

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF PUBLIC SERVICE</b>	)	
<b>COMPANY OF NEW MEXICO’S PETITION FOR</b>	)	
<b>A DECLARATORY ORDER REGARDING</b>	)	
<b>WHETHER THE EFFICIENT USE OF ENERGY</b>	)	
<b>ACT PERMITS A UTILITY TO IMPLEMENT A</b>	)	
<b>FULL REVENUE DECOUPLING MECHANISM</b>	)	
	)	<b>Case No. 20-00__-UT</b>
	)	
<b>PUBLIC SERVICE COMPANY OF NEW MEXICO,</b>	)	
	)	
<b>Petitioner.</b>	)	
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**PUBLIC SERVICE COMPANY OF NEW MEXICO’S PETITION FOR  
DECLARATORY ORDER**

Public Service Company of New Mexico (“PNM” or “Company”), pursuant to 1.2.2.21 NMAC, petitions the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) for a declaratory order that Section 62-17-5(F)(2), a provision of the Efficient Use of Energy Act (“EUEA”), NMSA 1978, §§ 62-17-1 through 11 (2019), authorizes full revenue decoupling, and for rulings on certain other legal questions that have been raised in Case 20-00121-UT. PNM requests that the Commission declare that Section 62-17-5(F)(2) requires the Commission, upon the request of a utility, to fully decouple a petitioning utility’s revenues from all changes between rate cases in average kWh sales per customer, and not simply limit decoupling to the removal of disincentives specifically related to implementation of energy efficiency or load management programs, as various parties have suggested in Case No. 20-00121-UT.<sup>1</sup> As this petition and its

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<sup>1</sup> In Case No. 20-00121-UT PNM requested approval of its Shared Cost of Service Rider No. 52, a full revenue decoupling mechanism. On October 2, 2020 PNM filed a Motion to Vacate Public Hearing and Stay Proceeding (“Motion to Stay”) in order to be able to first address and resolve, through this declaratory order proceeding, the threshold issue concerning the proper understanding and application of Section 62-17-5(F)(2). In the Motion to Stay, PNM committed to file this Petition for Declaratory Order within 14 days of an order staying Case No. 20-00121-UT, if so ordered. PNM also committed to asking

accompanying brief explain, various parties in Case No. 20-00121-UT presented substantial arguments, both in motions and in testimony, on the proper interpretation of the EUEA and Section 62-17-5(F)(2) which state threshold questions of pure law, severable from any factual issues presented by PNM’s proposed rider. Commission resolution of this Petition will resolve the fundamental—and overarching—controversy among a substantial number of parties regarding the application of Section 62-17-5(F)(2). In addition to PNM’s desire for resolution of the threshold legal issue of whether Section 62-17-5(F)(2) can be interpreted as not requiring approval of full decoupling, other parties brought forward related threshold legal issues, including:

- The construction of Section 62-17-5(F)(2) in light of other provisions of the EUEA;
- The permissibility of proposing full decoupling as to some rate classes, but not others;
- Whether full decoupling amounts to undue discrimination in violation of the Public Utility Act;
- Whether a standalone petition for decoupling is permitted under the EUEA, or whether such petition violates the principle against stand-alone or single-issue ratemaking;
- Whether the return-on-equity or capital structure of an applicant utility can or should be adjusted downward when a petition for full decoupling is granted under the EUEA;
- Whether a public utility’s petition pursuant to NMSA 1978, Section 62-17-5(F)(2) can be based on the revenue requirement approved in a past general rate case, or must the Commission specifically determine the “revenue per customer” in a rate case to which decoupling may apply.

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the Commission, in the event it decides to entertain the Petition for Declaratory Order, to close the docket for Case No. 20-00121-UT. On October 7, 2020, the hearing examiner entered an Order Vacating Hearings and Staying Proceeding, which stayed Case No. 20-00121-UT and required PNM to file a petition for declaratory order with the Commission by October 30, 2020. Accordingly, PNM now brings its Petition for Declaratory Order.

PNM's Brief in Support of PNM's Petition for Declaratory Order is filed contemporaneously with this Petition. PNM includes an affidavit as required by 1.2.2.21(B) NMAC.

As grounds for this Petition, and as set forth in PNM's brief, PNM states as follows:

1. On May 28, 2020, PNM filed a Petition for Approval of a Rate Adjustment Mechanism to Remove Regulatory Disincentives and Original Rider No. 52 ("Decoupling Petition"). In its Decoupling Petition, PNM proposed a full revenue decoupling mechanism, to be called the Shared Cost of Service Rider ("SCS Rider"). The mechanism would be a full decoupling mechanism in that it would entirely sever the link between average per customer kWh usage and the revenues PNM collects from PNM's residential and small power rate classes. On June 8, 2020, the Commission commenced Case No. 20-00121-UT<sup>2</sup> pursuant to the Initial Order in the case, and the Commission assigned Anthony Medeiros as Hearing Examiner to preside over the matter.

