

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-40332

PUBLIC SERVICE COMPANY OF NEW MEXICO,

Appellant,

v.

**NEW MEXICO PUBLIC REGULATION
COMMISSION,**

Appellee.

**In The Matter of the Application of
Public Service Company of New Mexico
For Revision of its Retail Electric Rates
Pursuant to Advice Notice No. 595,
NMPRC Case No. 22-00270-UT**

STATEMENT OF ISSUES

Appellant, Public Service Company of New Mexico (“PNM”), submits its Statement of Issues pursuant to Rule 12-208(A) and (E) NMRA, and Rule 12-601(B) NMRA.

A. Statement of the New Mexico Supreme Court’s Jurisdiction

This is a direct appeal by PNM of the *Final Order* (“Final Order”) issued by the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) on

January 3, 2024, in NMPRC Case No. 22-00270-UT.¹ The Final Order set new rates for PNM.

The Final Order partially adopted the *Recommended Decision* (“RD”), issued December 8, 2023, by the designated Hearing Examiners. Both the RD and the Final Order depart from the Commission’s established practice of using PNM’s actual capital structure in the ratemaking process and instead imputed a capital structure by arbitrarily changing the ratio of long-term debt and equity. The Commission wrongly concluded there was no precedent for applying a utility’s actual capital structure to a future test year rate period and wrongly imposed new criteria in deviating from its past practice of using actual capital structures without substantial evidence to support these determinations.

PNM timely filed for rehearing of the Final Order, which was deemed denied by operation of law pursuant to NMSA Section 62-10-16.²

¹ *In the Matter of the Application of Public Service Company of New Mexico for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 595*. PNM filed its Application for Revision of Retail Electric Rates (“Application”), designated as NMPRC Case No. 22-00270-UT, On December 5, 2022.

² NMPRC Case No. 22-00270-UT, *Motion for Rehearing on Final Order and Supporting Brief of Public Service Company of New Mexico* (“Motion for Rehearing”) filed January 29, 2024 [**59 RP 44394-44425**]. The RD and Final Order made other findings which were the subject of PNM’s exceptions and requested rehearing, but which are not the subject of this appeal and therefore are not discussed.

This Court has jurisdiction over this appeal pursuant to NMSA 1978, Section 62-11-1 (1993), Rule 12-102(A)(2) NMRA and Rule 12-601 NMRA. Pursuant to Section 62-11-1, the Notice of Appeal was timely filed on March 14, 2024, within thirty (30) calendar days of the statutory denial of rehearing.

B. Background and Statement of the Case

PNM is a New Mexico public utility subject to the Commission's jurisdiction under the Public Utility Act, NMSA 1978, Sections 62-1-1 to 62-13-15 (1941 as amended through 2019) ("PUA").

1. Procedural History of Underlying Case and how the Issues Arose

PNM filed its Application for new rates pursuant to § 62-8-7 of the PUA, and in doing so followed the Commission's past practice of using PNM's existing capital structure as a basis for determining the overall regulatory cost of capital for PNM. Using a utility's existing capital structure when setting rates is consistent with the PUA's recognition that "public utilities' financing involves the investment of large sum of money, including capital obtained from many members of the general public."³ When a utility is investing heavily in its system, as PNM is doing to transition to carbon-free energy, it is important to have a greater proportion of equity available, demonstrating strong financial credit metrics and a balance sheet that will incentivize investments in its system.

³ NMSA 1978, § 62-3-1(A)(2) (2008).

A rate case starts with a Base Period⁴ using financial data from the Company's historical books and records, as adjusted for known and measurable changes. The new rates are set based on the ongoing cost of providing utility service using a 12-month period that can start anywhere between the start of the Base Period (known as an historical test year) and the start of first year when rates go into effect;⁵ PNM uses the latter, which is referred to as a future test year period. The start of PNM's future test year period in this Application is calendar year 2024 ("Test Period"), to coincide with the effective date of new rates beginning in January 2024.

The Commission's rules require utilities to provide data on the actual capital structure during the Base Period along with any known or measurable changes to calculate the regulatory capital structure for the Test Period, which is used to set a utility's average weighted cost of capital that it can earn on its utility investments.⁶ As it has done before, PNM in the present Application requested the Commission approve a regulatory capital structure of 47.72% long-term debt and 52.00% common equity to match PNM's actual capital structure that it has maintained for

⁴ "'Base Period' means the applicant utility's twelve (12) consecutive months of actual experience as reflected on the book balance of accounts, the last day of which shall not be more than one hundred fifty (150) days prior to the date of tender for filing." 17.9.530.7(F) NMAC.

