paul M. Fish and George R. McFall), and for its Answer to The  
New Mexican, Inc.'s Second Amended Answer and Counterclaim ("Counterclaim"), states as follows.;

**FIRST DEFENSE**

The New Mexican has violated Rules 1-008(B) and (D) and 1-010(B) because it has failed to  
properly respond to the allegations of what it purports to be filed complaints. To the extent those  
complaints are still extant, judgment against The New Mexican should be entered by reason of  
the failure of The New Mexican to effectively controvert the assertions. The individual

statements are inadequate but are responded to here to the extent they are intended to be a part of the affirmative claim of The New Mexican against BHP.

1. Paragraph 1 does not contain allegations which require a response. To the extent that paragraph 1 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

2. BHP denies the allegations contained in paragraph 2.

3. Contrary to the requirements of Rule 1-008(B) cited by paragraph 27, the paragraph is an inadequate response to any allegations existing against The New Mexican, so The New Mexican has waived any objections to those allegations. Paragraph 3 does not contain allegations which require a response. To the extent that paragraph 3 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

4. PARTIES. (BHP will incorporate the headings used by The New Mexican for the convenience of the reader. To the extent they are intended to be assertions of fact, they are all denied.)

5. BHP admits the allegations of paragraph 5.

6. BHP admits that Mr. Martinez was formerly chief of staff of the Public Regulation Commission ("PRC"), but BHP is without sufficient knowledge or information to admit or to deny the remaining allegations of paragraph 6, and therefore denies them.

7. BHP admits that Mr. Lopez was formerly an attorney with the PRC Utility Division but BHP is without sufficient knowledge or information to admit or to deny the remaining allegations of paragraph 7, and therefore denies them. BHP further denies that any Exhibit 1 is attached to the pleading here responded to.

8. BHP admits that the named individuals are PRC Commissioners, but BHP is without sufficient knowledge or information either to admit or to deny the remaining allegations of paragraph 8, and therefore denies them.

9. BHP is without sufficient knowledge or information either to admit or to deny the allegations of paragraph 9, and therefore denies them.

10. BHP is without sufficient knowledge or information either to admit or to deny the allegations of paragraph 10, and therefore denies them.

11. BHP denies the allegations of paragraph 11.

12. As for the allegations contained in paragraph 12, BHP is without sufficient knowledge or information to either admit or deny the first two sentences and therefore denies them. BHP denies the remaining allegations.

13. BHP denies the allegations of paragraph 13.

14. Paragraph 14 does not contain allegations of fact which require a response. To the extent that paragraph 14 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

15. BHP denies the allegations of paragraph 15.

16. Paragraph 16 does not contain allegations of fact which require a response. To the extent that paragraph 16 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

17. BHP denies the allegations of paragraph 17.

18. Paragraph 18 does not contain allegations of fact which require a response. To the extent that paragraph 18 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

19. Paragraph 19 does not contain allegations of fact which require a response. To the extent that paragraph 19 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

20. BHP admits the allegations of paragraph 20.

21. BHP is without knowledge or information that any party acted wrongfully against The New Mexican on the subject of the claims asserted by it, so it denies the allegations of paragraph 21.

22. JURISDICTION.

23. BHP denies the allegations of paragraph 23.

24. Paragraph 24 appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 24 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

25. Paragraph 25 appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 25 contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

26. DENIALS AND ADMISSIONS.

27. Contrary to the requirements of Rule 1-008(B) cited by paragraph 27, the paragraph is an inadequate response to any allegations existing against The New Mexican, so The New Mexican has waived any objections to those allegations. The paragraph does not appear to contain allegations of fact against BHP. To the extent it contains any allegations against BHP, they are denied.

28. GENERAL ALLEGATIONS.

29. In response to the allegations on paragraph 29, BHP states that The New Mexican has certain documents that were inadvertently provided by the PRC in violation of the order of that instrumentality of the State of New Mexico, that those documents had been provided to the PRC in reliance on the confidentiality order of the PRC, that The New Mexican knew of the confidentiality order, and that the PRC timely sought to recover those documents from The New Mexican. The remaining allegations contained in paragraph 29 are denied. The New Mexican's characterization of the facts is denied.

30. BHP denies the allegations of paragraphs 30, 31, 32, 33, 34, 35 and 36.

31. With regard to the allegations contained in paragraph 37, BHP admits that The New Mexican's First Amendment rights are not absolute. BHP denies the remaining allegations contained in paragraph 37.

32. With regard to the allegations contained in paragraph 38, BHP admits that The New Mexican's right against prior restraint is not absolute. BHP denies the remaining allegations contained in paragraph 38.

33. BHP denies the allegations of paragraphs 39, 40 and 41.

34. With regard to the allegations contained in paragraph 42, BHP admits that a letter was sent from the PRC to The New Mexican on or about August 6, 2015, and that the letter sought to recover documents wrongfully disclosed to The New Mexican. BHP denies the characterization of the letter and denies all other allegations of paragraph 42 and denies that an Exhibit 2 is attached to the pleading.

35. BHP denies the allegations of paragraphs 43 and 44.

36. Paragraphs 45, 46 and 47 appear to contain only assertions of law and not allegations of fact. To the extent that paragraphs 45, 46 or 47 contain any allegations of fact directed toward BHP, all such allegations are hereby denied.

37. BHP denies the allegations of paragraph 48 of the Counterclaim.

38. BHP denies the allegations of paragraphs 49 and 50.

39. Paragraph 51 of the Counterclaim appears to contain only assertions of law and not allegations of fact. To the extent that paragraph 51 of the Counterclaim contains any allegations of fact directed toward BHP, all such allegations are hereby denied.

40. Paragraphs 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69 appear to contain only assertions of law and not allegations of fact. To the extent that any of those paragraphs contain any allegations of fact directed toward BHP, all such allegations are hereby denied.

41. BHP denies the allegations of paragraph 70, 71, 72, 73, 74, 75 and 76. BHP further states contrary to the apparent assertion in paragraph 75, no Exhibit 3 is attached to the pleading.

42. In response to the allegations in paragraph 77 of the Counterclaim, which realleges and incorporates all allegations in The New Mexican's Answer and Counterclaim into the following counts, BHP realleges and incorporates its responses to each such allegation.

**COUNT I**

43. BHP denies the allegations of paragraph 78.

**COUNT II**

44. BHP denies the allegations of paragraph 79.

**COUNT III**

45. BHP denies the allegations of paragraph 80.

**COUNT IV**

46. BHP denies the allegations of paragraph 81.

**COUNT V**

42. BHP denies the allegations of paragraph 82.

**COUNT VI**

43. BHP denies the allegations of paragraph 83.

**COUNT VII**

44. BHP denies the allegations of paragraph 84.

**COUNT VIII**

45. BHP denies the allegations of paragraph 85.

**COUNT IX**

46. BHP denies the allegations of paragraph 86.

**COUNT X**

47. BHP denies the allegations of paragraph 87.

**COUNT XI**

88. BHP denies the allegations of paragraph 88.

**COUNT XII**

89. To the extent that the allegations in paragraph 89 have not already been dismissed by the Court, they are denied by BHP.

**COUNT XIII**

90. BHP denies the allegations of paragraph 90.

**GENERAL DENIAL**

91. BHP denies all allegations not specifically admitted above.

**SECOND DEFENSE**

BHP is entitled to recover its attorneys' fees and costs pursuant to § 57-12-10.C. because the action brought under the New Mexico Unfair Practices Act is groundless.

**THIRD DEFENSE**

BHP is entitled to recover its attorneys' fees and costs pursuant to 42 U.S.C. § 1988 when it prevails on the claims brought under 42 U.S.C. § 1983.

**FOURTH DEFENSE**

BHP is entitled to recover its attorneys' fees and costs pursuant to 42 U.S.C. § 1988 when it prevails on the claims brought under 42 U.S.C. § 1985.

**FIFTH DEFENSE**

The New Mexican's lawsuit was not filed in good faith as to BHP and so the Court should exercise its discretion and award BHP its attorney's fees and costs.

**SIXTH DEFENSE**

The New Mexican lacks standing.

**SEVENTH DEFENSE**

The New Mexican's claims are barred in whole or in part under the doctrines of estoppel, waiver, and laches.

**EIGHTH DEFENSE**

The New Mexican's claims are barred or limited in whole or in part because of payment.

**NINTH DEFENSE**

The New Mexican's claims are barred or limited in whole or in part because of release.

**TENTH DEFENSE**

The New Mexican's rights and claims are barred in whole or in part under the doctrine of unclean hands.

