

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE APPLICATION )  
OF PUBLIC SERVICE COMPANY OF NEW )  
MEXICO FOR REVISION OF ITS RETAIL )  
ELECTRIC RATES PURSUANT TO ADVICE )  
NOTICE NO. 625, )  
)  
PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, )  
Applicant. )**

**Case No. 24-00089-UT**

**ORDER ON NOTICE AND MOTION**

**THIS MATTER** comes before Christopher P. Ryan and John F. Kreienkamp, hearing examiners for the New Mexico Public Regulation Commission, upon the Notice of Settlement in Principle and Unopposed Joint Motion to Vacate Testimony Deadline and for Scheduling Conference to Establish New Deadlines for Stipulation Testimony, filed on November 15, 2024. The hearing examiners **FIND** and **CONCLUDE** as follows:

1. The parties who filed the notice and joint motion include PNM (the applicant), the NM DOJ, ABCWUA, Commission Staff, Bernalillo County, NM AREA, and Walmart. In their filing, the joint movants alert the hearing examiners that they have reached a “settlement in principle” and ask that the procedural schedule be amended.

2. The notice portion of the filed writing explains that “a [s]ettlement in [p]rinciple has been reached in this case among several parties and PNM, although the signatories thereto have not been fully determined.”<sup>1</sup> The notice explains further that “[t]he [s]ettlement in [p]rinciple is subject to client formal review and approval processes and the comprehensive stipulation that parties intend to file by November 26, 2024 ultimately may or may not be unopposed.”<sup>2</sup>

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<sup>1</sup> Notice and Joint Motion, at 1.

<sup>2</sup> *Id.*

3. The motion portion of the writing reflects these events and asks the Commission to (1) vacate the November 26, 2024, date for intervenor and Staff direct testimony and (2) schedule a prehearing conference during the week of December 2, 2024, at which a modified procedural schedule will be discussed and established. It is important to emphasize that the joint movants request “that the start date for the [e]videntiary [h]earing stay as scheduled.”<sup>3</sup>

4. Some review of the procedural history of this case is necessary to address and resolve the joint movants’ requests.

5. PNM’s application for revision of its rates was filed on June 14, 2024.

6. In an order dated June 27, 2024, the Commission suspended the operation of the proposed rates for twelve months or until July 15, 2025.<sup>4</sup>

7. On July 11, 2024, the assigned hearing examiners issued a procedural order with a procedural schedule that was set with guidance and contributions from the parties.

8. The procedural order set the multi-week public hearing to begin on February 17, 2025, and continue as needed through March 7, 2025. The parties were directed to conduct a settlement conference by November 1, 2024. Staff and intervenors were directed to file direct testimony by November 26, 2024. If the parties entered into a stipulation, they were directed to file that stipulation by the date Staff and intervenor direct testimony was to be filed, i.e. November

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<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 625, Case No. 24-00089-UT, Order Suspending Rates*, at 2 (Jun. 28, 2024). See also NMSA 1978, § 62-8-7(C) (2011) (“Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.”).

26, 2024. Any stipulation filed was required to be accompanied by direct testimony. One other aspect of the procedural order requires attention as it is important, and it along with some background principles necessary to understand the concerns and justification for the provision are addressed in the paragraphs that follow.

9. The Commission has comprehensive procedures for adjudicating formal stipulations.<sup>5</sup>

10. These rules expressly contemplate contested stipulations where not all parties participating in a case agree that the proposed stipulation is the best outcome. The notice provided here in this case expressly indicates that it is possible the stipulation that will be filed may be contested.

11. The stipulation rules make clear that the Commission must ultimately approve any stipulation for it to have force of law.<sup>6</sup> This is true regardless of whether the stipulation is contested or uncontested.

12. It is unsurprising that the Commission must authorize stipulations given that Commission adjudications do not involve private rights over which discrete individual New Mexico citizens exercise sovereignty but public rights impacting all of New Mexico and its citizenry.<sup>7</sup>

13. Intervenors with individuated interests participate in Commission proceedings and have due process rights to express those interests, produce evidence, and be heard on legal matters.

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<sup>5</sup> See 1.2.2.20 NMAC.

<sup>6</sup> See *id.* (“Settlement stipulations shall be binding only if approved by the commission.”).

<sup>7</sup> See generally Caleb Nelson, Adjudication in the Political Branches, 107 Colum. L. Rev. 559 (2007) (discussing why administrative bodies, as opposed to courts, have authority to adjudicate certain forms of disputes and arguing that the principal explanation is the fact that certain rights inure to the benefit of the public, not individuals, and administrative bodies subject to political process are best positioned to adjudicate those questions).

The parties' contributions are invaluable to the regulatory process, but their contributions do not change the fact that the Commission's ultimate determination will not only impact the parties to the case but all of New Mexico.

14. The task of determining whether any given course of action is in the best interest for all of New Mexico is difficult given the asymmetry of information and resources that exists between regulated public utilities and the regulator (as well as the broader regulatory community) as well as the inherent complexity of utility regulation. The discipline requires highly specialized knowledge about engineering, economics, finance, and administrative law.

15. Stipulations represent persuasive evidence an outcome may be optimal. Stipulations cannot bind the Commission in the exercise of its statutory duties in deciding what is best for the entire state.