⁵ 17.1.3.7(G) NMAC.

⁶ 17.9.530.13(A)(5) NMAC.

the past four years, a period during which PNM has been required to invest heavily in changes to its system.⁷

The Commission conducted a public hearing on PNM's Application between September 5, 2023, and September 22, 2023. On December 8, 2023, the Hearing Examiners issued their RD to the Commission.⁸ The RD departed from the Commission's past practice of using PNM's actual capital structure in reviewing PNM's Application and instead recommended that the Commission impute a capital structure and with a reduction in the equity percentage of PNM's proposed actual capital structure, which reduces earnings across the board for the utility. The RD recommended the Commission impute a capital structure of 50% debt and 50% equity. On January 4, 2024, the Commission issued its Final Order,⁹ adopting the Hearing Examiners' recommended capital structure.

2. Background of PNM's Capital Structure Request

The Commission's long-standing policy has been to apply a utility's actual capital structure to establish the ratio between long-term debt and equity in a rate case, including rate cases utilizing a future Test Period. Since 2020, PNM has maintained a capital structure of approximately 48% long-term debt and 52% equity.

⁷ A small portion of the capital structure (approximately 0.29%) is made up of preferred stock.

⁸ [57 RP 42657-43040]

⁹ [58 RP 43401-43867]

This capital structure is designed to support PNM’s ongoing capital program that covers system needs and encompasses investments needed to accomplish New Mexico’s energy transition.¹⁰ PNM’s actual capital structure at the end of the Base Period (June 30, 2022), consisted of 47.62% long-term debt, 52.07% common equity and 0.31% preferred stock. In keeping with previous rate cases, PNM requested the Commission approve a regulatory capital structure using 47.71% long-term debt and 52.00% common equity for the Test Period based on the Company’s actual capital structure as adjusted for known changes from the Base Period, with 0.29% preferred stock.

3. Parties’ Positions on PNM’s Proposed Capital Structure

The RD summarizes parties’ positions on the capital structure issue.¹¹ Commission Staff accepted PNM’s proposed capital structure; the New Mexico Department of Justice (“NMDOJ”)¹² also initially accepted PNM’s proposed capital structure but changed positions in post-hearing briefing. Bernalillo County (“BernCo”) proposed a capital structure of 50% long-term debt, 0.29% preferred stock, and 49.61% common equity. Albuquerque Bernalillo County Water Authority (“ABCWUA”) proposed a capital structure with 54% long-term debt and 46%

¹⁰ PNM is required to supply 100 percent of all retail electricity sales to its customers from zero-carbon resources by 2045. NMSA 1978 § 62-16-4(A)(6)(2019).

¹¹ RD at 270-272 (Dec. 8, 2023) [57 RP 42944-42946].

¹² Throughout the underlying proceedings, NMDOJ was named the New Mexico Attorney General’s Office (“NMAG”).

equity. The New Mexico Affordable Reliable Energy Alliance (“NM AREA”) proposed an equity ratio of 49.61%.

4. Hearing Examiners’ Recommended Decision on PNM’s Capital Structure

Apparently unaware that past Commission orders had established a practice of using a utility’s existing capital structure to set rates based on a Future Test Year period, the Hearing Examiners expressed uncertainty about following the Commission’s practice of using actual capital structures in setting rates using a Test Year period that matched the Base Period in this case..¹³ Although the RD conceded that “the Commission has relied on a utility’s actual capital structure” in setting the Test Period regulatory capital structure, the RD nonetheless recommended against doing so for PNM because “it is unclear how this pronouncement should guide the present case.”¹⁴

Based on this misunderstanding of the Commission’s past practice, the Hearing Examiners recommended that the Commission not use PNM’s actual long-term debt and equity ratios, and in fact not change the ratios that were previously set

¹³ RD at 272 (Dec. 8, 2023) [57 RP 42946].

¹⁴ *Id.* [57 RP 42946].

in PNM's 2015 and 2016 rate cases based on the then-existing capital structure.¹⁵ In doing so, the Hearing Examiners recommended imputing a capital structure with 50.10% debt and 49.61% equity thereby reducing PNM's equity ratio by more than two hundred basis points.¹⁶ The RD found it significant that three intervenors advocated for leaving PNM's capital structure at a debt/equity ratio based on the previous cases.¹⁷

Agreeing with certain intervenors that PNM organized itself to "mitigate risk considerably,"¹⁸ the RD also found that PNM's risk profile merits a decrease from its actual equity ratio.¹⁹ In doing so, the RD created a standard for determining capital structure that has never before been applied in a PNM rate case.