**ELEVENTH DEFENSE**

The New Mexican's claim for punitive damages is barred by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States of America, as well as Article II, Sections 4, 12, 13, 17, 18 and 19, Article III, Section 1, and Article IV, Section 1, of the Constitution of the State of New Mexico. In this case a demand for punitive damages is not justified, and an award of punitive damages would constitute a denial of equal protection, a denial of due process and/or the imposition of excessive fines.

**TWELFTH DEFENSE**

The New Mexican's rights and claims are barred because of the unconscionable conduct of The New Mexican.

**THIRTEENTH DEFENSE**

BHP is or may be entitled to absolute immunity from The New Mexican's rights and claims in this case, and those claims are therefore barred against BHP.

**FOURTEENTH DEFENSE**

BHP, or the individual, as-yet unnamed "BHP Persons" are or may be entitled to qualified immunity from The New Mexican's rights and claims in this case, and those claims are therefore barred against BHP, and any individual employees.

**FIFTEENTH DEFENSE**

There is no private right of action for violation of the claims of The New Mexican related to the New Mexico Constitution.

**SIXTEENTH DEFENSE**

The New Mexican's claims under the Unfair Practices Act are barred pursuant to exemption by regulatory action or transaction, as set forth in NMSA 1978, § 57-12-7 (1999), and the Court's ruling.

**SEVENTEENTH DEFENSE**

The claim alleged by The New Mexican was proximately caused by the wrongful conduct of third parties for whom BHP is not responsible or in control of, or as a result of such conduct in conjunction with the wrongful conduct of The New Mexican.

**EIGHTEENTH DEFENSE**

To the extent The New Mexican has suffered any injury or damages, which is denied, its claims should be reduced or barred to the extent that it failed to mitigate those damages.

**NINETEENTH DEFENSE**

The New Mexican's claims are barred by the doctrine of unjust enrichment.

**TWENTIETH DEFENSE**

The New Mexican's claims are barred as moot.

**TWENTY FIRST DEFENSE**

Because The New Mexican has suffered no damage, its claims are barred.

**TWENTY SECOND DEFENSE**

This Court lacks personal jurisdiction over this Defendant, and therefore, this action must be dismissed.

**TWENTY THIRD DEFENSE**

BHP was not properly served, and therefore, BHP is not properly before this Court, so the action against it should be dismissed.

**TWENTY FOURTH DEFENSE**

The New Mexican's Counterclaim, and part thereof, even if all the facts alleged therein are true, fails to state a claim upon which relief can be granted, and therefore, the action should be dismissed.

WHEREFORE, Defendant BHP Billiton New Mexico Coal, Inc. denies that The New Mexican is entitled to judgment against it for any amount of money or other relief and further prays that The New Mexican's Counterclaim be dismissed with prejudice, that the Court award BHP its cost and attorneys' fees, and such other further relief as the Court deems just and proper.

Respectfully Submitted,

MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.

By: /s/ Paul M. Fish

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George R. McFall  
Attorneys for BHP Billiton  
Post Office Box 2168  
Albuquerque, New Mexico 87103-2168  
Telephone: 505.848.1800

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of August, 2016, a true and correct copy of the foregoing was served to counsel of record via the Court's Odyssey File & Serve System as well as email as follows:

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MODRALL, SPERLING, ROEHL, HARRIS  
& SISK, P.A.

By: /s/ Paul M. Fish  
Paul M. Fish

W2771227.DOCX

**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

**CASE NO. D-101-CV-2015-01823**

**NEW MEXICO PUBLIC REGULATION COMMISSION,  
Petitioner/Counterdefendant,**

v.

**THE NEW MEXICAN, INC.,  
Respondent/Counterclaimant,**

v.

**S. VINCENT MARTINEZ, *et al.*,  
Counterdefendants.**

**WESTMORELAND COAL COMPANY'S AMENDED REPLY TO  
COUNTERCLAIMANT THE NEW MEXICAN, INC.'S SECOND AMENDED ANSWER  
AND COUNTERCLAIMS**

Counterdefendant Westmoreland Coal Co. ("Westmoreland") submits the following amended reply to Counterclaimant The New Mexican Inc.'s Second Amended Answer and Counterclaims.

1. Paragraph 1 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.
2. Paragraph 2 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.
3. Paragraph 3 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.
4. Paragraph 4 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.

5. Admit.
6. Westmoreland denies knowledge and information sufficient to admit or deny the allegations contained in Paragraph 6 of the Second Amended Answer and Counterclaims. Westmoreland denies the commission of any wrongful acts against The New Mexican.
7. Westmoreland denies knowledge and information sufficient to admit or deny the allegations contained in Paragraph 7 of the Second Amended Answer and Counterclaims. Westmoreland denies the commission of any wrongful acts against The New Mexican.
8. Westmoreland denies knowledge and information sufficient to admit or deny the allegations contained in Paragraph 8 of the Second Amended Answer and Counterclaims. Westmoreland denies the commission of any wrongful acts against The New Mexican.
9. Paragraph 9 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required. Westmoreland denies the commission of any wrongful acts against The New Mexican.
10. Paragraph 10 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required.
11. Paragraph 11 of the Second Amended Answer and Counterclaims includes an allegation concerning the legal capacity in which Defendants are being sued. No response is required.
12. Westmoreland denies knowledge and information sufficient to admit or deny the allegations contained in Paragraph 12 of the Second Amended Answer and Counterclaims. Westmoreland denies the commission of any wrongful acts against The New Mexican.

13. Paragraph 13 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required. Westmoreland denies the commission of any wrongful acts against The New Mexican.
14. Paragraph 14 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required.
15. Paragraph 15 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required. Westmoreland denies the commission of any wrongful acts against The New Mexican.
16. Paragraph 16 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required.
17. Paragraph 17 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required. Westmoreland denies the commission of any wrongful acts against The New Mexican.
18. Paragraph 18 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required.
19. Paragraph 19 of the Second Amended Answer and Counterclaims includes an allegation concerning the identity of the Counterclaim Defendants to which no response is required.
20. Admit.
21. Paragraph 21 of The New Mexican's Second Amended Answer and Counterclaims is an allegation concerning The New Mexican's lack of knowledge, which requires no response. Westmoreland denies that it "acted against the New Mexican" in any way.
22. Paragraph 22 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.

23. Paragraph 23 of The New Mexican's Second Amended Answer and Counterclaims is a legal conclusion to which no response is required.
24. Paragraph 24 of The New Mexican's Second Amended Answer and Counterclaims is a legal conclusion to which no response is required.
25. Paragraph 25 of The New Mexican's Second Amended Answer and Counterclaims is a legal conclusion to which no response is required.
26. Paragraph 26 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.
27. Paragraph 27 of The New Mexican's Second Amended Answer and Counterclaims is a responsive statement to which no reply is required.
28. Paragraph 28 of The New Mexican's Second Amended Answer and Counterclaims is an introductory allegation to which no response is required.
29. Westmoreland denies knowledge or information sufficient to form a belief as to the accuracy of the allegation contained in Paragraph 29. Such allegation is therefore denied.
30. Denied.
31. Paragraph 31 of The New Mexican's Second Amended Answer and Counterclaims is a legal conclusion to which no response is required. To the extent a response is required, Westmoreland denies the allegations contained in this Paragraph.
32. Paragraph 32 of The New Mexican's Second Amended Answer and Counterclaims is a legal conclusion to which no response is required. To the extent a response is required, Westmoreland denies the allegations contained in this Paragraph.
33. Denied.
34. Denied.

35. Denied.

36. Paragraph 36 of The New Mexican's Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

37. Paragraph 37 of The New Mexican's Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

38. Paragraph 38 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 38 contains a factual allegation, Westmoreland denies the truth of said allegation.

39. Paragraph 39 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 39 contains a factual allegation, Westmoreland denies the truth of said allegation.

40. Denied.

41. Paragraph 41 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 41 contains a factual allegation, Westmoreland denies the truth of said allegation.

42. Admitted that on August 6, 2015 the PRC sent a letter to certain employees at the New Mexican. Westmoreland denies Counterclaimant's description of the letter as threatening. The substance of the letter speaks for itself.

43. Paragraph 43 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 43 contains a factual allegation, Westmoreland denies the truth of said allegation.