2. Albuquerque Bernalillo County Water Utility Authority ("ABCWUA"), the City of Albuquerque, the New Mexico Attorney General ("NMAG"), Bernalillo County, Coalition for Clean Affordable Energy ("CCAEE"), Merrie Lee Soules, New Energy Economy ("NEE"), New Mexico Affordable Reliable Energy Alliance ("NM AREA"), the Renewable Energy Industries Association of New Mexico ("REIA"), and Western Resource Advocates ("WRA") joined the case as interveners.

3. On July 13, 2020 ABCWUA, Bernalillo County, and the City of Albuquerque ("Joint Movants") filed a Joint Motion to Dismiss Public Service Company of New Mexico's Petition for

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<sup>2</sup> Hereinafter, all references to filings are to ones filed in Case No. 20-00121-UT, unless otherwise indicated.

Approval of a Rate Adjustment Mechanism (Decoupling), or, Alternatively, Motion to Defer Approval of a Rate Adjustment Mechanism to PNM's Next Rate Case ("Joint Movants' Motion"). NEE also filed a Motion to Dismiss Petition and Supporting Brief ("NEE Motion") (collectively, the "Motions").

4. The Motions advanced several legal arguments for why the Decoupling Petition should be dismissed. As pertinent here, both Motions asserted that Section 62-17-5(F)(2) does not authorize the Commission to adopt a full revenue decoupling mechanism. Rather, according to the Motions, Section 62-17-5(F)(2) only authorizes the Commission to adopt a mechanism to remove the disincentives directly (and only) relating to energy efficiency and load management programs. *See* Joint Movants' Motion, at 2-11; NEE Motion, at 49.

5. PNM filed its Consolidated Response in Opposition to the Motions to Dismiss on August 7, 2020 ("Consolidated Response"). In the Consolidated Response, PNM argued that the Motions' interpretation of the EUEA, and specifically Section 62-17-5(F)(1) and (F)(2), was incorrect as a matter of the text, structure, and legislative history of the amendments to the EUEA passed in 2019. *See* Consolidated Response, at 2-11. Hearing Examiner Medeiros did not rule and allowed the case to proceed.

6. Before NEE and the Joint Movants filed their Motions, PNM did not believe that the meaning of Section 62-17-5(F)(2) was in dispute as authorizing full revenue decoupling. Indeed, for the reasons described in PNM's accompanying brief, PNM believes that the text, structure, and legislative history demonstrate conclusively that Section 62-17-5(F)(2) authorizes full revenue decoupling. In an effort to rebut the interpretations put forward by NEE and the Joint Movants, PNM's witnesses in Case No. 20-00121-UT devoted significant time to explaining why PNM's

proposed Shared Cost of Service Rider decoupling mechanism was consistent with Section 62-17-5(F)(2), and other parties also addressed these issues at length in testimony and other pleadings. For example, CCAE witness Justin Brant testified through his pre-filed rebuttal testimony that the EUEA addresses full decoupling.<sup>3</sup> In briefing, Bernalillo County argued that the policy statement in Section 62-17-3 does not address full decoupling and therefore no other portion of the EUEA can be construed to support it as well.<sup>4</sup> Because the proper interpretation of Section 62-17-5(F)(2) is a question of law, it would be more efficient to resolve this question now, before a specific mechanism is considered and evidentiary proceedings are undertaken.

7. It became apparent that a substantial portion of the pre-filed testimony in Case No. 20-00121-UT pertained to the question of whether the statute authorizes full decoupling, and the merits of full decoupling. As the Hearing Examiner noted, parties requested 31.7 hours of cross examination, a majority of which appears likely to be on matters which would be removed from consideration if the Commission was to rule that Section 62-17-5(F) authorizes full decoupling upon a utility's request. The breadth of testimony on this issue and the various motions to strike such testimony demonstrate how significant administrative efficiency gains can be achieved by settling the threshold legal question in the first instance through a declaratory order. Then, after the Commission has decided this narrow issue, PNM can move forward with a proposal that is consistent with the Commission's interpretation.

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<sup>3</sup> See Rebuttal Testimony of Justin Brant (filed Oct. 2, 2020), at 10:12-14 (testifying that the use of "revenue per customer" in Section 62-17-5(F)(2) supports the interpretation that it addresses full revenue decoupling).

<sup>4</sup> See Bernalillo County's Response to Western Resource Advocates' Motion to Strike Portions of the Direct Testimony of Maureen L. Reno, at 4.

8. The resolution to this question is not an abstract or academic matter, with no direct consequences flowing from it. Rather, as explained in PNM's Motion to Stay in Case No. 20-00121-UT, resolving this controversy will determine PNM's next steps in whether and how to propose a decoupling mechanism under Section 62-17-5(F)(2) in its next rate case. Resolving this threshold purely legal matter in advance of PNM's next rate case (currently anticipated to be filed by the summer of 2021) would be imminently logical.

9. PNM also notes that through the course of Case No. 20-00121-UT, parties have also raised or alluded to other issues related to the interpretation of Section 62-17-5(F)(2). For example, whether PNM's return-on-equity should be adjusted if the Commission were to approve a decoupling mechanism and whether a decoupling mechanism can apply to only a subset of the utility's customer classes. *See, e.g.,* NEE Motion, at 8 n.1, 53.