¹⁵ NMPRC Case No. 15-00261-UT, *Corrected Recommended Decision* at 30-31 (NMPRC Aug. 15, 2016), approved by *Final Order Adopting Corrected Recommended Decision* (NMPRC Sept. 28, 2016) (approving PNM's proposed capital structure that reflected the projected actual capital structure at the end of its Test Period in a case that used a future test year). PNM's proposed future test year capital structure was also adopted in conjunction with the approval of a contested stipulation without discussion in PNM's 2016 Rate Case. See NMPRC Case No. 16-00276-UT, *Revised Order Partially Adopting Certification of Stipulation*, ¶ 10 at 3 (NMPRC Jan. 1, 2018)

¹⁶ RD at 274 [57 RP 42948].

¹⁷ *Id.* at 273 [57 RP 42947]. The RD summarily rejected PNM's arguments that highlighted the errors in those parties' capital structure analyses.

¹⁸ *Id.*

¹⁹ *Id.*

5. Commission's Final Order

On January 4, 2024, the Commission issued its *Final Order* adopting, approving, and accepting the RD, with modifications not relevant to the capital structure analysis.²⁰ The Commission adopted wholesale the Hearing Examiners' capital structure recommendations, finding the Hearing Examiners' rationale for significantly reducing PNM's equity ratio to be reasonable.²¹ Despite previous orders to the contrary, the Commission's Final Order specifically determined that the "known and measurable" standard for evaluating a utility's actual capital structure is premised on a historical test year rather than a future test year.²² The Commission's Order also cited to evidence presented by BernCo, NMDOJ, and NM AREA, which added short-term debt into the long-term debt calculation to argue that PNM's "actual" equity ratio is 49.31% rather than 52%.²³ This redetermination of PNM's actual capital structure, by adding short-term debt to the long-term debt when calculating the long-term debt and equity ratios is another departure from the Commission's past practice that sets the regulatory capital structure based on long-

²⁰ Final Order ¶¶ 75-90 at 39-45 [58 RP 43440-43446].

²¹ *Id.* ¶87 at 44 [58 RP 43445]; RD at 274 [57 RP 42948].

²² *Id.* ¶82 at 42-43 [58 RP 43444-43445].

²³ Final Order, ¶ 84 at 43 [58 RP 43444].

term debt, equity and preferred stock only.²⁴ No explanation was offered by the Commission for deviating from this long-standing practice.

The Commission also explained that it was rejecting PNM’s actual capital structure on the theory that—should the Commission be required to always adopt a utility’s actual capital structure—a utility could engage in “unwise business practices that result in a heavily imbalanced debt/equity ratio that would harm ratepayers.”²⁵ Though the Commission cited this as a concern and justification, it made no findings and cited no evidence that PNM’s actual capital structure represented any “unwise business practices” or represented an “imbalanced debt/equity ratio that would harm taxpayers.” The evidence adduced during the rate making process, however, shows in fact that PNM’s actual equity ratios were in place to support the State-mandated policy to transition PNM’s system to be carbon free by 2045 and to make necessary investments in plant and facilities.

The Commission rejected PNM’s evidence that a strong capital structure is necessary to fund significant capital investment, noting that the State’s policy goals regarding the energy transition are “ever-present” in the Commission’s decision-making and PNM’s rates should be adequate to co-exist with such policies.²⁶ The

²⁴ *Cf.* NMSA 1978, Section 62-6-6 (2003) (supervision and control of Commission requires prior approval for issuance, assumption or guarantee of securities payable at periods of more than eighteen months after the date thereof).

²⁵ Final Order, ¶ 83 at 43 [58 RP 43443].

²⁶ *Id.* ¶85 at 45 [58 RP 43446].

Commission concluded that the Hearing Examiners reasonably and lawfully found the arguments of BernCo, NMDOJ, and NM AREA persuasive.²⁷

C. Statement of Issues to be Raised on Appeal and How They Were Preserved

PNM raises the following issues on appeal, which all relate to the Commission's rejection of PNM's existing capital structure in favor of an imputed capital structure.