44. Denied.

45. Paragraph 45 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required.
46. Paragraph 46 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required.
47. Paragraph 47 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required.
48. Paragraph 48 of The New Mexican's Second Amended Answer and Counterclaims contains a response to allegations made in the Complaint. Such allegation requires no response. To the extent Paragraph 48 contains factual allegations requiring a response, such allegations are denied.
49. Paragraph 49 of The New Mexican's Second Amended Answer and Counterclaims contains a characterization of allegations raised in the original complaint, to which no response is required. This paragraph further contains legal conclusions to which no response is required. To the extent this Paragraph contains factual allegations requiring a response, such allegations are denied.
50. Paragraph 50 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent this Paragraph contains factual allegations requiring a response, such allegations are denied. The contents of the PRC's order speaks for itself.
51. Paragraph 51 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent this Paragraph contains factual allegations requiring a response, Westmoreland denies knowledge and

information sufficient to form a belief as to the truth of such allegations and, therefore, denies them.

52. Paragraph 52 of The New Mexican's Second Amended Answer and Counterclaims contains a statement of conjecture and guesswork to which no response is required.

53. Paragraph 53 (A)-(D) of The New Mexican's Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

54. Paragraph 54 of The New Mexican's Second Amended Answer and Counterclaims contains an allegation as to the falsity of a statement contained in an affidavit submitted in support of PNM's Application for a Preliminary Injunction. This allegation constitutes a legal conclusion to which no response is required. To the extent this Paragraph contains factual allegations requiring a response, Westmoreland denies the truth of the allegations contained in this Paragraph.

55. Paragraph 55 of The New Mexican's Second Amended Answer and Counterclaims contains a legal argument as to why PNM is in fact a party to the Stock Purchase Agreement. To the extent this Paragraph contains factual allegations requiring a response, Westmoreland denies knowledge and information sufficient to form a belief as to the truth of the allegations contained in this Paragraph.

56. Paragraph 56 of The New Mexican's Second Amended Answer and Counterclaims contains a legal argument as to why PNM is in fact a party to the Stock Purchase Agreement. Such a legal argument requires no response.

57. Westmoreland denies knowledge and information sufficient to admit or deny the allegations contained in Paragraph 57 of the Second Amended Answer and Counterclaims.

58. Westmoreland denies the allegations contained in the first sentence of Paragraph 58. The second sentence of Paragraph 58 reflects a conjecture and supposition and, therefore, requires no response.

59. Denied.

60. Denied.

61. Paragraph 61 of The New Mexican's Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

62. Paragraph 62 of The New Mexican's Second Amended Answer and Counterclaims does not identify the documents that are the subject of the allegations contained in Paragraph 62, nor does it describe where "Plaintiffs keep using shifting terms." Westmoreland, therefore, denies this allegation.

63. Paragraph 63 of The New Mexican's Second Amended Answer and Counterclaims does nothing but seek to characterize arguments made by Plaintiffs. No response is required to such characterization. To the extent Paragraph 63 contains allegations of fact requiring a response, Westmoreland denies such allegations.

64. Paragraph 64 of The New Mexican's Second Amended Answer and Counterclaims does nothing but seek to characterize arguments made by Plaintiffs. No response is required to such characterization. To the extent Paragraph 64 contains allegations of fact requiring a response, Westmoreland denies such allegations.

65. Denied.

66. Paragraph 66 of The New Mexican's Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

67. Paragraph 67 of The New Mexican’s Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

68. Paragraph 68 of The New Mexican’s Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

69. Paragraph 69 of The New Mexican’s Second Amended Answer and Counterclaims contains legal conclusions to which no response is required.

70. Paragraph 70 of The New Mexican’s Second Amended Answer and Counterclaims contains legal conclusions to which no response is required. To the extent Paragraph 70 contains allegations of fact requiring a response, Westmoreland denies such allegations.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Admit that on August 17, 2015 PNM filed a “Motion for Entry of Protective Order” with the PRC. Westmoreland lacks knowledge or information sufficient to form a belief as to whether PNM informed the Court or The New Mexican about this filing. The remainder of the allegations in Paragraph 75 of The New Mexican’s Second Amended Answer and Counterclaims constitute legal conclusions which require no response. Westmoreland specifically denies the existence of any conspiracy against the New Mexican.

76. Denied.

77. Paragraph 77 of is a summary allegation to which no response is required.

78. Paragraph 78 of The New Mexican’s Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required.

79. Denied.

80. Paragraph 80 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 80 contains allegations of fact requiring a response, Westmoreland denies such allegations.

81. Paragraph 81 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 81 contains allegations of fact requiring a response, Westmoreland denies such allegations.

82. Paragraph 82 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 82 contains allegations of fact requiring a response, Westmoreland denies such allegations.

83. Paragraph 83 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 83 contains allegations of fact requiring a response, Westmoreland denies such allegations.

84. Denied.

85. Paragraph 85 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 85 contains allegations of fact requiring a response, Westmoreland denies such allegations.

86. Paragraph 86 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 86 contains allegations of fact requiring a response, Westmoreland denies such allegations.

87. Paragraph 87 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 87 contains allegations of fact requiring a response, Westmoreland denies such allegations.

88. Paragraph 88 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 88 contains allegations of fact requiring a response, Westmoreland denies such allegations.

89. Paragraph 89 of The New Mexican's Second Amended Answer and Counterclaims relates to a claim that has been dismissed by the Court. Thus, no response is required. To the extent a response is required, Westmoreland denies these allegations.

90. Paragraph 90 of The New Mexican's Second Amended Answer and Counterclaims contains a legal conclusion to which no response is required. To the extent Paragraph 90 contains allegations of fact requiring a response, Westmoreland denies such allegations.

91. All allegations contained in The New Mexican's Second Amended Answer and Counterclaims that are not specifically admitted herein are denied.

### **Defenses**

Counterdefendant Westmoreland Coal Co. asserts the following defenses to The New Mexican's Counterclaims:

1. The Petition Clause of the First Amendment and the *Noerr-Pennington* doctrine protect Westmoreland against liability on the New Mexican's counterclaims;
2. This Court lacks personal jurisdiction over Westmoreland on The New Mexican's counterclaims;
3. This Court lacks subject matter jurisdiction over The New Mexican's counterclaims;
4. The New Mexican's counterclaims fail to state a claim upon which relief can be granted;
5. Westmoreland has not been properly served with process on the New Mexican's counterclaims;

6. Westmoreland enjoys qualified or absolute immunity from suit under 42 U.S.C. §§ 1983 and 1985.

WHEREFORE, Counterclaim Defendant Westmoreland Coal Co. respectfully requests:

(1) that The New Mexican's Counterclaims be dismissed in their entirety; (2) that Westmoreland be awarded attorney's fees and costs in connection with this matter and (3) such other and further relief as the Court deems just and proper.

Respectfully submitted,

**HOLLAND & HART LLP**

*/s/ John C. Anderson*

Bradford C. Berge

John C. Anderson

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**ATTORNEYS FOR COUNTERDEFENDANT  
WESTMORELAND COAL COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed and served on counsel of record

via Odyssey File and Serve on the 8th day of August, 2017:

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*/s/ John C. Anderson*

---

John C. Anderson

**New Mexico Public Regulation Commission**

**VS**

**The New Mexican, Inc**

**CASE DETAIL**

CASE #	CURRENT JUDGE	FILING DATE	COURT
D-101-CV-201501823	Thomson, David K.	08/06/2015	SANTA FE District

**PARTIES TO THIS CASE**

PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
CD	Counter Defendant	1	PHILLIPS BEN
	ATTORNEY: O'REILLY DYLAN		
CD	Counter Defendant	2	WESTMORELAND COAL COMPANY
	ATTORNEY: BERGE BRADFORD C.		
CP	Counter Plaintiff	1	THE NEW MEXICAN, INC.
	ATTORNEY: MARSHALL VICTOR R.		
D	Defendant	1	THE NEW MEXICAN, INC.
	ATTORNEY: MARSHALL VICTOR R.		
IT	Interested Party	1	NEW MEXICO ATTORNEY GENERAL'S OFFICE
	ATTORNEY: BIERNOFF ARI		
IV	Intervenor	1	WESTMORELAND COAL COMPANY
	ATTORNEY: BERGE BRADFORD C.		
IV	Intervenor	2	PUBLIC SERVICE COMPANY OF NEW MEXICO
	ATTORNEY: O'REILLY DYLAN		
	ATTORNEY: SALGANER LUKE		
	ATTORNEY: ALVIDREZ RICHARD L.		
IV	Intervenor	3	BHP BILLITON NEW MEXICO COAL, INC.
	ATTORNEY: MCFALL GEORGE R.		
	ATTORNEY: FISH PAUL MATHEW		
	ATTORNEY: BROWN MARTHA G.		
P	Plaintiff	1	NEW MEXICO PUBLIC REGULATION COMMISSION
	ATTORNEY: SMITH MICHAEL C.		
	ATTORNEY: CAFFEY-MOQUIN MARGARET KENDALL		
	ATTORNEY: DICKMAN MICHAEL JAY		
	ATTORNEY: BERGE BRADFORD C.		
	ATTORNEY: ANDERSON JOHN C.		
	ATTORNEY: ALVIDREZ RICHARD L.		
	ATTORNEY: O'REILLY DYLAN		
	ATTORNEY: SALGANER LUKE		

