# Administrative Office of the Courts

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Supreme Court issues ruling on a newspaper's lawsuit and a legal doctrine creating a defense against civil liability

SANTA FE – The state Supreme Court today restored a newspaper's legal claims against New Mexico's largest electric utility for suing to stop the news organization from publishing documents released by a regulatory agency.

In a unanimous opinion, the Court ruled that a district court wrongly dismissed counterclaims brought by The Santa Fe New Mexican against the Public Service Company of New Mexico (PNM) for what the newspaper contended was a groundless legal effort infringing on freedom of the press. The newspaper sought damages, attorney fees and expenses.

The justices concluded that PNM did not qualify for immunity from civil liability under a legal doctrine that offers protection from retaliation for activities trying to influence governmental decision-making, including litigation. Known as the *Noerr-Pennington* doctrine, the legal framework's name comes from U.S. Supreme Court cases that gave rise to it. The doctrine is rooted in the First Amendment right to petition the government to address a grievance or unjust act.

The dispute arose after the state Public Regulation Commission (PRC) released documents to the newspaper in 2015 in response to a public records request. PNM contended the documents had confidential information and trade secrets related to a coal-fired power plant in northwestern New Mexico. The PRC, which regulates utilities, initially sued for a restraining order to stop the newspaper from publishing the documents. PNM and two coal companies joined in the lawsuit.

The PRC later reached a settlement that included a payment to the newspaper. PNM moved ahead with legal efforts against The New Mexican. The newspaper filed a counterclaim, contending malicious abuse of process by those trying to stop publication of the documents. The newspaper published the documents on its website.

PNM argued that The New Mexican's lawsuit was retaliation for its legal actions. The district court dismissed the newspaper's counterclaim in 2019, and The New Mexican appealed. The state Court of Appeals upheld the district court and the newspaper asked the Supreme Court to review the matter. One of the coal companies was dropped from the appeal after reaching an agreement with the newspaper. The other coal company sought bankruptcy protection during the litigation.

In reversing the Court of Appeals, the Supreme Court ordered the case back to the district court and directed it to vacate the dismissal of the newspaper's counterclaim and a final judgment in favor of PNM.

The justices concluded that "PNM's conduct does not qualify as conduct protected under *Noerr-Pennington*" and as a result The New Mexican was not required to meet a heightened legal standard for its pleadings in court, which otherwise would apply for actions against protected activities.

"PNM's litigation activities sought only to resolve a private dispute with The New Mexican and did not seek to influence the government. PNM's conduct therefore falls outside of the 'rubric of the *Noerr-Pennington* doctrine,''' the Court wrote in an option by Justice Julie J. Vargas.

The Court further explained, "PNM's lawsuit against The New Mexican is purely a private dispute between private parties, and PNM seeks no more than for the judiciary to resolve this dispute."

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To read the decision in *NMPRC v. The New Mexican*, *Inc.,* No. S-1-SC-39602, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/530461/index.do