1. Whether the Commission acted arbitrarily, capriciously, and contrary to law by concluding actual long-term debt and equity ratios are not used to set a utility capital structure for Future Test Year rate cases when in fact the Commission has done so in other rate cases for PNM and other utilities.
2. Whether the Commission, by using new standards for setting a capital structure (including short-term debt in the debt/equity ratio; applying a "risk mitigation" approach; and considering speculative "unwise business practices"), unfairly reduced PNM's equity ratio for its capital structure without notice or evidentiary good cause and thereby violated PNM's due process rights and acted arbitrarily, capriciously, and contrary to law.

The arguments relating to the proper capital structure to be applied in setting PNM's rates were raised and preserved in PNM's filed testimonies and

²⁷ *Id.* ¶86 at 45 [58 RP 43446].

exhibits and in the following pleadings: *Public Service Company of New Mexico's Post-Hearing Brief-in-Chief* filed October 18, 2023;²⁸ *Public Service Company of New Mexico's Post-Hearing Response Brief* filed October 31, 2023;²⁹ *Exceptions to December 8, 2023 Recommended Decision of Public Service Company of New Mexico* filed December 15, 2023;³⁰ and Motion for Rehearing filed January 29, 2024.³¹

D. Summary of Relevant Law on Appeal

1. General Law Relating to Appeals from Commission Orders

Under NMSA 1978, Section 62-11-4 (1965), PNM bears the burden of showing that the Final Order is unreasonable or unlawful. *See, e.g., N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm'n*, 2007-NMSC-053 ¶¶ 13, 142 N.M. 533 (appellant bears burden of demonstrating Commission decision is arbitrary, capricious, not supported by substantial evidence, outside the scope of the agency's authority or otherwise inconsistent with law). The Court looks to whether the decision presents a question of law or fact, or some combination of the two, and whether the matter is within the agency's specialized field of expertise to determine whether to give deference to the Commission's decision. *Id.* The Court does not have

²⁸ [54 RP 40350-40740 at 40382-40397]

²⁹ [55 RP 40955-41155 at 40973-40983]

³⁰ [57 RP 43191-43249 at 43205-43210]

³¹ [59 RP 44394-44425 at 44404-44410]

authority to modify a Commission decision, and instead must vacate an order that it finds to be unreasonable or unlawful. NMSA 1978, Section 62-11-5 (1982); *Hobbs Gas Co. v. N.M. Pub. Serv. Comm'n*, 1993-NMSC-032, ¶ 6, 115 N.M. 678.

The Supreme Court will vacate a Commission decision as arbitrary and capricious where the Court finds the decision was “unreasonable or without a rational basis, when viewed in light of the whole record.” *Pub. Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n*, 2019-NMSC-012, ¶ 16, 444 P.3d 460 (2019) (quoting *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm'n*, 2003-NMSC-005, ¶ 17, 133 N.M. 97). This Court has stated that “an agency’s action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.” *N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm'n*, 2019 NMSC-015, ¶ 8, 450 P.3d 393 (quoting *Albuquerque CAB Co. v. N.M. Pub. Regul. Comm'n*, 2017-NMSC-028, ¶ 8, 404 P.3d 1) (alteration omitted).

2. Summary of Relevant Law on Capital Structure Appellate Issues

Relevant authorities applicable to the review of the denial of PNM’s proposed capital structure include:

- a) NMSA 1978, § 62-6-14(C) (“[T]he commission may change its past practices or procedures, provided that substantial evidence on the record justifies such a change.”). The Commission deviated from its past practice of approving

actual utility debt and equity ratios based on known and measurable changes, without having substantial evidence to do so and without offering a valid justification for doing so. Applicable to Statement of Issues (“SOI”) C. Issues 1 and 2.

b) *El Paso Electric Company v. N.M. Pub. Regul. Commission*, ___-NMSC-___, ¶¶ 21-23, 2023 WL 3166936, ¶ 19, ___ P.3d ___ (No. S-1-SC-38874, May 1, 2023) (non-precedential decision) (noting “PRC’s broad discretion to impute a capital structure for purpose of setting rates” and clarifying that “the PRC’s adoption of a new six-month rule in the final order violated due process, when no party presented evidence or argued in favor of such a rule at any point in the proceedings.”). Without notice to PNM, the Commission imputed a regulatory capital structure that included short-term debt amounts and applied an arbitrary “risk reduction” rather than adhering to its precedent of setting long-term debt and equity ratios using PNM’s actual capital structure. The Commission erred by imputing a capital structure based on a new rule or standard that is unsupported by the record evidence. Applicable to SOI C. Issues 1 and 2.