**CIVIL COMPLAINT DETAIL**

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
08/06/2015	1	OPN: COMPLAINT		

COA SEQ #	COA DESCRIPTION
1	Restraining Order

PARTY NAME	PARTY TYPE	PARTY #

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
08/06/2015	2	OPN: COMPLAINT		

COA SEQ #	COA DESCRIPTION
1	Tort Injunction

PARTY NAME	PARTY TYPE	PARTY #

## HEARINGS FOR THIS CASE

HEARING DATE	HEARING TIME	HEARING TYPE	HEARING JUDGE	COURT	COURT ROOM
11/30/2018	1:30 PM	MOTION HEARING	Thomson, David K.	SANTA FE	
03/02/2018	9:00 AM	MOTION HEARING	Thomson, David K.	SANTA FE	
10/12/2017	9:30 AM	MOTION HEARING	Thomson, David K.	SANTA FE	
10/10/2017	10:00 AM	MOTION HEARING	Thomson, David K.	SANTA FE	
10/06/2017	10:00 AM	MOTION HEARING	Thomson, David K.	SANTA FE	
09/26/2017	2:00 PM	MOTION HEARING	Thomson, David K.	SANTA FE	
01/31/2017	3:00 PM	MOTION HEARING	Thomson, David K.	SANTA FE	Santa Fe County Judicial Complex
09/29/2016	2:00 PM	MOTION HEARING	Thomson, David K.	SANTA FE	Santa Fe County Judicial Complex
07/20/2016	10:30 AM	MOTION HEARING	Thomson, David K.	SANTA FE	Santa Fe County Judicial Complex
05/03/2016	9:30 AM	SCHEDULING CONFERENCE	Thomson, David K.	SANTA FE	Santa Fe County Judicial Complex
02/15/2016	2:00 PM	PRESENTMENT HEARING	Thomson, David K.	SANTA FE	Santa Fe County Judicial Complex
12/02/2015	10:00 AM	MOTION HEARING	Thomson, David K.	SANTA FE	
08/13/2015	4:15 PM	HEARING	Thomson, David K.	SANTA FE	
08/07/2015	4:50 PM	TEMPORARY RESTRAINING ORDER HEARING	Thomson, David K.	SANTA FE	

## REGISTER OF ACTIONS ACTIVITY

EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
10/19/2018	NTC: NOTICE OF BANKRUPTCY		CD	2	
06/07/2018	Notice of Bankruptcy				
06/01/2018	NTC: HEARING				
06/01/2018	Request for Hearing set for 11-30-2018 at 1:30pm on the The New Mexican s Motion for Partial Summary Judgment About the Subject Documents				
06/01/2018	REQUEST FOR HEARING/ SETTING				
06/01/2018	Request for Hearing Matter: The New Mexican's Motion for Partial Summary Judgment About the Subject Documents (IPRA and Trade Secrets) with Inspection of Subject Documents in Open Court				
04/11/2018	NTC: COMPLETION OF BRIEFING				
04/11/2018	Notice of Completion of Briefing				
04/11/2018	ORD: ORDER DENYING				
04/11/2018	Order Denying Public Service Company of New Mexico's Motion for Sanctions Due to Spoliation of Evidence				
03/15/2018	NTC: NOTICE		P	1	
03/15/2018	Notice of Availability of Evidence				
02/27/2018	ORD: WITHDRAWAL/ SUBSTITUTION OF COUNSEL				
02/27/2018	Order Granting Unopposed Motion to Withdraw as Counsel				
02/20/2018	MTN: TO WITHDRAW				
02/20/2018	Unopposed Motion to Withdraw as Counsel				
12/21/2017	REQUEST FOR COPY OF TAPES/CD/AUDIO				
12/21/2017	CD Request				
12/21/2017	*****Spoke with Shirley from Mr. Marshall's office on 12/27/17 regarding discrepancy of hearings written on CD Request and actual FTR recordings dates on request were 9/26/16, 10/4/17. She wanted audio for 9/26/17 not 9/26/16 and she didnt want audio from 10/4/17 she wanted audio from 10/10/17. JDL				
12/21/2017	9/26/17 2:13:47P-4:05:47P				
12/21/2017	10/6/17 10:05:03A- 10:49:41A				
12/21/2017	10/10/17 10:04:00A- 12:22:22P				
12/21/2017	10/12/17 9:49:48A- 3:36:58P				
12/21/2017	1CD&33 pgs printed logs 12/27/17 JDL				
12/07/2017	NTC: HEARING				
12/07/2017	Notice of hearing set for 03-02-2018 at 9am on the PNM s Motion for Sanctions Due to Spoliation of Evidence				
11/28/2017	REQUEST FOR HEARING/ SETTING				
11/28/2017	Request for Hearing RE: PNMs Motion for Sanctions Due to Spoliation of Evidence				

D-101-CV-201501823 - Monday, November 26, 2018

11/28/2017 NTC: COMPLETION OF BRIEFING  
Notice of Completion of Briefing

11/28/2017 REPLY  
Public Service Company of New Mexicos Reply in Support of its Motion for Sanctions Due to Spoliation of Evidence

11/13/2017 OBJECTION/OPPOSITION  
BHP Billiton New Mexico Coal's Objections to the New Mexican's Notice of Submitting Privileged Documents for In Camera Review

11/13/2017 RECEIPT OF CD  
CD Receipt

11/10/2017 RESPONSE  
The New Mexicans Response to PNMs Motion for Sanctions Due to Alleged Spoliation of Evidence

11/03/2017 REQUEST FOR COPY OF TAPES/CD/AUDIO  
CD Request  
2:13:47P- 4:05:47P 1CD&8pgs printed logs 11/13/17 JDL

11/01/2017 NTC: NOTICE D 1  
The New Mexican's Notice of Submitting Privileged Docs for in Camera Review

10/27/2017 ORD: ORDER  
Order on (1) The New Mexican Inc. Motion to Compel Deposition of Patricia Vincent Collawn and (2) Motion of Public Service Company of New Mexico for Protective Order

10/25/2017 NTC: NOTICE  
Notice of Filing of PNM's Demonstrative Exhibit from 10/12/17 Hearing

10/24/2017 MEMORANDUM  
Public Service Company of New Mexico's Memorandum Regarding It's Motion to Compel

10/23/2017 NTC: OF FILING  
NM Notice of Filing Summaries

10/23/2017 MEMORANDUM BRIEF  
NM Supplemental Memo on Malicious Abuse of Process

10/23/2017 BRIEF  
2017-10-23 Counterdefendants' Supplemental Brief

10/23/2017 MTN: MOTION  
Public Service Company of New Mexicos Motion for Sanctions Due to Spoliation of Evidence

10/20/2017 REPLY  
NM Reply on Motion for Partial Summary Judgment

10/20/2017 RECEIPT OF CD  
Cd Receipt

10/17/2017 REQUEST FOR COPY OF TAPES/CD/AUDIO  
CD Request  
9:49:47A- 3:36:58P 4CD's & 17pgs printed logs 10/20/17 JDL

10/17/2017 RECEIPT OF CD  
cd receipt  
#11967

10/13/2017 REQUEST FOR COPY OF TAPES/CD/AUDIO  
CD Request  
9:49:47A- 3:36:58P 3CD's & 17pgs printed logs 10/17/17 JDL

10/11/2017 AMENDED NOTICE  
Amended Notice of hearing set for 10-12-2017 at 9:30am on the 1. August 8, 2017 Westmoreland motion for judgment on pleadings; New Mexican response filed August 23, 2017; Westmoreland reply not yet filed. ( 30 Minutes each side) , 2. August 23, 2017 New Mexican motion for partial summary judgment; responses and reply not yet filed. (30 Minutes each side), 3. September 14, 2017 Ruling on PNM s Motion for Summary Judgment as 42 U.S.C. 1985 Claim (10 Minutes), 4. PNM Motion to Compel: 25 Minutes each side, 5. Court Ruling on 11-514 procedure 15 Minutes each side, 6. Court Ruling on SFNM PI 10 minutes, and 7. Defendant s Motion to Dismiss Plaintiff s Claim on Prima Facie Tort Claim 10 minutes each side