10. To resolve the controversy, PNM requests that the Commission issue a declaratory order stating that Section 62-17-5(F)(2) requires full revenue decoupling upon a utility's request and is not limited to more narrow partial decoupling mechanisms related to lost revenues directly attributable to specific energy efficiency or load management programs.

11. Section 62-17-5(F)(2) states:

The Commission Shall: . . . [U]pon petition by a public utility, remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the revenue per customer approved by the commission in a general rate case proceeding is recovered by the public utility without regard to the quantity of electricity or natural gas actually sold by the public utility subsequent to the date the rate took effect. Regulatory disincentives removed through a rate adjustment mechanism shall be separately calculated for the rate class or classes to which the mechanism applies and collected or refunded by the utility through a separately identified tariff rider that shall not be used to collect commission-approved energy efficiency and load management program costs and incentives

As PNM argues in its accompanying brief, this statutory text is clear, and authorizes full revenue decoupling, as PNM had proposed through its SCS Rider mechanism in Case No. 20-00121-UT. PNM's accompanying brief also addresses how the structure of the statutory provisions surrounding Section 62-17-5(F)(2) and the legislative history of the Section support PNM's interpretation.

12. 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).

13. As demonstrated by the Motions filed in Case No. 20-00121-UT, NEE and the Joint Movants are interested parties to this controversy. Additionally, the other intervenors in Case No. 20-00121-UT and Staff are interested parties. Therefore, PNM has served a copy of this Petition, attachments, and the accompanying brief on Staff and each intervenor from Case No. 20-00121-UT, at the addresses found below:

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14. The controversy presented here is straightforward. It is a pure question of law, and it is a threshold and overarching question that should be addressed before there is further consideration of a specific PNM decoupling proposal, e.g., in PNM's next rate case. Therefore, resolving this controversy, through a declaratory order, prior to PNM's next rate case, offers the most efficient path forward for PNM, the Commission, and all intervenors. Then, once the Commission has resolved this controversy, PNM will evaluate if it still wishes to propose a decoupling mechanism, and if so, it can design that decoupling mechanism consistent with the Commission's conclusion on this matter. This will also have the benefit of reducing the number of disputed issues to be addressed in PNM's next rate case.

15. The correlate questions of law raised by other parties will also aid the Commission and the parties narrowing the issues to be considered with respect to any PNM decoupling proposal, and assist PNM in determining whether to bring forward a decoupling proposal in the next general rate case, or on a standalone basis. Therefore, PNM petitions the Commission to also answer the questions and legal objections raised by intervening parties outlined above, namely:

- a. Whether Section 62-17-5(F)(2) mandates "full" decoupling of a utility's revenues from its sales when read *in pari materia* with the other provisions of the EUEA and the NMPUA;
- b. Whether application of either "full" or "limited" decoupling to some rate classes, but not others, constitutes an "unreasonable preference" in violation of Section 62-8-6 of the NMPUA;
- c. Whether a standalone petition for decoupling is permitted under the EUEA, or whether such petition violates the principle against stand-alone or single-issue ratemaking;

- d. Whether PNM is estopped by the Revised Stipulation in Case No. 16-00276-UT from seeking to implement a decoupling mechanism prior to its next general rate case.
- e. Whether the return-on-equity or capital structure of an applicant utility can or should be adjusted downward when a petition for full decoupling is granted under the Efficient Use of Energy Act.

16. If the Commission decides to appoint a hearing examiner to issue a recommended decision on the Petition, PNM recommends that the Commission appoint Anthony Medeiros due to his familiarity with the legal issues raised in the Petition from his appointment as hearing examiner in Case No. 20-00121-UT.

WHEREFORE, PNM respectfully requests that the Commission issue an initial order pursuant to 1.2.2.21(C) NMAC stating that it will entertain PNM's Petition, directing interested parties to file responses to the Petition and supporting brief within 20 days of issuance of the initial order, closing Case No. 20-00121-UT.<sup>5</sup> Upon considering PNM's Petition and supporting brief and any responses, PNM respectfully requests a Declaratory Order of the Commission:

A. Declaring that Section 62-17-5(F)(2) authorizes full revenue decoupling, *i.e.*, a mechanism that severs entirely the connection between the Company's sales and its revenues, no matter the reason for variation in the Company's sales.

B. Declaring that Section 62-17-5(F)(2) precludes adjusting the Company's return-on-equity if it approves a decoupling mechanism.

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<sup>5</sup> Prior to filing, PNM circulated this Petition to Staff and the parties to Case No. 20-00121-UT. REIA, WRA, CCAE, and NM AREA stated that they support docketing a case to issue a declaratory order on the matters specified in PNM's petition.

C. Declaring that Section 62-17-5(F)(2) permits a decoupling mechanism to apply only to a subset of a utility's customer classes.

D. Declaring that PNM may seek approval to implement a decoupling mechanism under Section 62-17-5(F) outside of a general rate case.

Respectfully submitted this 30<sup>th</sup> day of October, 2020.

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