



**IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

**No. S-1-SC-39440**

**PUBLIC SERVICE COMPANY OF NEW  
MEXICO,**

**Appellant,**

**v.**

**NEW MEXICO PUBLIC REGULATION COMMISSION,**

**Appellee.**

*In The Matter of Public Service  
Company of New Mexico's  
Abandonment of San Juan  
Generating Stations Units 1 and 4,  
NMPRC Case No. 19-00018-UT*

**STATEMENT OF ISSUES**

Appellant, Public Service Company of New Mexico (“PNM”), submits its Statement of the Issues pursuant to Rule 12-208(A) and (E) NMRA, and Rule 12-601 NMRA.

**A. Statement of the New Mexico Supreme Court’s Jurisdiction**

This is a direct appeal by PNM of the *Final Order Adopting Recommended Decision with Additions* (“Final Order”) issued by the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) on June 29, 2022, in

NMPRC Case No. 19-00018-UT.<sup>1</sup> This Court has jurisdiction over this appeal pursuant to Section 62-18-8(B) of the Energy Transition Act, NMSA 1978, Sections 62-18-1 to -23 (2019) (“ETA”), and NMSA 1978, Section 62-11-1 (1993), Rule 12-102(A)(2) NMRA and Rule 12-601 NMRA. Pursuant to Section 62-18-8(B), the Notice of Appeal was timely filed within ten (10) calendar days of the Final Order. Also pursuant to Section 62-18-8(B), the Supreme Court is respectfully requested to determine this appeal as expeditiously as practicable.

### **B. Statement of the Case and How the Issues Arose**

This case arises from a Final Order in a proceeding to consider a *Joint Motion for Order to Show Cause and Enforce Financing Order and Supporting Brief* (“Joint Motion”) filed on February 28, 2022.<sup>2</sup> The issues on appeal generally concern:

1) whether the Final Order violates the terms of the ETA and the Financing Order<sup>3</sup> that has been affirmed by the Court by requiring PNM to immediately

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<sup>1</sup> The Final Order adopted, with certain additions, the Hearing Examiner’s June 17, 2022 *Recommended Decision in Show Cause Proceeding* (“Show Cause RD”).

<sup>2</sup> The Joint Motion was filed by Western Resource Advocates, Coalition for Clean Affordable Energy, and Prosperity Works (collectively “Joint Movants”).

<sup>3</sup> See *In the Matter of Public Service Co. of New Mexico’s Abandonment of San Juan Generating Station Units 1 and 4*, Case No. 19-00018-UT, *Recommended Decision on PNM’s Request for Issuance of a Financing Order* (Feb. 21, 2020) (“Financing RD”), adopted by *Final Order on Request for Issuance of a Financing Order* (Apr. 1, 2020) (“Financing Final Order”). PNM refers to the Financing RD and Financing Final Order collectively as the “Financing Order.”

implement a rate credit at the time of abandonment of San Juan Generating Station (“San Juan”) Units 1 and 4;<sup>4</sup> and

2) whether the Commission has general authority under the Public Utility Act (“PUA”) to reduce PNM’s annual revenues through a piecemeal or retroactive rate credit that removes all of the costs of San Juan from PNM’s rates prior to the issuance of the energy transition bonds and implementation of the energy transition charge (“ETC”) and without a general rate case proceeding.<sup>5</sup>

The ETA was passed in 2019 by the New Mexico Legislature. As part of the ETA’s intent to transition electricity supply away from fossil fuel generation to carbon-free energy sources, the ETA allows utilities to recover stranded investments in coal plants, and also provides community assistance and workforce benefits to

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<sup>4</sup> Issue preserved in Legal Memorandum in Response to April 1, 2022, Procedural Order, Case No. 19-00018-UT, at 1-19 (Apr. 20, 2022) (“*PNM Legal Memorandum*”); *Verified Response of Public Service Company of New Mexico to Joint Motion for Order to Show Cause and Enforce Financing Order and Supporting Brief*, Case No. 19-00018-UT, at 4-13 (Mar. 14, 2022) (“*PNM Verified Response*”); *Public Service Company of New Mexico’s Post-Hearing Brief-in-Chief*, Case No. 19-00018-UT, at 6-20, 30-35 (June 3, 2022) (“*Post-Hearing BIC*”); *Post-Hearing Response Brief of Public Service Company of New Mexico*, Case No. 19-00018-UT, at 3-21 (June 9, 2022) (“*Post-Hearing Response Brief*”); *Public Service Company of New Mexico’s Exceptions*, Case No. 19-00018-UT, at 2-12 (June 22, 2022) (“*Exceptions*”).