10/10/2017 ORD: ORDER DENYING  
Order Denying Public Service Company of New Mexico's Motion for Partial Summary Judgment on the Santa Fe New Mexican's Claims of Malicious Abuse of Process

10/10/2017 ORD: ORDER GRANTING  
Order Granting Permission to Appeal as Amicus Curiae for the Limited Purpose of Filing Brief in Support of the Positions Taken by Defendant Santa Fe New Mexican, seeking Relief from PNM's Misuse before the NMPRC of Confidentiality Designations

10/10/2017 ORD: ORDER DENYING  
Order Denying the Santa Fe New Mexican's Motion for Reconsideration of December 1, 2016 Order

10/08/2017 MEMORANDUM  
The New Mexican's Memorandum Regarding Rule 11-514 Procedures

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10/06/2017 ORD: ORDER  
Order on Public Service Company of New Mexico's Motion for Partial Summary Judgment on the New Mexican's Claims of Malicious Abuse of Process and Violation of IPRA

10/05/2017 NTC: NOTICE  
Notice of Filing Exhibits Supporting Motion to Compel

10/04/2017 ENTRY OF APPEARANCE  
Entry of Appearance

10/04/2017 ORD: VACATING HEARING  
Order Vacating Hearing set for October 5, 2017

10/03/2017 MEMORANDUM  
BBNMC's Memorandum Regarding Treatment of Documents Alleged to be Covered by the News Media Privilege in Rule 11-514

10/03/2017 MEMORANDUM  
Public Service Company of New Mexico's Memorandum Regarding Procedures for Review of Documents Claimed Privilege Pursuant to Rule 11-514 NMRA

10/03/2017 OBJECTION/OPPOSITION  
The New Mexican's Objection to PNM's Motion to Vacate October 5 Hearing

10/03/2017 NTC: NOTICE  
Notice of Objection to Court's Proposed Rule 11-514 Procedure

10/02/2017 RESPONSE  
BHP's Response to the New Mexican's Motion for Partial Summary Judgment About the Subject Documents

10/02/2017 RESPONSE CD 2  
Counterdefendant Westmoreland Coal Company's Response to the New Mexican's Motion for Partial Summary Judgment

10/02/2017 MTN: MOTION  
Motion for Extension of Page Limit

10/02/2017 RESPONSE  
New Mexccans Response to PNM Motion for Summary Judgment on Prima Facie Tort Claims

10/02/2017 RESPONSE  
Public Service Company of New Mexico Response to Partial Motion for Summary Judgment

10/02/2017 MTN: MOTION  
Public Service Company of New Mexico Motion for Page Extension

10/02/2017 MTN: TO VACATE  
Public Service Company of New Mexico Expedited Motion to Vacate Hearing Set for October 5, 2017

10/02/2017 MTN: MOTION  
Motion for Permission to Appear as Amicus Curiae

09/26/2017 NTC: HEARING  
Notice of Hearing set for 10-05-2017 at 10am on the October 25, 2016

09/26/2017 NTC: HEARING  
Notice of hearing set for 10-12-2017 at 10am on the August 8, 2017 Westmoreland motion for judgment on pleadings; New Mexican response filed August 23, 2017; Westmoreland reply not yet filed. August 23, 2017 New Mexican motion for partial summary judgment; responses and reply not yet filed. and September 14, 2017 PNM s Motion for Summary Judgment

09/26/2017 NTC: HEARING  
Notice of hearing set for 10-10-2017 at June 1, 2017 New Mexican motion for preliminary injunction; BHP response filed June 28, 2017; PNM response filed June 28, 2017; Westmoreland response filed June 28, 2017; New Mexican reply to BHP re unclean hands filed July 17, 2017; New Mexican reply in support of injunction file July 17, 2017. June 20, 2017 PNM motion to compel; New Mexican response filed July 10, 2017; PNM reply filed July 28, 2017.

09/26/2017 NTC: HEARING  
Notice of hearing set for 10-06-2017 at 10am on the April 7, 2017 New Mexican motion to compel deposition of Vincent-Collawn; PNM response filed April 25, 2017; New Mexican reply filed May 15, 2017. April 25, 2017 PNM motion for protective order [Vincent-Collawn]; New Mexican response combined with reply on motion to compel filed May 15, 2017; PNM reply filed June 2, 2017.

09/25/2017 REPLY  
Westmoreland Reply re Motion for Judgment on the Pleadings

09/22/2017 MTN: MOTION/ PETITION TO IV 3  
EXTEND TIME  
BPH Billiton NM Coal's Motion for Extension of Time in Which to Respond to the New Mexican's Motion for Partial Summary Judgment about the Subject Documents

09/22/2017 MTN: MOTION/ PETITION TO  
EXTEND TIME  
Westmoreland Notice of Joinder in Motion for Extension of Time

09/22/2017 MTN: MOTION  
Public Service Company of New Mexico's Motion for Extension of Time

09/14/2017 MTN: MOTION  
PNM's Motion for Summary Judgment - Prima Facie Tort

09/05/2017 MTN: FOR SUMMARY  
JUDGMENT  
The New Mexican's Motion for Partial Summary Judgment About the Subject Documents

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08/23/2017	RESPONSE		
	The New Mexicans Response to Westmorelands Motion to Dismiss on the Pleadings		
08/08/2017	MTN: MOTION		
	Westmoreland's Motion for Judgment on the Pleadings		
08/08/2017	REPLY	CD	2
	Westmoreland Coal Company's Amended Reply to Counterclaimant the New Mexican, Inc.'s Second Amended Answer and Counterclaims		
08/03/2017	REPLY		
	Westmoreland Coal Company's Reply to Counterclaimant The New Mexican Inc's Second Amended Answer and Counterclaims		
07/28/2017	REQUEST FOR HEARING/ SETTING		
	Request for Hearing		
07/28/2017	NTC: COMPLETION OF BRIEFING		
	Notice of Completion of Briefing		
07/28/2017	REPLY		
	PNM's Reply in Support of Motion to Compel		
07/24/2017	CERTIFICATE OF SERVICE		
	Certificate of Service		
07/17/2017	REPLY	D	1
	The New Mexican's Reply About Unclean Hands		
07/17/2017	REPLY	D	1
	The New Mexican's Reply in Support of Injunctive Relief Against PNM, BHP and Westmoreland		
07/10/2017	RESPONSE		
	New Mexican Response to PNM's Motion To Compel		
06/28/2017	RESPONSE		
	PNM's Response to Motion for Preliminary and Permanent Injunction		
06/28/2017	RESPONSE		
	Westmoreland Response to New Mexican's Motion for Preliminary Injunctions		
06/28/2017	RESPONSE		
	BHP Billiton New Mexico Coal's Response in Opposition to the Santa Fe New Mexican's Motion for Preliminary and Permanent Injunctions		
06/20/2017	MTN: TO COMPEL		
	PNM's Motion to Compel		
06/19/2017	CERTIFICATE OF SERVICE		
	Certificate of Service re PNM's Second Set of Interrogatories to SFNM		
06/19/2017	MTN: MOTION		
	Public Service Company of New Mexico's Motion for Extension of Time and for Extension of Page Limits		
06/16/2017	MTN: MOTION/ PETITION TO EXTEND TIME		
	Westmoreland Coal Company s Expedited Motion for Continuance of June 19, 2017, Response Deadline to Allow Full and Fair Opportunity to Respond		
06/16/2017	MTN: MOTION/ PETITION TO EXTEND TIME		
	BHP Billiton New Mexico Coal Inc.'s Motion for Extension of Time in Which to Respond to The New Mexican's Motion for Preliminary and Permanent Injunctions and for an Extension of Page Limits Relating to the Response		
06/15/2017	NTC: HEARING		
	Notice of hearing set for 09-26-2017 at 2pm to (For this Motion and Motions previously set) added BHP Billiton s Motion for Sanctions for the New Mexican s Failure to Comply with this Court s Order to Compel		
06/12/2017	RECEIPT OF CD		
	CD Receipt		
06/09/2017	REQUEST FOR COPY OF TAPES/CD/AUDIO		
	Request For Copy of Tape/CD		
	4:59:14-5:41:37 1 CD 6/12/17 JLG		
06/02/2017	REQUEST FOR HEARING/ SETTING	IV	2
	Request for Hearing - Matter: PNM's Motion for Protective Order		
06/02/2017	NTC: COMPLETION OF BRIEFING	IV	2
	Notice of Completion of Briefing		
06/02/2017	REPLY	IV	2
	Public Service Company of New Mexico's Reply in Support of Motion for Protective Order		
06/01/2017	MTN: MOTION		
	The New Mexicans Motion for Preliminary and Permanent Injunctions		
06/01/2017	REQUEST FOR HEARING/		