c) *In re PNM Gas Servs.*, 2000-NMSC-012, ¶ 9, 129 N.M. 1 (“[T]he Commission is not free to disregard its own rules and prior ratemaking decisions or ‘to change its position without good cause and prior notice to the

affected parties.” (quoting *Hobbs Gas Co. v. N.M. Pub. Serv. Comm’n*, 115 N.M. 678, 681, 858 P.2d 54, 57 (1993)). The Commission, without good cause and prior notice, disregarded its practice of adopting a capital structure under its known and measurable standard and created a new “risk reduction” rule. The Commission did not explain why a change from its own precedent is necessary. Applicable to SOI C. Issues 1 and 2.

d) *In re Zia Natural Gas v. N.M. Pub. Util. Comm’n*, 2000-NMSC-011, ¶¶ 5-10, 128 N.M. 728 (upholding imputation of capital structure for privately held natural gas utility with 100% equity where substantial evidence of current comparable utilities supported a more balanced imputed capital structure). PNM has historically maintained an actual capital structure with a balance of long-term debt and equity that has been acceptable to the Commission, and the Commission did not explain why a change in its past practices and the application of not previously announced standard was necessary was required. Applicable to SOI C. Issues 1 and 2.

e) *N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm’n*, 2019-NMSC-015, ¶ 8, 450 P.3d 393 (“An agency’s action is arbitrary and capricious if it provides no rational connection between the facts found and the choices made, or entirely omits consideration of relevant factors or important aspects of the problem at hand.” (quoting *Albuquerque Cab Co. v. N.M. Pub. Regul.*

Comm'n, 2017-NMSC-028, ¶ 8)). The Commission acted arbitrarily and capriciously because it failed to provide an evidentiary basis for deviating from its consistent practice of using actual, experienced data for each utility to set an appropriate capital structure—in both historical and future test years cases. Applicable to SOI C. Issues 1 and 2.

f) *Resolute Wind 1 LLC v. N.M. Pub. Regul. Comm'n*, 2022-NMSC-011, ¶ 26, 506 P.3d 346 (Substantial evidence “is evidence that a reasonable mind would regard as adequate to support a conclusion.” (quoting *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regul. Comm'n*, 2006-NMSC-032, ¶ 11, 140 N.M. 6)). The Commission omitted relevant determinations in its Final Order, including why it believes PNM’s actual capital structure is not relevant in a future test year rate case. The Commission wholly failed to acknowledge its past practices in future test year rate cases when it claimed its “known and measurable” standard did not apply. Applicable to SOI C. Issues 1 and 2.

g) *In the Matter of the Application of Public Service Company of New Mexico for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 513*, NMPRC Case. No. 15-00261-UT, *Corrected Recommended Decision*, at 31 (Aug. 15, 2016), approved by *Final Order Adopting Corrected Recommended Decision* (Sept. 28, 2016) (The Recommended Decision rejected Staff’s

proposal to include short-term debt and further examined if it was appropriate in a future test year rate case to deviate from past Commission practice of setting a capital structure based on known and measurable changes to the actual ratios and concluding deviation was not appropriate). The Commission's standard for evaluating a utility's capital structure is, as acknowledged in the Final Order: "known and measurable."³² The Commission incorrectly claimed this standard has only been applied in historical test year cases.³³ The Commission's finding does not acknowledge the Future Test Year and Rate Case Rule requirements for cost of capital data, with which PNM complied. The Commission failed to explain why its deviation from the policy applied in previous PNM rate cases was necessary under changed circumstances. Applicable to SOI C. Issues 1 and 2.

h) *In the Matter of the Application of El Paso Electric Co. for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 236*, NMPRC Case No. 15-00127-UT, *Recommended Decision* at 70 (Feb. 16, 2016), adopted in relevant part by *Final Order Partially Adopting Recommended Decision with Corrected Paragraph Numbering* (June 8, 2016) (the Hearing Examiner found that "the [capital structure] information that the Commission has previously

³² Final Order, ¶ 82 at 42-43 [58 RP 43443-43444].