<sup>5</sup> Issue preserved in *PNM Legal Memorandum* at 10-20; *PNM Verified Response* at 13-24; *Post-Hearing BIC* at 23-29, 35-37; *Post-Hearing Response Brief* at 26-35; *Exceptions* at 12-19.

tribal and local communities impacted by a coal plant closure. *See* §§ 62-18-4(A), 62-18-2(H), 62-18-16. The ETA allows a qualifying utility such as PNM to finance its “energy transition cost” associated with the abandonment of a coal-fired generating facility such as the San Juan plant with securitized bonds. *Citizens for Fair Rates & the Env’t v. N.M. Pub. Regulation Comm’n* (“CFRE”), 2022-NMSC-010, ¶¶ 6-7. At such time as the securitized bonds are issued, customers are to begin repaying them through ETCs, and at that point customers are to receive a credit for any of the same plant investments that are still included in general rates.

The Final Order requires PNM to immediately issue rate credits at the time San Juan Units 1 and 4 shut down rather than when securitized bonds are issued and customers begin repaying those bonds. When fully implemented, the rate credits will reduce PNM’s annual revenues by \$8.2 million per month, or approximately \$98 million per year, without the Commission having performed a general review of PNM’s cost of service or its annual revenue requirements.

Ordering Paragraph A of the Final Order required PNM to file by July 1, 2022, an advice notice to revise PNM’s rates to remove all the costs of San Juan Unit 1 from rates and issue rate credits to customers using the allocation and rate design methodology approved for the ETC in the Financing Order. *See* Show Cause RD, Decretal ¶ B. On October 1, 2022, PNM is required to file another advice notice that revises its rates to remove all the costs of San Juan Unit 4 and the San Juan common

facilities from rates and issue rate credits to customers using the allocation and rate design methodology approved for the ETCs in the Financing Order. *See id.*, Decretal ¶ C.

The Final Order also requires that PNM “file a report in this docket no later than October 15, 2022, that contains a record of all of its costs incurred in this show cause proceeding so that the prudence of those costs will be known and be subject to review in PNM’s forthcoming rate case.” Final Order at 13, Ordering ¶ B. The Final Order further provides that:

[A] prudency review shall include a compliance filing in this docket to enable a review of the prudence of PNM’s new changed plan made after the Financing Order that decided to delay bond issuance beyond the dates of the San Juan abandonment of Units 1 and 4. The two benchmark dates shall establish the interest rates that are in existence at the times of abandonment compared to the dates of actual bond issuance. Benchmark date #1 shall be set at 30 days following the date of abandonment of Unit 1. Benchmark date #2 shall be set at 30 days following the abandonment of Unit 4. Such compliance filings shall be filed in this docket no later than October 15, 2022.

*Id.* The Final Order was effective immediately. *Id.*, Ordering ¶ D.

The Final Order relates to a prior Commission order in the same proceeding approving the abandonment of San Juan Units 1 and 4, and also approving a financing order to recover PNM’s associated plant abandonment costs, pursuant to

the ETA.<sup>6</sup> This Court previously considered related issues in these prior underlying proceedings in Case No. 19-00018-UT, affirming the Commission’s Financing Order in connection with its abandonment of San Juan Units 1 and 4.<sup>7</sup>

### **C. Background of Proceedings**

#### *1. Procedural History of Underlying Case.*

On July 1, 2019, PNM filed a Consolidated Application (“Consolidated Application”) under the ETA asking the Commission to approve: (1) the abandonment of San Juan Units 1 and 4, effective July 1, 2022, after the June 30, 2022 expiration date of the coal supply agreement and the ownership and operating agreements among the various owners of the units; (2) the recovery and securitization of the estimated \$360.1 million of energy transition costs; and (3) the approval of replacement generating resources. During the course of those proceedings, this Court issued a Writ of Mandamus requiring the Commission to

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<sup>6</sup> *See supra*. n. 3. The Financing RD referenced *supra* in n. 3 was previously provided as Exhibit D to the *Verified Motion of Appellant Public Service Company of New Mexico for Partial Interim Stay of Final Order* (“Stay Motion”); and the Financing Final Order was previously provided as Exhibit C to the Stay Motion.