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SETTING

06/01/2017 Request for Hearing  
NTC: COMPLETION OF  
BRIEFING

05/22/2017 Notice of Completion of Briefing  
NTC: COMPLETION OF  
BRIEFING  
Notice of Completion re BHP Billiton New Mexico Coal's Reply in Support of its Motion for Sanctions for the New Mexican's Failure to Comply with this Court's Order to Compel

05/22/2017 REPLY  
BHP Billiton New Mexico Coal's Reply in Support of its Motion for Sanctions for the New Mexican's Failure to Comply with this Court's Order to Compel

05/15/2017 REPLY  
NM Reply to MTC and PNM Motion for Protection

05/12/2017 NTC: HEARING  
Notice of Hearing Set for 09-26-2017 at 2:30pm on the Counterdefendant Westmoreland Coal Company s Motion to Compel Production of Discovery Responses and for Sanctions and PNM s Motion for Partial Summary Judgment on the New Mexican s Claims of Malicious Abuse of Process and Violation of IPRA

05/08/2017 RESPONSE  
The New Mexican's Response to BHP Motion for Sanctions

05/03/2017 ORD: ORDER GRANTING  
Order Granting Motion for Page Extension

05/01/2017 CERTIFICATE OF SERVICE  
New Mexican Certificate of Service re PNM Discovery

05/01/2017 NTC: NOTICE  
Marshall Notice of Unavailability

04/28/2017 REQUEST FOR HEARING/  
SETTING  
Request for Hearing re PNM's Motion for Partial Summary Judgment

04/28/2017 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

04/28/2017 REPLY  
Reply of Public Service Company of New Mexico in Support of Motion For Partial Summary Judgment of the New Mexican's Clamis of Malicious Abuse of Process and Violation of IPRA

04/28/2017 MTN: MOTION  
Public Service Company of New Mexico's Motion For Page Extension

04/27/2017 OBJECTION/OPPOSITION  
New Mexicans Consolidated Objections to Discovery Propounded by PNM BHP and Westmoreland

04/25/2017 MTN: MOTION  
Public Service Company of New Mexicos Motion for Protective Order

04/25/2017 RESPONSE  
Public Service Company of New Mexicos Response to the New Mexicans Motion to Compel Deposition of Patricia Vincent-Collawn

04/19/2017 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

04/19/2017 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

04/18/2017 REQUEST FOR HEARING/  
SETTING  
Request for Hearing re BHP Billiton New Mexico Coal s Motion for Sanctions for the New Mexican s Failure to Comply with this Court s Order to Compel

04/18/2017 MTN: MOTION  
BHP Billiton New Mexico Coal s Motion for Sanctions for the New Mexican s Failure to Comply with this Court s Order to Compel

04/10/2017 RESPONSE  
NM Response to PNM Motion for Partial Summary Judgment

04/07/2017 MTN: TO COMPEL D 1  
Motion To Compel Deposition of Patricia Vincent-Collawn

03/27/2017 MTN: FOR SUMMARY  
JUDGMENT  
Westmoreland's Joinder in PSCNM's Motion for Partial Summary Judgment

03/24/2017 REPLY  
Counterdefendant Westmoreland Coal Company's Reply in Support of Motion to Compel and For Sanctions

03/24/2017 MTN: TO JOIN  
BHP Billiton New Mexico Coal's Joinder in Public Service Company of New Mexico s Motion for Partial Summary Judgment on the New Mexican s Claims of

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Malicious Abuse of Process and Violation of IPRA

03/24/2017 CERTIFICATE OF SERVICE  
COS - PNM's First Set of Discovery to the New Mexican

03/24/2017 REPLY  
PNM's Reply to the New Mexican's Response to PNM's Additional Submissions

03/22/2017 MTN: FOR SUMMARY  
JUDGMENT  
Public Service Company of New Mexicos Motion for Partial Summary Judgment on the New Mexicans Claims of Malicious Abuse of Process and Violation of IPRA

03/22/2017 MTN: MOTION  
Public Service Company of New Mexicos Motion for Page Extension

03/06/2017 MISCELLANEOUS ENTRY  
The New Mexicans Supplement to Privilege Log Concerning 42 USC Section 2000aa

03/06/2017 RESPONSE  
The New Mexicans Response to PNM's Additional Submissions of February 9 2017

03/06/2017 RESPONSE  
The New Mexicans Response to Westmorelands Motion to Compel Discovery Responses and for Sanctions

02/17/2017 MTN: TO COMPEL  
Counterdefendant Westmoreland Coal Company's Motion to Compel Production of Discovery Responses and for Sanctions

02/16/2017 OBJECTION/OPPOSITION  
Objections to the New Mexican's Proposed Form of Order Relating to the New Mexican's Motion to Compel Rule 26(B)(4) Discovery

02/16/2017 REQUEST FOR HEARING/  
SETTING  
Request for Presentment Hearing

02/09/2017 MISCELLANEOUS ENTRY  
Public Service Company of New Mexico's Additional Submissions Concerning its Response to the New Mexican's Motion to Compel Discovery

02/07/2017 RECEIPT OF CD  
CD Receipt (January 31, 2017 recording)

02/07/2017 RECEIPT OF CD  
CD Receipt (January 31, 2017 recording)

02/06/2017 REQUEST FOR COPY OF  
TAPES/CD/AUDIO  
CD Request, (3:31:24-4:48:17 1cd + 7 page log notes 2/7/17 jn)

02/02/2017 EXHIBIT LIST  
Additional Submissions of Exhibits

02/01/2017 REQUEST FOR COPY OF  
TAPES/CD/AUDIO  
Transcript/CD Request, (3:31:24-4:48:17 1CD 2/7/17 JN)

01/27/2017 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

01/27/2017 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

01/27/2017 REPLY  
Reply on New Mexican Motion To Compel Rule 1-026(B)(4) Discovery

01/13/2017 RESPONSE  
PNM's Response to the New Mexican's Motion to Compel Rule 1-026(B)(4) Discovery

01/13/2017 RESPONSE  
BHP Billiton's Response to the New Mexican's Motion to Compel Rule 1-026(B)(4) Discovery

01/13/2017 CERTIFICATE OF SERVICE  
COS - BHP's Supplemental Responses to The New Mexican's Rule 1-026(B)(4) Discovery

01/12/2017 RESPONSE  
Counterdefendant Westmoreland's Response to New Mexican's Motion to Compel Rule 1-026(B)(4) Discovery From the CounterDefendants PNM, BHP, and Westmoreland

12/23/2016 DISCOVERY  
New Mexican Privilege Log and Notes

12/23/2016 AFFIDAVIT  
Affidavit of Steve Terrell

12/23/2016 RESPONSE  
New Mexican Additional Responses to BHP Discovery

12/14/2016 MTN: TO COMPEL D I  
New Mexican Motion To Compel Rule 1-026(B)(4) Discovery from the Counterdefendant's PNM, BHP, and Westmoreland

12/06/2016 NTC: HEARING

12/01/2016 Notice of hearing set for 01-31-2017 at 3pm on New Mexican s Consolidated Motion To Compel Discovery from PNM, Westmoreland, and BHP  
ORD: ORDER DENYING  
Order Denying BHP Billiton and Westmoreland's Motion to Realign Parties

12/01/2016 ORD: ORDER GRANTING  
Order Granting Plaintiff/Counterdefendant BHP Billiton New Mexico Coal, Inc.'s Motion to Compel

11/22/2016 RESPONSE  
Counterdefendant Westmoreland's Response to the New Mexican's Motion to Compel

11/21/2016 CERTIFICATE OF SERVICE  
Certificate of Service

11/21/2016 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

11/21/2016 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

11/21/2016 REPLY D 1  
New Mexican Reply in Support of Consolidated Motion To Compel, With Status Report

11/21/2016 CERTIFICATE OF SERVICE  
Certificate of Service - BHP Billiton's Responses to the New Mexican's Rule 1-026(B)(4) Discovery

11/21/2016 CERTIFICATE OF SERVICE  
Certificate of Service

11/14/2016 RESPONSE  
PNM's Response in Opposition to the New Mexican's Motion to Compel

11/10/2016 RESPONSE  
BHP Billiton's Response to the New Mexican's Consolidated Motion to Compel

10/25/2016 RESPONSE  
Supplemental Response to BHP Discovery

10/25/2016 MTN: TO COMPEL  
Motion To Compel

10/21/2016 NTC: NOTICE D 1  
New Mexican's Notice of Supplemental Authorities on Motion on Motion to Religion and Removal

