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State energy efficiency law authorizes rate mechanism that fully separates utility revenue from energy sales, Supreme Court rules

SANTA FE – The New Mexico Supreme Court ruled today that state law provides for a rate mechanism that fully decouples or separates a utility’s revenues from its total sales of electricity or natural gas as a way to encourage utilities to promote energy efficiency.

In a unanimous opinion, the state’s highest court annulled and vacated a Public Regulation Commission (PRC) order that the Efficient Use of Energy Act (EUEA) allowed for partial – but not full – revenue decoupling.

The justices analyzed state law and concluded “the Legislature has clearly expressed an intent to permit a utility to petition for a full revenue decoupling mechanism that will remove regulatory disincentives or barriers to utility expenditures in energy efficiency and load management in a manner that balances the public interest, consumers’ interests, and investors’ interests.”

“We see no injustice, absurdity, or contradiction in that clearly expressed legislative intention,” the Court wrote in an opinion by Justice Michael E. Vigil.

Traditionally, state regulators set rates to allow a utility to collect an amount of revenue, based on projected energy sales, to cover the costs of serving customers and earn a fair return on its capital investments. However, actual revenue may fall short or exceed what regulators approved because energy use varies depending on weather and other factors, including energy efficiency and conservation measures.

A rate adjustment mechanism fully decoupling revenue from energy consumption is intended to remove regulatory incentives for a utility to sell more electricity or natural gas, and instead encourage utilities to support energy efficiency initiatives by stabilizing their revenues. Rates are adjusted periodically through an additional charge, refund or credit on customer bills to prevent a utility from collecting more or less than the total revenue approved by regulators through a

ratemaking proceeding. Partial decoupling guarantees recovery of only a portion of a utility's regulator-approved revenue.

The PRC issued its order in 2022 after the state's largest electric utility, Public Service Company of New Mexico (PNM), proposed a rate adjustment mechanism that would fully decouple its revenues from customer energy consumption. Regulatory proceedings on the proposal were put on hold while the PRC determined whether such a mechanism was authorized under state law. PNM, the Coalition for Clean Affordable Energy and the Renewable Energy Industries Association of New Mexico appealed the PRC's decision.

A provision of the EUEA requires the PRC, in response to a utility's request, to "remove regulatory disincentives through the adoption of a rate adjustment mechanism that ensures that the revenue per customer approved by the commission ... is recovered by the public utility without regard to the quantity of electricity or natural gas actually sold by the public utility subsequent to the date the rate took effect."

The Court concluded that the law "clearly describes a full revenue decoupling mechanism" and rejected the PRC's interpretation of the statute.

"The statute does not say that the Commission shall approve a rate adjustment mechanism which ensures that the utility recovers only a part or percentage of approved revenue without regard to the quantity of sales," the Court wrote. "We will not read language into a statute that is not there, especially if the statutory language makes sense as written."

The Court stated that the PRC "must balance the interests of the public, consumers, and investors before approving a full decoupling mechanism ... by ensuring that the mechanism will result in just and reasonable rates."

"If the Commission finds the proposed mechanism to be unjust or unreasonable, then the Commission may modify the mechanism or deny the utility's" proposal, the Court explained.

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To read the decision in *Coalition for Clean Affordable Energy v. N.M. Public Regulation Commission*, No. S-1-SC-39406, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522517/index.do>