

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE PUBLIC SERVICE COMPANY)
OF NEW MEXICO’S PETITION FOR A DECLARATORY)
ORDER REGARDING WHETHER THE EFFICIENT USE) Case No. 20-00211-UT
OF ENERGY ACT PERMITS A UTILITY TO IMPLEMENT)
A FULL REVENUE DECOUPLING MECHANISM)
_____)**

**IN THE MATTER OF THE PETITION OF ALBUQUERQUE)
BERNALILLO COUNTY WATER UTILITY AUTHORITY)
AND BERNALILLO COUNTY FOR A DECLARATORY)
ORDER REGARDING WHETHER THE EFFICIENT USE) Case No. 20-00212-UT
OF ENERGY ACT MANDATES THE COMMISSION TO)
FULLY AUTHORIZE FULL DECOUPLING UPON)
PETITION BY A PUBLIC UTILITY)
_____)**

NOTICE OF PROCEEDING

NOTICE is hereby given to Public Service Company of New Mexico, Southwestern Public Service Company, El Paso Electric Company, Raton Natural Gas Company, Zia Natural Gas Company, and New Mexico Gas Company pursuant to 1.2.2.10(C) NMAC and to all other persons potentially affected by the proceeding, including customers of the preceding utilities, and individuals listed on the certificate of service for the proceeding, of the above-captioned cases pending before the New Mexico Public Regulation Commission (“Commission” or NMPRC):

1. On March 17, 2021, the Commission issued an order commencing a declaratory order proceeding pursuant to 1.2.2.21 NMAC to address certain legal issues related to “full decoupling” under the Efficient Use of Energy Act (EUEA), NMSA 1978, §§ 62-17-1 to -11 (2019) and Public Utility Act, NMSA 1978, §§ 62-1-1 to -6-28 and 62-8-1 to -13-16 (1941, as amended through 2020) (PUA). “Full decoupling” is a utility rate mechanism that severs entirely the connection between an electric utility’s sales and its revenues, no matter the reason for variation in the utility’s sales.

2. The legal issues to be considered in the declaratory order proceeding were initially raised by parties to Case No. 20-00121-UT, which was docketed to consider a specific decoupling proposal made by Public Service Company of New Mexico (PNM). The decoupling rate mechanism proposed in that case would have ensured that revenue per customer approved by the Commission in a general rate case proceeding would be recovered without regard to the quantity of electricity actually sold or the reason for any decreased sales of electricity.

3. Prior to the issuance of a final order in Case No. 20-00121-UT, PNM filed on October 30, 2020 a petition for declaratory order in Case No. 20-00211-UT for the Commission to resolve certain legal issues and the Albuquerque Bernalillo County Water Utility Authority (ABCWUA) and Bernalillo County (“County”) (collectively, the “Joint Petitioners”) filed on November 3, 2020 a petition for declaratory order in Case No. 20-00212-UT asking the Commission to resolve certain other legal issues. On November 5, 2020, New Energy Economy (NEE) filed a Joinder in the Joint Petition. The Commission’s March 17, 2021 Order dismissed PNM’s decoupling proposal in Case No. 20-00121-UT and consolidated Case Nos. 20-00211-UT and 20-00212-UT for consideration of the petitions filed in those dockets.

4. Notice is provided to utilities that were not parties to the underlying proceedings in 20-00121-UT to permit them an opportunity to intervene and participate in this proceeding. Such participation would assist the Commission’s policy of seeking uniformity and consistent interpretation of statutes to create regulatory certainty for all stakeholders. Moreover, utilities and others potentially affected by a Commission decision in this matter are advised that that legal issues common to and affecting their interests may be determined in this proceeding.

