



Administrative Office of the Courts

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Supreme Court resolves dispute over a utility's purchase of power from a nuclear plant

SANTA FE – The state Supreme Court today affirmed regulatory decisions that allowed a utility company to charge customers in southern New Mexico for electricity it obtained from a nuclear power plant during a severe winter storm in 2021.

In a unanimous opinion, the Court rejected a challenge by the city of Las Cruces to New Mexico Public Regulation Commission (PRC) orders permitting about \$5.7 million in costs to be passed along to customers of El Paso Electric Company (EPE).

“The Commission’s final orders established the requisite ‘rational connection between the facts found and the choices made,’ and were supported by substantial evidence,” the Court concluded in an opinion written by Justice David K. Thomson.

The city contended the PRC acted arbitrarily in failing to consider whether there were lower cost alternatives to allowing the utility to charge customers for the nuclear power through a “proxy price” formula based on natural gas costs, which spiked during the winter storm. Extremely cold temperatures during Winter Storm Uri resulted in disruptions to natural gas supplies and widespread power outages, including in parts of Texas and New Mexico. EPE used power it purchased from Palo Verde Nuclear Generating Station in Arizona to avoid an interruption in electric service to its customers.

The PRC allowed EPE to charge customers for the costs of the nuclear power over a 12-month period rather than a single month to moderate the impact on ratepayers of higher electricity prices.

The Court determined that the regulatory agency had repeatedly authorized EPE to buy power from Palo Verde using the proxy price formula. The justices rejected the city’s arguments that the formula was limited to a 2009 rate case that initially authorized its use.

In today’s opinion, the Court for the first time concluded that it would give a “high level of deference” to the PRC’s interpretation of its prior orders.

“This approach is consistent with this Court’s practice of ‘tread[ing] lightly in reviewing [the Commission’s] construction of an unclear or ambiguous statute where, as here, the issue

presented implicates policy choices,’ in which case we ‘will overturn the administrative construction of statutes by appropriate agencies *only if they are clearly incorrect,*’” the Court wrote.

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To read the decision in *City of Las Cruces v. N.M. Pub. Regul. Comm’n*, No. S-1-SC-40636, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538189/index.do>