10/20/2016 CERTIFICATE OF SERVICE  
New Mexican Certificate of Service for Rule 26(B)(4) Discovery

10/05/2016 CERTIFICATE OF SERVICE  
Certificate of Service

09/27/2016 CERTIFICATE OF SERVICE  
Certificate of Service - BHP's Responses to The New Mexican's First Set of Interrogatories and Requests for Production

09/14/2016 MTN: MOTION  
Westmoreland Motion for 3 Week Extension of Time to Respond to the New Mexican's Discovery Requests

09/12/2016 CERTIFICATE OF SERVICE  
Certificate of Service

09/08/2016 NTC: HEARING  
Notice of hearing set for 09-29-2016 at 2pm on BHP Billiton's Motion to Compel Responses to BHP's Second Interrogatories and Requests for Production to The New Mexican

08/29/2016 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

08/29/2016 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

08/29/2016 REPLY  
BHP Billiton's Reply in Support of Its Motion to Compel Responses to BHP's Second Interrogatories and Requests for Production to The New Mexican

08/23/2016 MANDATE  
Mandate to District Court Clerk - Westmoreland Coal Company & BHP Billiton New Mexico Coal Inc Applicatoin for Leave to File Interlocutory Appeal is Denied

08/18/2016 ANSWER  
BHP's Answer to Second Amended Answer and Counterclaim by The New Mexican, Inc.

08/17/2016 AMENDED NOTICE  
AMENDED NOTICE OF HEARING SET FOR 09-29-2016 AT 2PM ON THE BHP Billiton's Motion to Compel Responses to BHP's First Interrogatories and Requests for Production to The New Mexican and BHP Billiton and Westmoreland's Motion to Realign Parties

08/15/2016 ANSWER  
PNM's Answer to Second Amended Answer and Counterclaim by the New Mexican

08/12/2016 CERTIFICATE OF SERVICE  
New Mexican CoS re Discovery to Plaintiffs

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08/12/2016	RESPONSE	D	1
	New Mexican Response to BHP 2d Motion To Compel		
08/10/2016	NTC: OF NON-AVAILABILITY		
	New Mexican's Notice of Unavailability		
08/10/2016	MEMORANDUM		
	New Mexican's Memo on Federal Law		
08/10/2016	BRIEF		
	PNM's Supplemental Brief in Support of Motion to Dismiss Claims		
08/02/2016	AMENDED NOTICE		
	AMENDED NOTICE OF HEARING SET FOR 08-18-2016 AT 3:30PM ON THE BHP Billiton s Motion to Compel Responses to BHP s First Interrogatories and Requests for Production to The New Mexican AND BHP Billiton and Westmoreland s Motion to Realign Parties		
08/02/2016	MTN: TO COMPEL		
	BHP Billiton's Motion to Compel Responses to BHP's Second Interrogatories and Requests for Production to The New Mexican		
08/02/2016	NTC: HEARING		
	NOTICE OF HEARING set for 08-18-2016 at 4pm on the BHP Billiton and Westmoreland s Motion to Realign Parties		
08/02/2016	REQUEST FOR HEARING/ SETTING		
	Request for Hearing on BHP's Motion to Compel		
08/02/2016	NTC: COMPLETION OF BRIEFING		
	Notice of Completion of Briefing on BHP Billiton's Motion to Compel Responses to BHP's First Interrogatories and Requests for Production to The New Mexican		
08/01/2016	REQUEST FOR HEARING/ SETTING		
	Request for Hearing [Matter to be Heard: BHP Billiton and Westmoreland's Motion to Realign Parties]		
08/01/2016	NTC: COMPLETION OF BRIEFING	IV	3
	Notice of Completion of Briefing on BHP Billiton and Westmoreland s Motion to Realign Parties		
08/01/2016	REPLY	IV	3
	BHP Billiton and Westmoreland's Reply Regarding the Motion to Realign Parties		
07/29/2016	REPLY		
	BHP Billiton's Reply in Support of its Motion to Compel Responses to BHP's First Interrogatories and Requests for Production to the New Mexican		
07/28/2016	REQUEST FOR COPY OF TAPES/CD/AUDIO		
	CD Request for 12-02-15 Hearing (Hearing was taken Stenographically xc:BC)		
07/27/2016	ANSWER & COUNTERCLAIM		
	Second Amended Answer and Counterclaim by The New Mexican, Inc		
07/26/2016	ORD: ORDER		
	ORDER ON PNM s AND PHILLIP S MOTION TO DISMISS		
07/21/2016	RESPONSE		
	New Mexican Response to Motion To Realign		
07/14/2016	RESPONSE	P	1
	NMPRC's Response to Motion to Realign Parties		
07/14/2016	RESPONSE		
	New Mexican Response to BHP Billiton Motion To Compel		
07/13/2016	CERTIFICATE OF SERVICE		
	Certificate of Service re BHP 2d ROG and RFPs		
07/06/2016	ORD: ORDER		
	ORDER EXCUSING COUNSEL FROM HEARING		
07/06/2016	MTN: MOTION		
	BHP Billiton and Westmoreland's Motion to Realign Parties		
06/30/2016	MTN: MOTION	P	1
	Motion to Excuse Counsel from Hearing (Unopposed)		
06/28/2016	AMENDED NOTICE		
	AMENDED NOTICE OF HEARING SET FOR 07-20-2016 AT 10:30AM ON THE PNM and Phillips Motion to Dismiss New Mexican s Purported Counterclaim Alternatively Motion to Strike New Mexican s Purported Counterclaim, filed September 14, 2015		
06/27/2016	MTN: TO COMPEL		
	BHP Billiton's Motion to Compel Responses to BHP's First Interrogatories and Requests for Production to The New Mexican		
06/21/2016	MANDATE ON INTERLOCUTORY APPEAL		
	Mandate to District Court Clerk - Application of Public Service Company of New Mexico for Leave to File Interlocutory Appeal is Denied (COA 35,360)		
06/10/2016	CERTIFICATE OF SERVICE		

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05/11/2016 Certificate of Service - BHP Billiton's 2nd Set of ROGS and RFP to The New Mexican  
RECEIPT OF CD  
CD Receipt

05/10/2016 NTC: HEARING  
PNM and Phillips' Motion to Dismiss New Mexican's Purported Counterclaim Alternatively Motion to Strike New Mexican's Purported Counterclaim scheduled at 10:30 a.m. on July 26, 2016

05/06/2016 REQUEST FOR COPY OF  
TAPES/CD/AUDIO  
Request for copy of hearing CD, 5/9/16 4:59:14-5:41:38 lcd jn

05/04/2016 CERTIFICATE OF SERVICE  
Certificate of Service - BHP Billiton's First Set of Interrogatories and Requests for Production to The New Mexican

04/06/2016 NTC: HEARING  
Notice of Scheduling Conference

04/01/2016 REQUEST FOR HEARING/  
SETTING  
Joint Request for Scheduling Conference

03/28/2016 ORD: ORDER DENYING P 1  
COA Denied Interlocutory Appeal and is remanded back to District Court (COA # 35,360)

02/18/2016 INTERLOCUTORY APPEAL  
Application for Interlocutory Appeal (Court of Appeals)

02/17/2016 ORD: STIPULATED  
STIPULATED ORDER ADOPTING PART OF SETTLEMENT AGREEMENT AS ORDER OF THE COURT

02/08/2016 NTC: HEARING  
NOTICE OF HEARING SET FOR 02-15-2016 AT 2PM FOR A PRESENTMENT HEARING

02/01/2016 ORD: ORDER DENYING  
ORDRE DENYING THE NOTICES OF DISMISSAL WITHOUT PREJUDICE WHICH WERE FILED BY PNM, WESTMORELAND AND BHP BILLITON AND INCLUDING NMSA SECTION 39-3-4 LANGUAGE AND A LIMITED STAY AND ORDER VACATING HEARING AND ORDER DENYING MOTION FOR CERTIFICATION AS MOOT

01/21/2016 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

01/21/2016 MTN: MOTION

01/20/2016 REQUEST FOR HEARING/  
SETTING  
Request for Hearing on Public Service Company of New Mexico's Motion for Certification for Interlocutory Appeal

01/20/2016 MTN: MOTION  
Public Service Company of New Mexico's Motion for Certification for Interlocutory Appeal

01/19/2016 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing as to Second Joint Motion for Entry of Agreed-Upon Order (Opposed)

01/14/2016 NTC: HEARING  
NOTICE OF HEARING set for 02-08-2016 at 1:30pm on the PNM and Phillips' Motion to Dismiss New Mexican's Purported Counterclaim Alternatively Motion to Strike New Mexican's Purported Counterclaim, filed September 14, 2015.

