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Contact: Barry Massey, communications officer
bmassey@nmcourts.gov
505-827-4805
505-470-3436

STATE SUPREME COURT INVALIDATES REGULATORY ORDER APPROVING ELECTRIC RATE INCREASE

SANTA FE – The state Supreme Court overturned today a state regulator's order from 2016 that would have allowed a $61 million electric rate increase for the Public Service Company of New Mexico (PNM).

The Court said it vacated the entire order because the Public Regulation Commission (PRC) violated PNM's due process right in denying the ability to recover in rates the future costs of decommissioning a nuclear power plant used as a source of electricity for customers.

In a unanimous ruling, the Court said "virtually all of the Commission's decisions are reasonable and lawful" with the exception of the nuclear decommissioning costs issue. The rate case was sent back to the PRC for reconsideration. The Court said the Commission can include in a new decision those provisions of the vacated order that were found to be reasonable and lawful by the justices.

The Commission determined that PNM had acted imprudently in deciding to repurchase part of the Palo Verde Nuclear Generating Station and renew leases for power from the plant in Arizona. As a result, the regulator limited how much of PNM's spending for Palo Verde power could be passed along to ratepayers. The Court said most of the limitations in the rate order were lawful, but the Commission failed to give PNM any notice at the rate hearing before deciding to exclude future decommissioning costs from rates.

"Because the issue of a permanent disallowance of recovery for contributions to the nuclear decommission trusts appears to have been first raised by the Commission in its final order, PNM was not afforded an opportunity to be heard on the issue," the Court said in an opinion written by Justice Barbara J. Vigil. "Accordingly, we conclude that the Commission's decision to disallow

recovery of any future decommissioning costs as a remedy for PNM's imprudence deprived PNM of its right to due process of law."

Under PNM's original Palo Verde leases, the utility was responsible for decommissioning costs of the nuclear generating capacity it had been leasing. PNM has been placing money in trust funds for decommissioning costs and the utility's spending has been recovered through electric rates. The Commission decided that if additional funding was needed the utility – not ratepayers – should cover those expenses.

Part of the rate case appeal involved PNM's spending to install pollution controls at the coal-fired San Juan Generating Station. The Court rejected PNM's challenge to the Commission excluding those costs from rates. The Commission allowed rate recovery of the costs of a new coal supply agreement at the Four Corners Power Plant, and the Court found that was reasonable and supported by substantial evidence.

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To read the decision in *PNM v. PRC*, No. S-1-SC-36115, please visit **NMOneSource.com 2.0** using the following link:

https://nmonesource.com/nmos/nmsc/en/item/405934/index.do