<sup>7</sup> *CFRE*, 2022-NMSC-010, ¶ 1 (affirming the Financing Order, rejecting constitutional challenges to the ETA, and “reaffirming that the authority of the New Mexico Public Regulation Commission ‘goes no further than what has been statutorily authorized.’”). This Court also previously considered issues related to the retirement of San Juan Units 1 and 4 and the ETA in *Egolf v. N.M. Pub. Regulation Comm’n* (“*Egolf*”), 2020-NMSC-018, ¶ 33 (directing the Commission to apply the ETA to proceedings relating to PNM’s planned abandonment of San Juan Units).

apply the ETA to PNM’s abandonment and securitization application, holding that “the Commission has a nondiscretionary duty to apply the ETA to San Juan abandonment proceedings.” *Egolf*, 2020-NMSC-018, ¶ 22. The Commission issued its final orders approving the San Juan abandonment and securitization requests in Case No. 19-00018-UT, and granted replacement resources approvals in Case No. 19-00195-UT. The Court affirmed the Commission’s Financing Order. *CFRE*, 2022-NMSC-010.

The subsequent Show Cause proceeding and resulting Final Order that is the subject of this appeal directly arise from the Commission’s prior Financing Order. Pertinent to the issues in this appeal, the Financing Order authorizes PNM to use a special purpose entity to issue up to \$361 million in energy transition bonds for PNM’s estimated San Juan abandonment costs, and to collect ETCs from customers to repay the energy transition bonds. Financing RD at 116-117, ¶ 18, 119-20, ¶ 24, and 125-26, ¶ 41. The ETCs are customer charges that are separate and distinct from PNM’s rates.

The Financing Order further provided that if PNM’s general rates had not yet been changed through a rate case at the time the bonds were issued and an ETC was collected from customers, then San Juan costs would be removed from PNM’s base rates through a rate credit. *See* Financing RD at 84-85 (stating: “PNM shall be required to implement an immediate credit to ratepayers as an interim rate

adjustment mechanism upon the start date of the ETC charges.”); Sections 62-18-4(B)(11) and 62-18-5(F)(8).

PNM has not yet issued the bonds and is not yet charging customers the ETC, and its current general base rates have not been adjusted since its 2016 rate case. *See In the Matter of the Application of Pub. Serv. Co. of N.M. for Revision of Its Retail Electric Rates*, NMPRC Case No. 16-00276-UT (2018). PNM deferred its planned rate cases as a result of the COVID-19 pandemic and at the request of negotiating parties during PNM’s merger proceedings conducted in 2021. As a result, PNM plans to file its general rate case in December 2022 (which include the removal of San Juan costs from general rates) and anticipates issuing the securitized bonds upon the implementation of the resulting new rates in January 2024. The Commission has confirmed that the Financing Order “does not require that PNM issue the Energy Transition Bonds . . . by any specific date.” *Order on PNM Notice and Request for Modification to or Variance From Abandonment Date of San Juan Generating Station Unit 4* (“Order on Notice”), at 9, ¶ 26, Case No. 19-00018-UT (Feb. 23, 2022).

1. *Summary of Subsequent Show Cause Proceedings*

The Joint Motion filed on February 28, 2022, requested that the Commission issue a show cause order to show why PNM should not be required to: (1) implement a customer rate credit at the time San Juan Units 1 and 4 are abandoned; (2) report



to the Commission on the status of obtaining necessary approvals to issue energy transition bonds; and (3) explain the prudence in delaying the issuance of the energy transition bonds beyond the San Juan abandonment dates. Final Order at 3. The Joint Motion asserted that by delaying the issuance of bonds until new general rates might be approved by the Commission in early 2024, PNM would be violating both the ETA and the terms of the Financing Order, which intended that PNM issue the energy transition bonds, implement the ETC, and implement rate credits at the time it abandoned San Juan Units 1 and 4.