5. In its petition in Case No. 20-00211-UT, PNM requests that the Commission resolve the following legal issues:

- a) Whether Section 62-17-5(F)(2) mandates “full” decoupling of a utility’s revenues from its sales when read *in pari materia* with the other provisions of the EUEA and the PUA;
- b) Whether application of either “full” or “limited” decoupling to some rate classes, but not others, constitutes an “unreasonable preference” in violation of Section 62-8-6 of the PUA;
- c) Whether a standalone petition for decoupling is permitted under the EUEA, or whether such petition violates the principle against standalone or single-issue ratemaking;
- d) Whether PNM is estopped by the Revised Stipulation in Case No. 16-00276-UT from seeking to implement a decoupling mechanism prior to its next general rate case; and
- e) Whether the return-on-equity or capital structure of an applicant utility can or should be adjusted downward when a petition for full decoupling is granted under the EUEA.

6. PNM asserted that these issues are threshold legal issues that should be considered before PNM presents a new decoupling proposal, e.g., in PNM’s next general rate cases. PNM stated that once the Commission has resolved the issues, PNM will evaluate if it wishes to propose a decoupling mechanism, and if so, it can design that decoupling mechanism consistent with the Commission’s conclusion on the matters in the declaratory order proceeding. PNM asserted that issuance of a declaratory order will also have the benefit of reducing the number of disputed issues to be addressed in PNM’s next general rate case and assist PNM in determining whether to bring forward a decoupling proposal in the next general rate case, or on a standalone basis.

7. In their petition in Case No. 20-00212-UT, the Joint Petitioners ask that the Commission resolve the following legal issues:

- a) Whether the Commission is mandated to adopt a decoupling mechanism proposed by a utility related or unrelated to energy efficiency, load management and regulatory disincentives as contemplated by the EUEA;
- b) Whether a utility may use decoupling to establish an additional customer charge, to recover for losses due to increased penetration of Distributed Generation customers in spite of the existence of an on-point statute, NMSA 1978, § 62-13-13.2, and the burdens of proof established therein;
- c) How the Commission may balance the interests of customers and shareholders in adopting a decoupling mechanism pursuant to NMSA 1978, § 62-17-5(F) in *pari materia* with the EUEA and the PUA; and
- d) Whether a standalone decoupling proposal violates the Commission's prohibition on piecemeal and retroactive ratemaking.

8. In its March 17, 2021 Order, the Commission granted the requests by PNM and the Joint Petitioners that the Commission entertain the petitions for declaratory order and consolidated Case Nos. 20-00211-UT and 20-00212-UT for purposes of this proceeding so that a single order may be issued resolving the legal controversies raised in the petitions filed in those two dockets. The Commission also appointed the undersigned to, among other things, issue a Recommended Decision on the issues presented to the Commission.

9. Any interested person may inspect PNM's petition and the Joint Petitioners' petition at PNM's offices, 414 Silver Avenue, SW, Albuquerque, New Mexico, telephone number 505-241-2700 or by contacting the Commission's offices, telephone number 888-427-5772. This

proceeding has been docketed as Case Nos. 20-00211-UT and 20-00212-UT and any inquiries should refer to those numbers.

10. Interested persons may also examine PNM's petition and the Joint Petitioners' petition and all other pleadings and other documents in the public record for this case on the Commission's website at <https://edocket.nmprc.state.nm.us>.

11. Additional details regarding this matter and the procedural requirements for this proceeding are set forth in the Procedural Order issued by the Hearing Examiner on March 30, 2021. The procedural dates and requirements established in the Procedural Order are subject to further order of the Hearing Examiner.

The procedural schedule for this case is as follows:

A. On or before May 14, 2021, any person desiring to intervene to become a party ("intervenor") in this case must file a motion for leave to intervene in conformity with NMPRC Rules of Procedure 1.2.2.23(A) and (B) NMAC. Persons who wish to provide public comment on this case without becoming a party may do so without filing a motion to intervene.

B. On or before June 7, 2021, the petitioning parties (PNM, ABCWUA, the County, and NEE) and Staff shall, and intervenors may, file initial briefs addressing the issues set forth under paragraphs 5 and 7 above.

