

SUPREME COURT OF THE STATE OF NEW MEXICO

New Mexico Attorney General v. New Mexico Public Regulation Commission

NMAG v. NMPRC · No. 33,393 · Decided August 29, 2013

SUMMARY

The New Mexico Supreme Court considered whether the New Mexico Public Regulation Commission could permit a public utility to earn a return on operating expenses for energy-efficiency programs. The Court held that the Commission’s methodology and approved adder rates were authorized by the Public Utility Act and Efficient Use of Energy Act, consistent with prior precedent, supported by substantial evidence, and neither arbitrary nor capricious. The Court affirmed the Commission’s final order.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New Mexico                                                                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Charles W. Daniels, Justice; Petra Jimenez Maes, Chief Justice; Richard C. Bosson, Justice; Edward L. Chávez, Justice; Barbara J. Vigil, Justice                                                                                                                                                                                                                                                                                 |
| JURISDICTION          | New Mexico                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | August 29, 2013                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET                | 33,393                                                                                                                                                                                                                                                                                                                                                                                                                           |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Direct appeal from a final order of the New Mexico Public Regulation Commission under NMSA 1978, § 62-11-1.                                                                                                                                                                                                                                                                                                                      |
| STANDARD OF REVIEW    | The Court reviews an administrative order for arbitrariness, capriciousness, abuse of discretion, lack of substantial evidence in the record, or noncompliance with law. Statutory interpretation is reviewed de novo, although the Court gives some or heightened deference to an agency's interpretation within its specialized field and statutory function. Whole-record review applies to the substantial-evidence inquiry. |
| PRECEDENTIAL VALUE    | Published New Mexico Supreme Court opinion                                                                                                                                                                                                                                                                                                                                                                                       |

## PARTIES

New Mexico Attorney General, New Mexico Industrial Energy  
Consumers v. New Mexico Public Regulation Commission

## TOPICS

judicial review of agency action

administrative law

statutory interpretation

standard of review

appellate jurisdiction

## PRACTICE AREAS

administrative law

utility regulation

energy law

statutory interpretation

appellate procedure

## QUESTIONS PRESENTED

1. Whether the Case 308 Final Order was consistent with the Court's prior decision requiring energy-efficiency rates to be evidence based, cost based, utility specific, and the product of balancing investor and ratepayer interests.
2. Whether the EUEA authorizes the PRC to allow a utility to earn a profit on energy-efficiency and load-management expenditures without tying that profit to invested capital or requiring use of the traditional return-on-rate-base method.
3. Whether the Case 308 Final Order was supported by substantial evidence when the PRC relied on factual determinations from the Case 280 proceeding.
4. Whether the PRC's use of an operating-ratio approach, explained by analogy to the Motor Carrier Act, was arbitrary or capricious.

## HOLDINGS

1. The PRC was not required to use a particular ratemaking method. The Case 308 Final Order was consistent with Attorney General v. New Mexico Public Regulation Commission, 2011-NMSC-034, because the rates were cost based, evidence based, and utility specific and resulted from balancing investor and ratepayer interests.
2. The EUEA authorizes the PRC to allow utilities to earn a return on expenditures incurred for energy-efficiency and load-management resource development, and the authorized profit need not be tied to invested capital.
3. The PRC reasonably relied on the factual record and adjudicated findings from Case 280 because Case 308 involved only the legal sufficiency of the Case 280 Final Order and did not require new fact-finding.
4. The PRC acted within its discretion by using the operating-ratio approach and explaining it by analogy to the Motor Carrier Act; the Case 308 Final Order was neither arbitrary nor capricious.

## KEY QUOTATIONS

*“However, it does not prescribe the use of any particular ratemaking method—or restrict the use of others—as Appellants argue.” (¶ 16)*

*“We interpret “profit” in the EUEA according to its ordinary meaning as any return over expenditure.” (¶ 27)*

*“Because of the level of complexity involved in setting rates and the number of variables at issue in every rate proceeding, the [PRC] is not bound to the use of any single formula or combination of formulae in determining rates.” (¶ 33)*

## FACTUAL BACKGROUND

The PRC approved reduced adder rates for Public Service Company of New Mexico's cost-effective energy-efficiency and load-management programs. The rates were intended to remove regulatory disincentives and permit PNM to earn a return on expenditures associated with those programs, even though the programs involved little or no utility capital investment. In Case 308, the PRC relied on the adjudicated factual record from Case 280 and determined that the rates were cost based, evidence based, and utility specific.

## PROCEDURAL HISTORY

The PRC issued the Case 280 Final Order approving reduced adder rates for PNM's energy-efficiency programs. After the Court vacated the PRC's earlier Case 024 rulemaking order in *Attorney General v. New Mexico Public Regulation Commission*, 2011-NMSC-034, the PRC opened Case 308 to determine whether the Case 280 rates were consistent with that decision. The PRC concluded that the rates were lawful and supported by the existing record, and the appellants directly appealed the Case 308 Final Order to the New Mexico Supreme Court.

## DISPOSITION

affirmed

## CASES CITED

- *Attorney General v. New Mexico Public Regulation Commission*, 2011-NMSC-034, 150 N.M. 174, 258 P.3d 453
- *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, 133 N.M. 97, 61 P.3d 806
- *Plains Elec. Generation & Transmission Coop., Inc. v. N.M. Pub. Util. Comm'n*, 1998-NMSC-038, 126 N.M. 152, 967 P.2d 827
- *Rodriguez v. Permian Drilling Corp.*, 2011-NMSC-032, 150 N.M. 164, 258 P.3d 443
- *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, 120 N.M. 579, 904 P.2d 28
- *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, 146 N.M. 24, 206 P.3d 135
- *State v. Nick R.*, 2009-NMSC-050, 147 N.M. 182, 218 P.3d 868
- *State v. Maestas*, 2007-NMSC-001, 140 N.M. 836, 149 P.3d 933
- *Benavidez v. Sierra Blanca Motors*, 1996-NMSC-045, 122 N.M. 209, 922 P.2d 1205
- *National Council on Compensation Insurance v. New Mexico State Corporation Commission*, 1988-NMSC-036, 107 N.M. 278, 756 P.2d 558
- *Herman v. Miners' Hosp.*, 1991-NMSC-021, 111 N.M. 550, 807 P.2d 734

- TW Telecom of N.M., L.L.C. v. N.M. Public Regulation Commission, 2011-NMSC-029, 150 N.M. 12, 256 P.3d 24
- Mountain States Tel. & Tel. Co. v. State Corp. Comm'n, 1959-NMSC-035, 65 N.M. 365, 337 P.2d 943
- Community Public Service Co. v. N.M. Pub. Serv. Comm'n, 1983-NMSC-026, 99 N.M. 493, 660 P.2d 583
- PNM Gas Servs. v. N.M. Pub. Util. Comm'n, 2000-NMSC-012, 129 N.M. 1, 1 P.3d 383
- Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n, 1980-NMSC-005, 94 N.M. 731, 616 P.2d 1116

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