

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE PETITION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, PURSUANT TO THE EFFICIENT USE OF ENERGY ACT AND THE PUBLIC UTILITY ACT, FOR APPROVAL OF A RATE ADJUSTMENT MECHANISM TO REMOVE REGULATORY DISINCENTIVES AND ORIGINAL RIDER NO. 52,) **Case No. 20-00121-UT**
)
PUBLIC SERVICE COMPANY OF NEW MEXICO,)
)
Petitioner.)
_____)

ORDER VACATING HEARINGS AND STAYING PROCEEDING

THIS MATTER comes before the Hearing Examiner upon the filing of the Motion to Vacate Public Hearing and Stay Proceeding (“Motion”) filed by Public Service Company of New Mexico (PNM) on October 2, 2020. Being fully informed in the premises, the Hearing Examiner **FINDS** and **CONCLUDES**:

1. The current procedural schedule for this case has a public comment hearing slated for October 8, 2020 and, judging from the relatively large number of witness testimonies filed and the extensive amount of cross-examination time (collectively speaking) requested by PNM, intervenors, and Staff of the Utility Division of the New Mexico Public Regulation Commission (“Commission” or NMPRC) in their prehearing memoranda,¹ a likely four-day evidentiary hearing scheduled to begin on October 13, 2020.²

¹ In their September 28, 2020 prehearing memoranda, the parties collectively requested 1,904 minutes of cross-examination (31.7 hours) of the twelve witnesses who filed testimony in this case. The prefiled testimony consists of 11 direct testimonies and 7 rebuttal testimonies. Assuming 5 hours of cross-examination per day on the basis of a 9 a.m. to 5 p.m. hearing schedule (which does not account for other typical aspects of a hearing, such as oral arguments, rulings on evidentiary objections, Commissioner and Hearing Examiner questioning, discussion of bench requests, witness introductions and transitions, etc.), the evidentiary hearings would take up over six days ($31.7 \div 5 = 6.34$ days). If cross-examination time were reasonably capped as recently done by the Hearing Examiners in Case Nos. 19-00195-UT at 20 minutes maximum per witness distributed as proposed by

2. PNM moves the Hearing Examiner to issue an order vacating the evidentiary hearing and staying the proceeding until the Commission decides whether to entertain a petition for declaratory order, which PNM commits to filing in a new docket within 14 days of the Hearing Examiner's issuance of an order on the instant Motion.

3. As grounds for the Motion, PNM asserts that Section 62-17-5(F)(2) of the Efficient Use of Energy Act (EUEA)³ authorizes utilities to bring forward petitions for full revenue decoupling. Testing that assertion in this case, the Shared Cost of Service (SCS) Rider proposed by PNM in this proceeding seeks full revenue decoupling for PNM's Residential and Small Power rate classes.

4. PNM notes that intervenor testimony filed in this case suggests that PNM should bring forward its decoupling proposal in PNM's next general rate case. PNM notes, further, that several intervenors have argued that Section 62-17-5(F)(2) only authorizes decoupling mechanisms dedicated to removing disincentives attributable to utility implementation of energy efficiency and load management programs and addressing decreased utility revenue specifically tied to such programs. For instance, intervenors New Energy Economy (NEE) and the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) have made this argument both in their respective motions to dismiss and direct testimonies filed in this case.

5. While PNM disagrees that Section 62-17-5(F)(2) requires that requests for full revenue decoupling must be presented only in general rate case proceedings, PNM says it is willing

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cross-examining parties among the total number of witnesses to be cross-examined by each party (e.g., PNM would have 160 minutes of cross-examination time with 8 witnesses apportioned among each as desired – 60 minutes with Witness A, 30 minutes with Witness B, 10 with Witness C, etc.), the hearings would still take up four full days (based on 1219 minutes of cross-examination allowed, or $20.3 \text{ hours} \div 5 = 4.1 \text{ days}$).

² See Procedural Order (June 29, 2020) at 4-5, ¶¶ I-K.

³ NMSA 1978, §§ 62-17-1 to -11 (2005, as amended through 2019).

to consider returning to this issue in its next general rate case, which it expects to file by the summer of 2021. Nevertheless, PNM believes that the same threshold issue now framed in this proceeding – whether or not Section 62-17-5(F)(2) of the EUEA allows for full revenue decoupling – is virtually certain to arise in any future rate case proceeding wherein PNM might propose such a decoupling mechanism, unless the issue is resolved in advance of that future rate case filing.⁴

6. Consequently, citing the interest of conserving the limited resources of the parties and the Commission, PNM expresses its willingness to dismiss its pending application if the Commission entertains a petition for declaratory order pursuant to 1.2.2.21 NMAC requesting a legal determination from the Commission as to whether Section 62-17-5(F)(2) does, or does not, provide for full revenue decoupling. PNM states that in the petition for declaratory order that it commits to filing within two weeks, PNM will ask the Commission, if it decides to entertain the petition pursuant to 1.2.2.21 NMAC, to close the instant docket. On the other hand, if the Commission decides to not entertain the petition, PNM will make a filing in this docket within ten days indicating whether it intends to continue with its Petition and, if so, proposing a new procedural schedule.⁵

7. PNM suggests, moreover, that a declaratory order proceeding could also resolve other disputed legal issues that have arisen in this case, including whether a decoupling mechanism under Section 62-17-5(F)(2) may apply to some, but not all, of a utility's customer classes, and whether the Commission may consider an adjustment to a utility's return on equity if it approves a decoupling mechanism pursuant to Section 62-17-5(F)(2). Hence, PNM asserts that staying this

⁴ Motion at 2.

