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Supreme Court upholds a regulator’s denial of a renewable energy incentive for an electric utility

SANTA FE – The state Supreme Court today rejected a utility’s appeal for a financial incentive under a law requiring greater production of electricity from renewable energy sources.

In a unanimous opinion, the Court affirmed the New Mexico Public Regulation Commission’s (PRC) denial of a request by Southwestern Public Service Co. (SPS) in 2021 for a rate rider that would have allowed it to collect an additional \$5.2 million from customers over three years for exceeding requirements under the state’s Renewable Energy Act (REA). The justices also upheld a PRC order that changed the regulator’s rules for administering the REA, including financial incentives to encourage utilities to shift to clean energy sources more quickly than the law mandates.

The law sets annual benchmarks – called a Renewable Portfolio Standard – that require a certain share of a utility’s retail electricity sales to come from renewable energy. A minimum of 20 percent renewable energy is required currently and that increases to 40 percent in 2025, 50 percent by 2030, 80 percent in 2040, and 100 percent carbon free electricity by 2045. Utilities demonstrate compliance with the law by retiring renewable energy certificates (REC) they receive for every one megawatt-hour of electricity generated from renewable energy. If certificates are not used in the year they are earned, a utility can bank them for up to four years and retire them later to meet renewable energy requirements for a particular year.

The Court agreed with the PRC that the electric utility’s proposal in 2021 to use banked energy certificates to exceed the 20 percent renewable energy standard “was insufficient to qualify for an incentive under the REA because the proposed retirement would not have ‘produce[d] or acquire[d] renewable energy’” as required by state law.

SPS proposed to retire enough renewable energy certifications in 2022, 2023 and 2024 to meet the 40 percent standard in those years, which would be earlier than the mandates of the REA. The PRC rejected the proposal, determining that it was a “paper exercise” rather than a specific

plan to produce or acquire additional renewable energy. The utility appealed the decision to the Supreme Court.

In an opinion by Justice David K. Thomson, the Court held that “substantial evidence supports the PRC’s finding that SPS did not propose to produce or acquire renewable energy to support its request for an incentive.”

“The act of retiring RECs alone does nothing to further the statute’s objectives,” the Court explained. “SPS’s proposal for an incentive illustrates the point. SPS characterized its proposal as a plan ‘to supply no less than 40% of [its] New Mexico retail energy sales [from renewable energy] three years early.’ But SPS’s supporting documentation showed that in 2020, it actually generated and purchased renewable energy in an amount that was substantially equivalent to its RPS obligation — twenty percent of its retail electricity sales.”

“SPS also admitted that it was not proposing to produce or acquire additional renewable energy or renewable energy resources,” the Court noted. “Rather, SPS proposed only to retire *banked* RECs from its sizeable balance of RECs carried forward from renewable energy generated in previous years.”

The Court wrote, “SPS’s proposal thus would have done nothing to expand SPS’s renewable energy portfolio or reduce carbon emissions during the three years that its requested incentive would have been in effect. We see nothing in the REA to suggest that the Legislature intended the award of an incentive under these circumstances.”

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To read the decision in *Southwestern Public Service Co. v N.M. Public Regulation Commission*, No. S-1-SC-38815, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522425/index.do>