³³ *Id.*

relied upon has been the actual percentages that of debt and equity for regulatory purposes at the end of the test period.” The Hearing Examiner found “no compelling evidence to recommend that the Commission change its policy as to this issue.” The Hearing Examiner found that EPE’s proposed capital structure should be approved because it reflects “not only the amount of equity and debt that EPE had in its regulatory capital structure at the end of the test period, but it is also consistent with EPE’s historical levels of equity; and based upon the evidence presented should be approved.”). The Commission erred by ignoring the evidence on PNM’s Base Period and Test Period capital structure, as well as the actual capital structure PNM has maintained since 2020. Applicable to SOI C. Issues 1 and 2.

- i) *In the Matter of Southwestern Pub. Serv. Co.’s Application for Revision of Its Retail Rates Under Advice Notice No. 292, NMPRC Case No. 20-00238-UT, Certif. of Stip., at 70 (Dec. 21, 2021), approved by Final Order Adopting Certif. of Stip. in Its Entirety and Granting SPS’s Motion for Reconsideration (Feb. 16, 2022) (the Commission adopted the Hearing Examiner’s proposed findings and conclusions outlining Commission policy of relying upon “the actual percentages that of debt and equity for regulatory purposes at the end of the test period” and determining stipulated capital structure request was consistent with that policy and should be approved). The Commission, in the*

case that is the subject of this appeal, without good cause or prior notice and without substantial evidence in the record, deviated from this policy. Applicable to SOI C. Issues 1 and 2.

- j) *In the Matter of Southwestern Public Service Co.’s Application for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 272*, NMPRC Case No. 17-00255-UT, *New Final Order on Partial Mandate from the New Mexico Supreme Court*, ¶ 6 at 3 (Mar. 6, 2019) (the Commission reconsidered its downward adjustment to the actual equity ratio and accepted the Hearing Examiner’s Recommended Decision that there is substantial evidence in the record to support the finding that adjusted equity ratio more closely reflects SPS’s “actual equity.”). The decision in this case supports the Commission adopting PNM’s actual equity ratio; no compelling reason exists for the Commission to deviate from its policy. Applicable to SOI C. Issues 1 and 2.
- k) *In the Matter of Southwestern Public Service Company’s Application for: (1) Revision of Its Retail Rates Under Advice Notice No. 312; (2) Authority to Abandon its Plant X Unit 1, Plant X Unit 2, and Cunningham Unit 1 Generating Stations and Amend the Abandonment Date of the Tolk Generating Station; and (3) Other Associated Relief*, NMPRC Case No. 22-00286-UT, *Certif. of Stip.*, at 47-48, 52-53 (Sept. 6, 2023), adopted by *Final Order Adopting Certif. of Stip.*, ¶ 18 at 7 (Oct. 19, 2023) (the Commission

approved a Certification of Stipulation for SPS similar to SPS’s actual capital structure, citing to its policy of using a utility’s actual capital structure). Without good cause, the Commission did not follow its policy of using a utility’s actual capital structure. Applicable to SOI C. Issues 1 and 2.

- 1) *In the Matter of the Application of El Paso Electric Co. for Revision of Its Retail Electric Rates Pursuant to Advice Notice No. 267, NMPRC Case No. 20-00104-UT, Order Adopting Recommended Decision with Modifications*, ¶ 86 at 30 (June 23, 2021)³⁴ (the Commission determined El Paso Electric Company’s (“EPE”) actual capital structure without applying “known and measurable” changes adjustments as too remote, and to reach “a better result for ratepayers as it leads to a lower revenue requirement and lower rates.”). The Commission, without good cause or the support of substantial evidence, did not use known and measurable changes in adopting PNM’s capital structure. Applicable to SOI C. Issues 1 and 2.

E. Related Appeals

Separate notices of appeal of the Commission’s Final Order were filed by New Energy Economy on March 1, 2024, in Supreme Court Case No. S-1-SC-40307; and

³⁴ This is the underlying NMPRC case addressed in *El Paso Electric Company v. N.M. Public Regulation Commission*, ___-NMSC-___, ¶¶ 21-23, 2023 WL 3166936, ¶ 19, ___ P.3d ___ (No. S-1-SC-38874, May 1, 2023).

jointly by NMDOJ, BernCo and ABCWUA on March 19, 2024, in Supreme Court Case No. S-1-SC-40340. To the best of PNM's knowledge, these related appeals do not address the specific issue of the proper capital structure to be used in setting PNM's rates.

Respectfully submitted this 5th day of June 2024.

PUBLIC SERVICE COMPANY OF NEW MEXICO

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Public Service Company of New Mexico’s Statement of Issues was served in accordance with Rules 12-202(E) and 12-208(C) NMRA by email to the parties listed below on June 5, 2024:

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