16. All of what has just been said must be true given that the Commission's procedural rules governing adjudication of stipulations expressly contemplate (as noted above) contested stipulations where not all parties participating in a case agree that the proposed stipulation is the best outcome.

17. For these reasons (and others that it is unnecessary to spell out in detail here) the Commission's rules understandably contemplate that the Commission may reject a stipulation.<sup>8</sup> Rejection can occur either before or after hearing.<sup>9</sup>

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<sup>8</sup> See 1.2.2.20(B)(4) NMAC (requiring that a public hearing be held concerning a contested stipulation "to determine whether the stipulation shall be approved by the commission"). It should also be noted that the Commission's rules also expressly contemplate the possibility of a denial of an *uncontested* stipulation. See 1.2.2.20(A)(3) NMAC (requiring that a hearing be held "to determine whether the stipulation should be approved by the commission").

<sup>9</sup> *Id.*; 1.2.2.20(B)(3) NMAC (instructing that, as to contested stipulations, "[t]he commission or presiding officer shall schedule the stipulation for public hearing and review unless it is determined that the nature and

18. The fact that the Commission may reject a stipulation after hearing on it gives rise to a procedural problem that is, in fact, a core substantive concern in this and all cases subject to legislative or regulatory time constraints.

19. If time within the statutory suspension period governing this rate case is dedicated to adjudication of a stipulation and the Commission ultimately rejects that stipulation, then the Commission could find itself in a position that it is without the time needed to adjudicate the as-filed application.

20. This possibility is addressed in the procedural order issued in this case. It states as follows:

To prevent the Commission from being placed in the untenable position of issuing an order rejecting a stipulation and then having insufficient time remaining in the statutory suspension period to adequately consider the application, the parties are alerted now that the Hearing Examiners may condition consideration of the stipulation on the stipulating parties' agreement to toll the running of the statutory suspension period between the date the parties file the stipulation and the date Commission takes final action on it.<sup>10</sup>

21. That the procedural order accounted for contingency does not mean it any way enlarged the Commission's authority.

22. That the Commission must act within a certain period of time in an adjudication is a legislative directive, and how best to understand that directive is a question of statutory construction.<sup>11</sup> The Legislature could not have intended to place the Commission in a position for

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extent of the opposition is such that hearing the stipulation will not materially conserve commission, staff, and party resources.”).

<sup>10</sup> *Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 625*, Case No. 24-00089-UT, *Procedural Order*, at 9-10 (Jul. 11, 2024).

<sup>11</sup> “The principal command of statutory construction is that the court should determine and effectuate the intent of the legislature.” *State v. Ogden*, 1994-NMSC-029, ¶ 24, 118 N.M. 234, 242 (citing *State ex rel. Kline v. Blackhurst*, 1988-NMSC-015, ¶ 12, 106 N.M. 732, 735). Although a court looks first to the plain language of the statute, “when the literal meaning leads to conclusions that are unjust or nonsensical,” it must

which there is no good outcome: either (1) allow the parties to proceed on their stipulation and accept that there will be no time to consider the as-filed application if the Commission elects to reject the stipulation, or (2) decline to proceed on the stipulation to avoid the circumstances identified in the first scenario. It is crucial to emphasize that the impossibility of the situation only grows where not all parties to a proceeding join the stipulation and some are opposed to it. Moreover, the parties opposing the stipulation must have some vehicle by which to present their positions on the as-filed application if the Commission ultimately agrees the stipulation should be rejected.

23. For these reasons, it must be that the legislative line drawing that is the suspension-period statute is subject to tolling that permits the Commission to exercise the discretion statutorily conferred on it and to address the rights of all parties to a proceeding.

24. Conditioning treatment of the stipulation on the parties' concomitant willingness to toll the running of the suspension period resolves the possibility that the adjudication of a stipulation could result in a circumstance where there is no time to hear and consider the as-filed application.

For these reasons, **IT IS ORDERED:**

A. The request in the joint motion that the intervenors and Staff be relieved of the obligation to file direct testimony on November 26, 2024, is **GRANTED**.

B. The joint movants are alerted that their request to forego the filing of direct testimony and instead file testimony in support of a not-as-yet-filed stipulation is granted on the

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"look beyond the four corners of the statute." *Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 13, 117 N.M. 655, 658.

understanding that the Commission will not count the time utilized to litigate the stipulation against the Commission's statutory time to adjudicate the as-filed application.

C. A prehearing conference will be conducted on **Wednesday, December 4, 2024**, at 1:00 p.m.

D. The prehearing conference will be conducted via the Zoom videoconferencing platform. An invitation to that virtual conference will be sent by separate e-mail to the service list.

E. This order is effective immediately.

**ISSUED** under the seal of the Commission at Santa Fe, New Mexico, this **22nd** day of **November, 2024**.



**NEW MEXICO PUBLIC REGULATION COMMISSION**

A handwritten signature in black ink, appearing to read "C. Ryan", written over a horizontal line.

**Christopher P. Ryan**  
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A handwritten signature in black ink, appearing to read "John F. Kreienkamp", written over a horizontal line.

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)  
)  
PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, Applicant )

**CERTIFICATE OF SERVICE**

I certify that on this date I sent, via email, a true and correct copy of the Order on Notice and Motion to the parties listed below.

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## BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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DATED November 22, 2024.

NEW MEXICO PUBLIC REGULATION COMMISSION



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**John F. Kreienkamp, Hearing Examiner**