PNM filed its Verified Response to the Joint Motion on March 14, 2022, responding that neither the Financing Order nor the ETA requires the issuance of the bonds at the time San Juan is abandoned, and that both the Financing Order and the ETA provide that San Juan costs are to be removed from PNM's rates only at the time the ETCs are implemented, if these costs have not already been removed from rates. Verified Response, at 1-2, 4-7. PNM confirmed it intended to issue the energy transition bonds to coincide with the completion of PNM's next rate case. *Id.* at 21, nn. 66, 67. Shortly after the issuance of the bonds, PNM would commence collecting ETCs from customers. *Id.* at 2-3. PNM also argued that the policy against piecemeal ratemaking precluded the relief sought in the Joint Motion. *Id.* at 13-19.

On March 30, 2022, the Commission issued an order granting the Show Cause Motion. After the filing of testimony and briefs and an evidentiary hearing, the

designated Hearing Examiners issued the Show Cause RD on June 17, 2022. The Show Cause RD recommended that, among other things, the Commission order PNM to immediately issue rate credits to customers until new rates were implemented through a future general rate case. Once fully implemented, the rate credits will reduce PNM's annual revenues by \$8.2 million per month. On June 22, 2022, PNM and New Energy Economy filed Exceptions to the Show Cause RD, with responses being filed on June 24, 2022.

On June 29, 2022, the Commission issued its Final Order, which adopted the Show Cause RD, with certain additions. On June 29, 2022, PNM filed its *Emergency Motion and Supporting Brief of Public Service Company of New Mexico For Stay of Rate Credits Under Final Order Pending Appeal and For Shortened Response Time* ("Emergency Motion"), asking the Commission to grant an immediate stay of the portion of the Final Order requiring PNM to implement the rate credits, and a continuing stay pending the resolution of this appeal.

On June 30, 2022, PNM filed its Notice of Appeal of the Final Order. The Final Order and Show Cause RD were provided as Exhibits A and B, respectively, to the PNM Notice of Appeal. Also on June 30, 2022, PNM filed with this Court its *Verified Emergency Motion of Appellant Public Service Company of New Mexico for Partial Interim Stay of Final Order* ("Motion for Interim Stay"), requesting an

interim stay of portions of the Final Order requiring rate credits, because the Commission had not yet acted on PNM's pending Emergency Motion filed below.

On July 21, 2022, the Commission issued its *Order Denying PNM's Emergency Motion for Stay of Customer Rate Credits and Motion to Strike Certain Portions of Monroy's Affidavit* ("Order Denying Stay"), which denied the Emergency Motion and request for a stay during the pendency of the appeal.

As a result of the Order Denying Stay, PNM filed with this Court its *Emergency Motion and Brief for Partial Stay Pending Appeal* on July 25, 2022, seeking an immediate emergency stay of the portions of the Final Order requiring immediate rate credits and for a continuing stay of the Final Order through the resolution of this appeal.

**D. Statement of the Issues to be Raised on Appeal and How They Were Preserved**

PNM preserved the issues raised on appeal in the proceedings below in the following pleadings: *PNM Legal Memorandum*; *Verified Response*; *Post-Hearing BIC*; *Post-Hearing Response Brief*; *Exceptions*; and *Public Service Company of New Mexico's Response to Exceptions* filed on June 24, 2022 ("*Response to Exceptions*").

