

SUPREME COURT OF NEW MEXICO

El Paso Electric Company v. New Mexico Public Regulation
Commission

El Paso Electric · No. S-1-SC-40286 · Decided April 24, 2026

SUMMARY

The New Mexico Supreme Court held that the rule against retroactive ratemaking barred El Paso Electric Company from recovering losses incurred under rates that were later vacated on appeal. The Court declined to overrule its precedent establishing that rule and affirmed the New Mexico Public Regulation Commission’s denial of recovery for the period before the Court’s mandate. The Court emphasized that utilities seeking to avoid potentially unrecoverable losses during an appeal should request a stay or interim rates.

CASE DETAILS

COURT	Supreme Court of New Mexico
WRITING FOR THE COURT	Julie J. Vargas, Chief Justice; Michael E. Vigil, Justice; C. Shannon Bacon, Justice; David K. Thomson, Justice; Briana H. Zamora, Justice
JURISDICTION	Supreme Court of New Mexico
DECIDED	April 24, 2026
DOCKET	S-1-SC-40286
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the New Mexico Public Regulation Commission's Final Order on Remand denying El Paso Electric's request to recover losses incurred under rates that were later vacated on appeal.
STANDARD OF REVIEW	Under NMSA 1978, Section 62-11-4, the appellant bears the burden of showing that the Commission's order is unreasonable or unlawful, including that it is arbitrary and capricious, unsupported by substantial evidence, outside the agency's authority, or otherwise inconsistent with law. Legal questions are reviewed with some deference to the Commission depending on the nature of the issue, but the Court is not bound by the Commission's interpretation of law and may substitute its own judgment.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

El Paso Electric Company v. New Mexico Public Regulation
Commission, City of Las Cruces, New Mexico Department of Justice,
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QUESTIONS PRESENTED

1. Whether the rule against retroactive ratemaking prohibits a utility from recovering losses incurred under rates that were later vacated on appeal.
2. Whether the Supreme Court may provide independent equitable relief to compensate the utility for those losses.
3. Whether the Court should abandon the rule against retroactive ratemaking and overrule *Mountain States Telephone & Telegraph Co. v. New Mexico State Corp. Commission* and *U.S. West Communications, Inc. v. New Mexico State Corp. Commission*.

HOLDINGS

1. The rule against retroactive ratemaking prohibits El Paso Electric from including in its January 2024 rates a regulatory asset for losses incurred between June 2021 and June 2023 under the vacated June 2021 rate order.
2. The Court declined to recognize an independent equitable remedy allowing El Paso Electric to recover the losses.
3. The Court declined to overrule *Mountain States* and *U.S. West* and retained the rule against retroactive ratemaking.

KEY QUOTATIONS

“We agree with the Commission that the rule against retroactive ratemaking prohibited recovery of EPE’s losses.” (¶ 3)

“Essentially, the rule presumes that, absent express statutory or constitutional language to the contrary, the Commission has not been authorized to set rates retroactively so as to permit the refund or recovery of gains or losses experienced under prior rates.” (¶ 13)

“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.” (¶ 31)

FACTUAL BACKGROUND

The Commission's June 2021 rate order set rates for El Paso Electric but excluded certain costs and assets from the utility's rate base. The Supreme Court later vacated that order for violating due process, and the Commission issued a remand order and approved new rates effective January 2024. El Paso Electric sought to include a regulatory asset in the new rates to recover losses incurred while the June 2021 rates were in effect during the appeal, but it had not sought a stay or interim rates.

PROCEDURAL HISTORY

The Commission set El Paso Electric's rates in a June 2021 order. In a prior appeal, the New Mexico Supreme Court vacated that order after finding a due-process violation and remanded the matter. On remand, the Commission approved revised rates effective January 2024 but denied recovery of losses incurred between June 2021 and June 2023 as impermissible retroactive ratemaking. The Supreme Court affirmed.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The proceedings are returned to the New Mexico Public Regulation Commission.

CASES CITED

- Mountain States Telephone & Telegraph Co. v. New Mexico State Corp. Commission, 1977-NMSC-032, ¶¶ 86-90, 90 N.M. 325, 563 P.2d 588
- U.S. West Commc'ns, Inc. v. N.M. State Corp. Comm'n, 1999-NMSC-016, ¶¶ 27, 52-57, 127 N.M. 254, 980 P.2d 37
- El Paso Elec. Co. v. N.M. Pub. Regul. Comm'n, S-1-SC-38874, dec. ¶¶ 1, 11, 15, 18, 24 (N.M. May 1, 2023) (nonprecedential)
- Pub. Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n, 2019-NMSC-012, ¶¶ 12-13, 444 P.3d 460
- Citizens for Fair Rates & the Env't v. N.M. Pub. Regul. Comm'n, 2022-NMSC-010, ¶ 12, 503 P.3d 1138
- N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm'n, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 168 P.3d 105
- Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n, 1995-NMSC-062, ¶ 11, 120 N.M. 579, 904 P.2d 28
- Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regul. Comm'n, 2006-NMSC-032, ¶ 10, 140 N.M. 6, 139 P.3d 166
- N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm'n, 1970-NMSC-097, ¶¶ 3-6, 81 N.M. 683, 472 P.2d 648
- Howell v. Heim, 1994-NMSC-103, ¶ 17, 118 N.M. 500, 882 P.2d 541
- City of Albuquerque v. State ex rel. Vill. of Los Ranchos de Albuquerque, 1991-NMCA-015, ¶ 33, 111 N.M. 608, 808 P.2d 58
- Coal. for Clean Affordable Energy v. N.M. Pub. Regul. Comm'n, 2024-NMSC-016, ¶ 24, 549 P.3d 500
- State v. Davis, 2003-NMSC-022, ¶ 6, 134 N.M. 172, 74 P.3d 1064

- Socorro Elec. Coop., Inc. v. N.M. Pub. Regul. Comm'n, 2024-NMSC-017, ¶ 28, 557 P.3d 68
- Valdez v. State, 2002-NMSC-028, ¶ 5, 132 N.M. 667, 54 P.3d 71
- Pub. Serv. Co. v. N.M. Pub. Serv. Comm'n, 1979-NMSC-042, ¶ 24, 92 N.M. 721, 594 P.2d 1177
- City of Las Cruces v. N.M. Pub. Regul. Comm'n, 2020-NMSC-016, ¶ 26, 476 P.3d 880
- Friends of the Earth v. Pub. Serv. Comm'n, 254 N.W.2d 299, 309 (Wis. 1977)
- Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n, 1993-NMSC-032, ¶¶ 6, 12, 14-22, 115 N.M. 678, 858 P.2d 54
- Qwest Corp. v. N.M. Pub. Regul. Comm'n, 2006-NMSC-042, ¶¶ 22-30, 140 N.M. 440, 143 P.3d 478
- Padilla v. State Farm Mut. Auto. Ins. Co., 2003-NMSC-011, ¶ 7, 133 N.M. 661, 68 P.3d 901
- Trujillo v. City of Albuquerque, 1998-NMSC-031, ¶¶ 34-35, 125 N.M. 721, 965 P.2d 305
- State v. Chavez, 2021-NMSC-017, ¶¶ 53-54, 485 P.3d 1279
- State v. Ordunez, 2012-NMSC-024, ¶¶ 13-14, 283 P.3d 282
- Swink v. Fingado, 1993-NMSC-013, ¶ 29, 115 N.M. 275, 850 P.2d 978
- Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 855-56 (1990) (Scalia, J., concurring)
- Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994)

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