Administrative Office of the Courts

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Supreme Court rejects challenge to regulator's energy planning requirements for electric utilities

SANTA FE – The state Supreme Court today upheld the validity of a regulatory rule expanding the plans that electric utilities must prepare for meeting the current and future energy needs of their customers.

In a unanimous decision, the Court rejected a challenge by three utilities – El Paso Electric Company, the Public Service Co. of New Mexico and Southwestern Public Service Company – to rules that revised requirements for Integrated Resource Plans (IRP), which must be submitted to the state Public Regulation Commission (PRC). The amended regulations were adopted by the Commission in 2022.

"Appellants have failed to meet their burden to show that the Commission's orders adopting the Amended Rule were unreasonable and unlawful or that the Commission violated their procedural due process rights," the Court wrote in an opinion by Chief Justice David K. Thomson.

Utilities argued that the PRC exceeded its authority with new IRP requirements, including ones related to the procurement of energy resources and establishing an independent monitor who reports to the commission about procurement processes such as requests for proposals (RFPs). The Commission first established rules for IRPs in 2007 in response to enactment of the Efficient Use of Energy Act (EUEA). The PRC has revised its regulations several times after changes in state laws, including those related to renewable energy.

The Court noted that the Legislature "gave the Commission little or no guidance as to what form or substance the regulations that would govern the IRP process should take" when it approved the EUEA. However, the Court construed that as granting broad authority to the PRC in its regulatory approaches.

"The Legislature's tacit delegation of authority must be view as sufficiently broad to allow, for example, the Commission to have determined that the use of an independent monitor as advisory staff would help the Commission facilitate the submission of utility RFPs that were 'fair, competitive, and transparent,''' the Court wrote. "Appellants have not sufficiently explained why this Court should conclude otherwise in second-guessing such a discretionary – and reasonable – policy decision by the Commission."

The Court stated that the Commission's amended rule "was not the work of an agency acting beyond the bounds of its delegated authority," as argued by the utilities.

"Quite to the contrary, the Commission's adoption of the Amended Rule marks its joinder with a growing number of counterpart public utility commissions that have taken similar regulatory action to extend IRP procedures to the procurement or 'resource activity' realms," the Court wrote.

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To read the decision in *El Paso Elec. Co. v. N.M. Pub. Regul. Comm'n*, No. S-1-SC-39773, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/530937/index.do