Relevant to the issues summarized above, PNM may raise the following questions on appeal, which arise from the determinations in the Show Cause RD and Final Order that PNM violated the terms of the ETA and the Financing Final Order:

- 1) Did the Commission act arbitrarily, capriciously and contrary to law in relying on Sections 62-18-4 and 62-18-5 to impose a rate credit based on the date of the San Juan abandonment rather than when ETC is to be paid by customers? Issue preserved in *PNM Legal Memorandum* at 1-20; *PNM Verified Response* at 4-13; *Post-Hearing BIC* at 6-20; *Post-Hearing Response Brief* at 3-21, 30-31; *Exceptions* at 2-7.
- 2) Did the Commission act arbitrarily, capriciously and contrary to law in determining that the ETA requires the energy transition bonds be issued at the time of abandonment to carry out the purpose of the ETA, including Section 62-18-16 (transference of funds to state agency energy transition programs) and Section 62-18-2(H)(4)? Issue preserved in *PNM Legal Memorandum* at 6-10; *PNM Verified Response* at 4-13; *Post-Hearing BIC* at 6-20, 30-35; *Post-Hearing Response Brief* at 3-21, 30-31; *Exceptions* at 7-12.
- 3) Did the Commission act arbitrarily, capriciously and contrary to law in concluding that PNM's statements during the Consolidated Application proceeding regarding the anticipated timing for issuing bonds created a "moral hazard" that required a remedy? Issue preserved in *PNM Legal Memorandum* at 6-10; *PNM Verified Response* at 4-13; *Post-Hearing BIC* at 6-20; *Post-Hearing Response Brief* at 3-21, 30-31; *Exceptions* at 7-12.

- 4) Did the Commission act arbitrarily, capriciously contrary to law and without substantial evidence in the record in concluding that the ETA and the PUA authorize the Commission to engage in piecemeal or retroactive ratemaking to remove San Juan costs from PNM's rates, without conducting a general rate case proceeding prescribed by statute? Issue preserved in *PNM Legal Memorandum* at 10-20; *PNM Verified Response* at 13-24; *Post-Hearing BIC* at 23-29, 35-37; *Post-Hearing Response Brief* at 26-35; *Exceptions* at 12-19.
- 5) Did the Commission act arbitrarily, capriciously and contrary to law in ordering a hindsight "prudence" review based on a comparison of interest rates at the time of abandonment and interest rates that may exist at the time of bond issuance? Issue preserved in *PNM Legal Memorandum* at 5-6; *PNM Verified Response* at 26-28; *Post-Hearing BIC* at 19; *Post-Hearing Response Brief* at 32-35; *Exceptions* at 20-21; and *Response to Exceptions* at 1-5.

**E. Summary of Relevant Law on Appeal.**

*1. General Law Relating to Appeals from Commission Orders*

NMSA 1978, Section 62-11-1 (1993) (right of appeal to New Mexico Supreme Court).

NMSA 1978, Section 62-11-4 (1965) (burden of proof on appeal).

*N.M. Indus. Energy Consumers v. N.M. Pub. Regulation Comm'n*, 2007-NMSC-053 ¶ 13, 142 N.M. 533 (utility bears burden of demonstrating commission final order is arbitrary and capricious, not supported by substantial evidence, outside the scope of the agency's authority or otherwise inconsistent with law).

*Moongate Water Co. v. City of Las Cruces*, 2013-NMSC-018, ¶ 6, 302 P.3d 405 (standard of review on legal questions and statutory construction); *see also Pub. Serv. Co. of N.M. v. N.M. Pub. Util. Comm'n*, 1999-NMSC-040, ¶ 14, 128 N.M. 309, *see also Albuquerque Cab Co. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-004, ¶ 10, 317 P.3d 837 (*de novo* review of an administrative agency's statutory construction and determination of legislative intent).

*Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012, ¶ 16, 444 P.3d 460 (appellate review evaluates whether the decision was unreasonable or without a rational basis when viewed in the light of the whole record); *see also N.M. Indus. Energy Consumers v. N.M. Pub. Reg Comm'n*, 2019 NMSC-015, ¶ 8, 450 P.3d 393 (describing an agency's action is arbitrary and capricious related to the facts in the record and the choices made).

