

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.)	
)	

MOTION TO VACATE PUBLIC HEARING AND STAY PROCEEDING

Public Service Company of New Mexico (“PNM”) respectfully requests the Hearing Examiner to issue an order vacating the public hearing scheduled for October 13 and 14, 2020 and staying the proceeding¹ until the New Mexico Public Regulation Commission (“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 this Motion. As grounds for this Motion, PNM state as follows:

1. PNM believes that Section 62-17-5(F)(2) of the Efficient Use of Energy Act, NMSA 1978, §§ 62-17-1 to -11 (“EUEA”), authorizes utilities to bring forward petitions for full revenue decoupling; 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.

2. Intervenor testimony filed in this proceeding has suggested that PNM should bring forward its decoupling proposal in PNM’s next general rate case. A number of intervenors have also argued that Section 62-17-5(F)(2) only authorizes decoupling mechanisms specific to

¹ Notwithstanding its filing this Motion, PNM has this same day filed its rebuttal testimony in this case, because that deadline remains in effect under the current procedural schedule.

removing disincentives limited to utility implementation of energy efficiency and load management programs, and addressing decreased utility revenue specifically tied to such programs. Intervenor New Energy Economy (“NEE”) and Albuquerque Bernalillo County Utility Water Authority (“ABCWUA”), for instance, have made this argument both in motions to dismiss filed by each intervenor, which remain pending, and in their direct testimony in this proceeding.

3. While PNM does not agree that Section 62-17-5(F)(2) requires that full revenue decoupling requests must be presented only in general rate case proceedings, PNM is willing to consider returning to this issue in its next general rate case, which it expects to file by the summer of 2021. However, the same threshold issue now framed in this proceeding – whether or not Section 62-17-5(F)(2) allows for full revenue decoupling—is virtually certain to arise in any future rate case proceeding, were PNM to propose full revenue decoupling—unless it is resolved in advance of that future rate case filing.

4. Accordingly, in the interest of conserving the limited resources of the parties and the Commission, PNM is willing 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. In the petition for declaratory order that PNM commits to filing within 14 days, PNM will ask that the Commission, in the event it decides to entertain the petition pursuant to 1.2.2.21 NMAC, close the instant docket. In the event 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. 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). Staying this 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.

6. PNM understands that some parties to this proceeding, including NEE and ABCWUA, may disagree with PNM's position on some or all of these issues, but that is 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.

7. 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. 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

8. PNM therefore requests that the Hearing Examiner grant this motion and vacate the public hearing and stay this proceeding in anticipation of the petition for declaratory order, which PNM commits to file within 14 days following entry of an order staying this proceeding, assuming such is ordered.

9. PNM sought the position of other parties regarding this Motion and has been advised of their respective positions as follows: The Commission's Utility Division Staff, the New Mexico Attorney General, the Coalition for Clean Affordable Energy, and Western Resource Advocates do not oppose. The Renewable Energy Industry Association of New Mexico takes no

position. Counsel for Bernalillo County indicated that he takes no position on the motion at this time, that he needs additional time to confer with his client, and that the County reserves its right to respond and will do so on an expedited basis, not later than October 8, 2020. The Albuquerque Bernalillo County Water Utility Authority, City of Albuquerque, and the New Mexico Affordable Reliable Energy Alliance also indicated they take no position at this time and reserve the right to file a response. NEE opposes the Motion and requests a right to respond. No other party provided a position.

WHEREFORE, PNM respectfully requests that the Hearing Examiner grant this Motion and issue an order vacating the public hearing and staying this case, to allow the legal issues presented in this case to be resolved in a declaratory order proceeding, to be initiated by PNM within 14 days of the Hearing Examiner's order.

Respectfully submitted this 2nd day of October 2020.

PUBLIC SERVICE COMPANY OF NEW MEXICO

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the PNM's **Motion to Vacate Public Hearing and Stay Proceeding** was emailed to the parties listed below on October 2, 2020:

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