C. Response briefs shall be filed on or before June 28, 2021.

D. Initial and response briefs shall comply with all applicable content and format requirements set forth under Rule 1.2.2.36(E) NMAC and Rule 23-112 NMRA (governing citations for pleadings and other papers in state court) and the Appendix thereto, which contains additional citation guidelines and correct forms of citation.

E. Oral argument shall be held on July 15, 2021 at 10:00 a.m. Mountain Time (MT). Any party that submits an initial brief or a response to an initial brief must provide oral argument. Due

to the ongoing COVID-19 pandemic, the oral argument shall be conducted via the Zoom videoconference platform. Access to and participation in the oral argument shall be limited to counsel for the parties, the Commissioners, and other Commission personnel. The oral argument will also be livestreamed through YouTube and will be displayed on the Commission's website at <http://nmprc.state.nm.us>. Thus, persons not participating in the oral argument may view the argument on the Commission's website or otherwise via YouTube and shall not participate in the argument via Zoom except to provide oral comment as allowed below.

F. Interested persons who are not affiliated with a party may make oral or written comment pursuant to Rule 1.2.2.23(F) NMAC. Oral comment shall be taken at the commencement of the oral argument in this matter on July 15, 2021 at 10:00 a.m. MT and shall be limited to 3 minutes per commenter. As part of the oral argument, public comment will be taken via the Zoom platform. Therefore, persons wishing to make an oral comment must register in advance, not later than 9:30 a.m. MT on July 15, 2021, by e-mailing Ana Kippenbrock at Ana.Kippenbrock@state.nm.us. Written comments may be submitted before the Commission takes final action in this matter by sending the comment, which shall reference Case Nos. 20-00211-UT and 20-00212-UT, to prc.records@state.nm.us. Public comments, whether oral or written, shall not be considered as evidence in this proceeding.

G. Interested persons should contact the Commission at 505-690-4191 for confirmation of the oral argument, time, and place, since Commission proceedings are occasionally rescheduled or canceled if deemed not required in the discretion of the Hearing Examiner.

H. The Commission's Rules of Procedure under 1.2.2 NMAC shall apply in this case except as modified or varied by order of the Hearing Examiner or Commission. The Rules of Procedure and other Commission rules are available online at the New Mexico Commission of

Public Records' State Records Center and Archives website at <http://www.srca.nm.gov/nmac-home/nmac-titles>.

I. Anyone filing briefs, pleadings, or other documents in this case shall comply with the Commission's electronic filing policy, as amended from time to time. This includes filings in .pdf format, with electronic signatures, sent to the Records Bureau's e-mail address, as set out on the Commission's website, at: prc.records@state.nm.us, within regular business hours of the due date in order to be considered timely filed. Documents received after regular business hours will be considered as being filed the next business day. Regular business hours are from 8:00 a.m. to 5:00 p.m. MT. Parties shall serve a copy on all parties of record and Staff. All filings shall be e-mailed by no later than 5:00 p.m. MT on the date they are filed with the Commission. In addition, all filings shall be e-mailed to the Hearing Examiner on the date filed at anthony.medeiros@state.nm.us by no later than 5:00 p.m. MT. Such e-mailing shall include the Word or other native version of the filing (e.g., Excel or Power Point) if created in such format. Any filings not e-mailed to the Hearing Examiner in compliance with the requirements of the Procedural Order and Commission rules are subject to being summarily rejected and stricken from the record in the Hearing Examiner's discretion.

J. Any person with a disability requiring special assistance in order to participate in this proceeding should contact the Commission at 505-690-4191 prior to the start of the public hearing.

ISSUED at Santa Fe, New Mexico this **30th** day of **March 2021**.

NEW MEXICO PUBLIC REGULATION COMMISSION



[electronic signature]
Anthony F. Medeiros
Hearing Examiner