## *2. Summary of Relevant Law on Show Cause RD and Final Order Appellate Issues*

Relevant authorities applicable to the review of the Final Order include:

- 1) Energy Transition Act, NMSA 1978, §§ 62-18-1 to -23 (2019). Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 2) NMSA 1978, Section 62-18-4(B)(7) (providing flexibility on bond issuance and only requiring an estimate of when the energy transition bonds may be issued). Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 3) NMSA 1978, Section 62-18-4(B)(11) (providing that a utility applying for a financing order must include a “proposed ratemaking method to account for the reduction in the qualifying utility’s cost-of-service associated with the amount of undepreciated investments being recovered by the energy transition charge at the time that charge becomes effective.”) Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 4) NMSA 1978, Section 62-18-5(F)(8) (requiring that a financing order approve a ratemaking process and methodology under Section 62-18-4(B)(11)). Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 5) NMSA 1978, Sections 62-3-1(A)(1) through (3) and (B) (public utilities “are affected with the public interest” through their rendition of essential public services, the financing of investment of large sums of money, and by directly affecting the development, growth and expansion of the general welfare, business and industry of the state; and requiring reasonable rates

- at levels that encourage and attract necessary capital for the rendition of service to the general public and to industry). Applicable to SOI B(1), (2) and D(1), (3), (4).
- 6) NMSA 1978 Section 62-8-7 (C), (D) (the ratemaking process is based on prescribed Commission rules and is used to determine the just and reasonable rates that will produce annual revenues necessary for the utility to provide utility services to customers). Applicable to SOI B(2) and D(1), (3), (4).
- 7) *Egolf v. N.M. Pub. Regulation Comm'n*, 2020-NMSC-018, ¶ 33, 476 P.3d 896 (authority of Commission “goes no further than what has been statutorily authorized” and includes “a nondiscretionary obligation to apply the ETA”). Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 8) *Citizens for Fair Rates & the Env't v. N.M. Pub. Regulation Comm'n*, NMSC, 2022-NMSC-010, ¶¶ 1, 33, 34, 45, 53 (stating that *Egolf* reaffirmed that authority of Commission must be statutorily authorized, finding that utility customers do not have any claim of entitlement to utility property or a right to any fixed rate, and finding that parameters of public utility regulatory policy are for the Legislature to decide). Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).



9) *Bluefield Waterworks and Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 690 (1923) (as a matter of federal constitutional law, utility is entitled to be fairly compensated for providing electric service to customers). Applicable to SOI B(2) and D(3), (4), (5).

*a. Court Cases Relevant to Statutory Construction*

10) *Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047. Applicable to B(1), (2) and D(1), (2), (4), (5).

11) *Bishop v. Evangelical Good Samaritan Soc'y*, 2009-NMSC-036, ¶ 11, 146 N.M. 473. Applicable to B(1), (2) and D(1), (2), (4), (5).

12) *El Paso Elec. Co. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-048, ¶ 7, 149 N.M. 174. Applicable to B(1), (2) and D(1), (2), (4), (5).

13) *Marbob Energy Corp. v. N.M. Oil & Conservation Comm'n*, 2009-NMSC-013, ¶ 11, 146 N.M. 24. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).

14) *Quynh Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 37, 147 N.M. 583. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).

15) *Reynolds v. Landau*, 2020-NMCA-036, ¶ 23, 468 P.3d 928. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).

- 16) *State ex rel. State Engineer v. United States*, 2018-NMCA-053, ¶ 16, cert. granted, 425 P.3d 723. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).
- 17) *State v. Maestas*, 2007-NMSC-001, ¶ 15, 140 N.M. 836. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).
- 18) *State v. Monafó*, 2016-NMCA-092, ¶ 27, 384 P.3d 134. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).
- b. Court Cases Related to Commission Authority, Requirements for Substantial Evidence and Change in Past Practice of Commission.*
- 19) *City of Albuquerque v. N.M. Pub. Regulation Comm'n*, 2003-NMSC-028, ¶ 22, 134 N.M. 472. Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 20) *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-032, ¶ 7, 115 N.M. 678. Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).
- 21) *Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm'n*, 2019-NMSC-012, ¶ 29, 444 P.3d 460. Applicable to SOI B(1), (2) and D(1), (2), (3), (4).
- 22) *Oil Transp. Co. v. N.M. State Corp. Comm'n*, 1990-NMSC-072, ¶¶ 10, 12, 110 N.M. 568. Applicable to SOI B(1), (2) and D(1), (2), (3), (4) (5).