01/13/2016 REQUEST FOR HEARING/  
SETTING  
Request for Hearing on PNM and Phillips' Motion to Dismiss New Mexican's Purported Counterclaim Alternatively Motion to Strike New Mexican's Purported Counterclaim

01/12/2016 ORD: ORDER  
Order

01/08/2016 RESPONSE  
PNM and Phillips Response to Second Joint Motion for Approval of Form of Order

01/06/2016 RESPONSE  
Non-Party BHP Billiton New Mexico Coal, Inc.'s Response and Objections to Second Joint Motion for Entry of Agreed-Upon Order

12/22/2015 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

12/22/2015 MTN: MOTION  
Second Joint Motion for Entry of Revised Agreed-Upon Order (Opposed)

12/17/2015 OBJECTION/OPPOSITION  
Westmoreland Coal Company's Objection to "Corrections for the Record by the New Mexican"

12/08/2015 NTC: NOTICE  
Corrections for the Record by The New Mexican

11/25/2015 AMENDED NOTICE

AMENDED NOTICE OF HEARING SET FOR 12-02-2015 AT 10AM ON THE Westmoreland s Notice of Dismissal filed 8/18/15; PNM s Notice of Dismissal filed 8/20/15; BHP s Notice of Dismissal filed 8/21/15; PNM & Phillips Motion to Dismiss filed 9/14/15; Westmoreland s Motion to Dismiss filed 9/14/15 AND Joint Motion for Entry of Agreed-Upon Order, Filed by NMPRC and The New Mexican, Inc. on October 28, 2015

11/19/2015 REPLY  
Joint Reply in Support of Joint Motion for Entry of Agreed-Upon Order

11/19/2015 REQUEST FOR HEARING/  
SETTING  
Request for Hearing

11/19/2015 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

11/16/2015 RESPONSE  
Special Appearance of Public Service Company of New Mexico to Lodge Objection to Joint Motion for Entry of Agreed Upon Order

11/11/2015 OBJECTION/OPPOSITION  
Westmoreland Coal Company's Objection to Joint Motion for Entry of Agreed-Upon Order

10/30/2015 RESPONSE  
BHP Billiton New Mexico Coal, Inc.'s Response and Objections to Joint Motion for Entry of Agreed-Upon Order

10/28/2015 MTN: MOTION  
Joint Motion for Entry of Agreed-Upon Order

10/28/2015 ORD: EXTENDING TIME  
FOURTH STIPULATED ORDER EXTENDING DEADLINES

10/15/2015 NTC: HEARING  
NOTICE OF HEARING SET FOR 12-02-2015 AT 10AM ON Westmoreland s Notice of Dismissal filed 8/18/15; PNM s Notice of Dismissal filed 8/20/15; BHP s Notice of Dismissal filed 8/21/15; PNM & Phillips Motion to Dismiss filed 9/14/15; Westmoreland s Motion to Dismiss filed 9/14/15

10/13/2015 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

10/13/2015 REPLY  
Reply of PNM & Phillips in Support of their Motion to Dismiss the New Mexican's Purported Counterclaim

10/07/2015 ORD: EXTENDING TIME  
THIRD STIPULATED ORDER EXTENDING DEADLINES

10/01/2015 NTC: HEARING  
Notice of hearing set for 11-03-2015 at 2:30PM on the Westmoreland s Notice of Dismissal filed 8/18/15; PNM s Notice of Dismissal filed 8/20/15; BHP s Notice of Dismissal filed 8/21/15; PNM & Phillips Motion to Dismiss filed 9/14/15; Westmoreland s Motion to Dismiss filed 9/14/15

09/24/2015 ORD: EXTENDING TIME  
SECOND STIPULATED ORDER EXTENDING DEADLINES

09/23/2015 RESPONSE  
Consolidated Response to Motions To Dismiss

09/15/2015 JURY DEMAND 6 PERSON  
Jury Demand

09/15/2015 NTC: COMPLETION OF  
BRIEFING  
Notice of Completion of Briefing

09/14/2015 MTN: TO DISMISS  
PNM & Phillips' Motion to Dismiss New Mexican's Purported Counterclaim

09/14/2015 ENTRY OF APPEARANCE  
Entry of Limited Appearance for Ben Phillips

09/14/2015 REPLY  
Reply In Support of Notice of Dismissal

09/14/2015 REPLY  
Reply to First Amended Counterclaim

09/14/2015 ORD: ORDER  
STIPULATED ORDER TO EXTEND PAGE LIMITS IN REGARDS TO MOTIONS TO DISMISS AND SUBSEQUENT RESPONSE

09/14/2015 MTN: TO DISMISS  
Motion to Dismiss Westmoreland Coal Company

09/14/2015 ORD: EXTENDING TIME  
STIPULATED ORDER EXTENDING DEADLINES

09/11/2015 ENTRY OF APPEARANCE  
Entry of Appearance as Co-Counsel

09/11/2015 ENTRY OF APPEARANCE  
Entry of Appearance

09/10/2015 REQUEST FOR HEARING/  
SETTING

09/10/2015 Request for Hearing  
NTC: COMPLETION OF  
BRIEFING

09/10/2015 Notice of Completion of Briefing  
REPLY

08/26/2015 PNM's Reply to the New Mexican's Response to PNM's Notice of Dismissal without Prejudice  
RESPONSE

08/26/2015 Response to Purported Notices of Dismissal  
RESPONSE

08/26/2015 Response to PRC Motion To Dismiss  
AMENDED ANSWER

08/21/2015 Amended Answer and Counterclaim  
Notice of Partial Dismissal

08/20/2015 BBNMC Notice of Dismissal  
Notice of Partial Dismissal

08/18/2015 PNM's Notice of Dismissal without Prejudice  
Notice of Partial Dismissal CD 2

08/13/2015 Westmoreland Coal Company's Notice of Dismissal  
NTC: NOTICE

08/13/2015 PNM's Notice of Withdrawal as Intervenor  
NTC: NOTICE

08/13/2015 Notice of Withdrawal of BHP Billiton New Mexico Coal, Inc.'s Motion to Intervene  
NTC: NOTICE

08/13/2015 Notice of Withdrawal of Westmoreland Coal Company's Motion to Intervene  
ORD: ORDER

08/13/2015 ORDER APPROVING INTERVENORS  
BRIEF

08/12/2015 Attorney General's Office Brief Regarding Inspection of Public Records Act  
REQUEST FOR HEARING/  
SETTING

08/12/2015 Request for Expedited Hearing on Motion to Withdraw as Petitioner and Voluntarily Dismiss the Commission from the Petition  
MTN: MOTION

08/12/2015 Motion to Withdraw as Petitioner and Voluntarily Dismiss the Commission from the Petition  
NTC: HEARING

08/12/2015 Notice of hearing set for August 13, 2015 at 4:15PM for a Presentment Hearing  
MTN: MOTION/ PETITION TO  
EXTEND TIME

08/12/2015 Attorney General's Office Motion for Extension of Time to File  
ANSWER & COUNTERCLAIM

08/12/2015 Answer and Counterclaim  
RESPONSE

08/12/2015 New Mexican Statement of Points and Authorities in Opposition to TRO  
REQUEST FOR HEARING/  
SETTING

08/12/2015 Request for Hearing  
APPLICATION (NON-  
OPENING)

08/11/2015 PNM's Application for Preliminary Injunction  
ORD: TEMPORARY  
RESTRAINING ORDER

08/10/2015 ORDER DENYING TRO WITHOUT PREJUDICE AND SETTING HEARING  
MTN: TO INTERVENE

08/10/2015 Westmoreland Coal Company's Motion to Intervene  
REQUEST

08/10/2015 Expedited Request for Setting  
MTN: TO INTERVENE

08/10/2015 BHP Billiton New Mexico Coal, Inc.'s Expedited Motion to Intervene  
ORD: ORDER

08/10/2015 ORDER NOTICE OF HEARING  
ENTRY OF APPEARANCE

08/07/2015 Entry of Appearance  
REQUEST FOR HEARING/  
SETTING

08/07/2015 Emergency Request for Hearing  
MTN: TO INTERVENE  
Motion of Public Service Company of New Mexico to Intervene as a Party Plaintiff

08/06/2015 OPN: PETITION  
Emergency Verified Petition for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction and Petition to Enforce Protective Order

**JUDGE ASSIGNMENT HISTORY**

ASSIGNMENT DATE	JUDGE NAME	SEQ #	ASSIGNMENT EVENT DESCRIPTION
08/06/2015	Thomson, David K.	1	INITIAL ASSIGNMENT