⁵ *Id.*

proceeding while the Commission decides whether to entertain these threshold issues will conserve parties' resources and avoid the need for duplicate work in multiple dockets.

8. While PNM recognizes that some parties to this proceeding, including NEE and ABCWUA, may disagree with PNM's position on some or all of these issues, PNM asserts those disagreements illustrate precisely why it makes sense to resolve these issues, which are purely legal issues not factual issues, before the Commission potentially takes up the question of a proposed Section 62-17-5(F)(2) decoupling mechanism in PNM's next general rate case.⁶

9. In sum, PNM submits that, irrespective of each intervenor's position on these issues, it makes sense to resolve these issues before the Commission is potentially asked to take up a specific proposed decoupling mechanism, if proposed by PNM, in its next rate case. PNM concludes that resolving these purely legal issues now, in advance of that future rate case, will allow the parties to focus on the specifics of any decoupling mechanism PNM might propose in that future rate case.

10. PNM reported in the Motion that, among the parties stating positions on the Motion, the following parties did not oppose it: Staff, the New Mexico Attorney General, Coalition for Clean Affordable Energy (CCAEE), and Western Resource Advocates (WRA). The Renewable Energy Industry Association of New Mexico initially took no position but eventually filed a response proposing an alternative procedure similar in intent to the approach proposed by PNM in the Motion on October 6, 2020. On that date, responses were also filed by New Mexico Affordable Reliable Energy Alliance, who supports the Motion, and the following parties who oppose the Motion and made various arguments in opposition to it, including ABCWUA, NEE, the City of Albuquerque, and Bernalillo County.

⁶ Motion at 2-3.

11. On October 6, 2020, the Hearing Examiner held a prehearing and status conference via the Zoom videoconference platform. The videoconference was attended by representatives of PNM, all the intervenors, and Staff. In the videoconference, the Hearing Examiner entertained oral argument on the Motion from PNM and the intervenors who filed responses as well as from other parties, including CCAE, WRA, and Staff, who were also afforded the opportunity to weigh in on the issues presented.

12. In the wake of the oral argument, and assuming a favorable outcome on the Motion and depending on the contours of the Commission's ruling on the petition for declaratory order, PNM agreed during the videoconference to an as yet unspecified but appropriate extension of the statutory period for Commission action on the Petition in this case.⁷ In addition, advancing the spirit of cooperation further still with the aim of potentially refining the legal issues that PNM will ask the Commission to address in a declaratory order, PNM also agreed to circulate a draft petition via e-mail to the intervenors and Staff by October 13, 2020 and then to file its petition for declaratory order by October 30, 2020.

13. Therefore, having closely considered the Motion, the responses pro and con, the parties' positions stated in oral argument, and the record as a whole, the Hearing Examiner finds substantial merit in the approach proposed by PNM to addressing the threshold legal issues, a sensible alternative to intensive and, perhaps, ultimately unnecessary evidentiary hearings conducted in suboptimal conditions via videoconference given the ongoing COVID-19 pandemic. Thus, the Hearing Examiner finds the declaratory order process PNM has proposed will advance the interests of administrative efficiency, adjudicative economy, and preservation of party and

⁷ In its Initial Order issued on June 10, 2020, the Commission suspended PNM's proposed Rider No. 52 and Advice Notice 568 for a period of nine months subject to further order of the Commission. Therefore, the current suspension period for a dispositional order on the decoupling petition expires on February 28, 2021.

Commission resources. Accordingly, deeming the Motion well taken and PNM's subsequent concessions reasonable, the Hearing Examiner will vacate the public comment and evidentiary hearings and hold this proceeding in abeyance at least until the Commission renders its initial judgment on entertaining the forthcoming petition for declaratory order and closing this docket.⁸

IT IS THEREFORE ORDERED:

- A. The public comment hearing set for October 8, 2020 is **VACATED**.
- B. The evidentiary hearing set to begin October 13, 2020 is **VACATED**.
- C. This proceeding is **STAYED** pending further order.
- D. PNM shall circulate a draft petition via e-mail to all intervenors and Staff for their review and comment no later than October 13, 2020.
- E. PNM shall file a petition for declaratory order with the Commission by October 30, 2020.
- F. Except as expressly provided herein, all findings, conclusions, and ordering clauses contained in prior orders of the Hearing Examiner and Commission that have not been amended or otherwise superseded remain in full force and effect.

ISSUED at Santa Fe, New Mexico this 7th day of **October 2020**.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Anthony F. Medeiros

Anthony F. Medeiros
Hearing Examiner

⁸ This ruling holds in abeyance and, hence, effectively preserves for potential further proceedings, among other things, the opportunity the Hearing Examiner provided intervenors and Staff in his September 30, 2020 Order to file replies to PNM's responses to the Hearing Examiner's Bench Request Order and the Commission's First Bench Request Order.

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TO THE EFFICIENT USE OF ENERGY ACT AND THE)
PUBLIC UTILITY ACT, FOR APPROVAL OF A RATE)
ADJUSTMENT MECHANISM TO REMOVE REGULATORY)
DISINCENTIVES AND ORIGINAL RIDER NO. 52,)
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PUBLIC SERVICE COMPANY OF NEW MEXICO,)
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Petitioner.)

Case No. 20-00121-UT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused to be sent via e-mail on this date a true and correct copy of the foregoing *Order Vacating Hearings and Staying Proceeding* to the parties set forth below:

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DATED this 7th day of October 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ *Anthony F. Medeiros*

Anthony F. Medeiros
Hearing Examiner