*c. Court Cases Related to Ratemaking.*

- 23) *In re Petition of PNM Gas Servs.*, 2000-NMSC-012, ¶¶ 6, 8, 9, 129 N.M. 1. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).
- 24) *Mountain States Tel. & Tel. Co. v. N.M. State Corp. Comm'n*, 1977-NMSC-032, ¶¶ 72, 89, 90 N.M. 325. Applicable to SOI B(1), (2) and D(1), (2), (4), (5).
- 25) *N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 1986-NMSC-059, ¶¶ 28-29, 104 N.M. 565. Applicable to SOI B(1), (2) and D(1), (4).
- 26) *Southern Union Gas Co. v. N.M. Pub. Serv. Comm'n*, 1972-NMSC-072, ¶¶ 7-8, 84 N.M. 330. Applicable to SOI B(2) and D(4), (5).
- 27) *Timberon Water Co. v. N.M. Pub. Serv. Comm'n*, 1992-NMSC-047, ¶ 29, 114 N.M. 154 Applicable to SOI B(2) and D(4), (5).

*d. Other Court Cases*

- 28) *State v. White*, 2010-NMCA-043, ¶ 16, 148 N.M. 214 (“It is axiomatic that a party may not do indirectly that which the law does not permit directly.”). Applicable to SOI B(1), (2) and D(1), (2), (3), (4), (5).

*e. Commission Cases*

- 29) *Final Order Approving Recommended Decision to Dismiss Proceeding*, 25, Case No. 2361 (Feb. 6, 1992). (“Unless a complete picture

- is presented, the Commission cannot possibly fulfill its duty to determine just and reasonable rates.”). Applicable to SOI B(2) and D(4), (5).
- 30) *Final Order*, 43, Case No. 15-00166-UT (Nov. 18, 2015) (“Piecemeal ratemaking involves changing rates for one item and ignoring all of the other cost of service elements.”). Applicable to SOI B(2) and D(4), (5).
- 31) *Final Order Approving Recommended Decision to Dismiss Proceeding*, 24-25, Case No. 2361 (Feb. 6, 1992) (prohibition against piecemeal ratemaking applies to both increases and decreases in expenses or revenues and the Commission “frown[s] upon using selective items to either increase or decrease rates”). Applicable to SOI B(2) and D(4), (5).
- 32) *Order Denying CEUC’s Motion and Brief to Reject Stipulation Without Hearing*, 3-4, Case No. 10-00086-UT (April 15, 2011) (piecemeal ratemaking is not *per se* unlawful but is strongly disfavored based on well-established policy grounds). Applicable to SOI B(2) and D(4), (5).
- 33) *Certification Recommending Modification of Stipulation*, 22, Case No. 11-00047- UT (Sept. 13, 2012) (the use of a full “rate case” based upon the full spectrum of costs for the utility, and for which Commission only has authority to approve prospective rates, “avoids the problem of piecemeal ratemaking”). Applicable to SOI B(2) and D(4), (5).

- 34) *Recommended Decision*, 30, Case No. 17-00255-UT (June 29, 2018) (“The rule against retroactive ratemaking prevents using prospective rates to make up for past losses or excessive profits collected under rates that did not perfectly match expenses.”). Applicable to SOI B(2) and D(4), (5).
- 35) *Order on PNM Notice and Request for Modification to or Variance From Abandonment Date of San Juan Generating Station Unit 4*, at 9, ¶ 26, Case No. 19-00018-UT (Feb. 23, 2022) (acknowledging that the Financing Order “does not require that PNM issue the Energy Transition Bonds . . . by any specific date”). Applicable to SOI B(1), (2) and D(1), (2), (5).

#### **F. Related Appeals**

Another appeal of a Commission order applying the ETA involving PNM’s proposed abandonment and sale of its interest in the Four Corners Power Plant has been fully briefed and is currently pending before this Court. *Pub. Serv. Co. of N.M. v. N.M. Pub. Regulation Comm’n, et al.*, No. S-1-SC-39138. PNM is not aware of any other related appeals that are pending.

Respectfully submitted this 1st day of August 2022.

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

*/s/ Stacey J. Goodwin*

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Public Service Company of New Mexico's Statement of Issues was served in accordance with Rules 12-202(E) and 12-208(C) NMRA by email to the parties listed below on August 1, 2022:

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