



Administrative Office of the Courts

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Supreme Court rejects utility's request to retroactively recover losses from rates

SANTA FE – The state Supreme Court ruled today that an electric utility cannot recover losses it experienced under rates that were later invalidated on appeal.

In a unanimous opinion, New Mexico's highest court upheld a decades-old legal precedent that prohibits retroactive ratemaking. The justices concluded that El Paso Electric Company (EPE) "has not shown sufficiently compelling reasons for overruling this Court's retroactive ratemaking precedent."

The Court affirmed the New Mexico Public Regulation Commission's (PRC) denial of a proposal by EPE to recoup losses it incurred for two years before rates were vacated by a 2023 Supreme Court decision. EPE serves customers in southern New Mexico, including Las Cruces.

"We agree with the Commission that the rule against retroactive ratemaking prohibits EPE's request to book a regulatory asset in its January 2024 Rates for the losses incurred between June 2021 and June 2023," the Court concluded in an opinion written by Chief Justice Julie J. Vargas.

The Court explained that a "party that seeks to avoid incurring potentially unrecoverable losses during the pendency of an appeal should request a stay of the Commission's ratemaking order" as allowed under state law or ask the regulatory agency to establish interim rates subject to refund or a surcharge pending the outcome of the appeal. El Paso Electric took no such actions when it appealed the PRC's June 2021 order setting the utility's rates, the Court noted.

The 2021 order was reversed by the Court in a 2023 opinion, in which the justices concluded that the PRC violated EPE's due process rights by excluding certain costs and assets from the utility's rate base. When the PRC took up the rate case again after the Court's ruling, EPE proposed a way for it to recover losses from the rates in effect during its initial appeal. The utility filed a second appeal after the PRC established new rates, which did not allow for recovery of the losses between the time the rates were initially ordered in 2021 and when the rates were vacated by the Court in 2023.

In today's opinion, the Court wrote that if state regulators "were to allow EPE to recover these amounts in rates with a January 2024 effective date, then the Commission would retroactively change the price of transactions occurring between June 2021 and June 2023. This is precisely what the rule against retroactive ratemaking was designed to prevent."

The Court stated that the prohibition on retroactive ratemaking “promotes principles of fairness and protects parties’ due process rights by ensuring that rates paid for past transactions cannot be changed without prior notice to the parties.”

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To read the decision in *El Paso Elec. Co. v. N.M. Pub. Regul. Comm’n*, No. S-1-SC-40286, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538124/index.do>