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NM Supreme Court upholds PRC decisions holding PNM's purchase of Palo Verde nuclear to be imprudent and its gold-plating at San Juan imprudent. The high court sends case back to PRC to determine amount of cost disallowance for imprudent investment of nuclear

SANTA FE, NM – Today, the New Mexico Supreme Court issued a long awaited ruling on PNM's decision to invest in nuclear at Palo Verde Generating Station ("Palo Verde" or "PVNGS") affirming the New Mexico Public Regulation Commission ("PRC") finding that PNM was "imprudent" because PNM had conducted no financial analysis (p. 22) and no alternative resource analysis before PNM made further investments in that plant. (pp. 41) However, the Court did not uphold the disallowance (or punishment) for PNM's imprudence and sent the case back for the PRC to fashion another ratepayer protection remedy. (pp. 40-41) (PNM was not "provided notice of a potential permanent disallowance of all recovery for its future contributions to the nuclear decommissioning trusts.") (p. 40)

"[W]e hold that the Commission's determination that PNM's decisions were imprudent [in purchasing the nuclear] was supported by substantial evidence, was not arbitrary or capricious, was not contrary to law, and was thus lawful and reasonable." (p. 24)

PNM's argument failed to persuade the Court to overturn the PRC because:

1. **PNM had not performed any economic modeling or financial analysis before it made the nuclear purchase.** (p.22)

AND

2. **"PNM's failure to consider alternatives – impaired the Commission's ability to quantify the potential harm to ratepayers from PNM's imprudence."** (pp. 28-29)

" We disagree [that] PNM [] claims that its purchase price was a fair market value for that [nuclear] capacity." P. 31

"PNM's argument [] ignores the central issue facing the Commission – how to protect ratepayers from PNM's failure to consider alternatives [to the further nuclear investment]." P. 32

Further, affirming the PRC's finding that PNM was "imprudent" when it invested in "balanced draft technology" (pp.48-56) The Court found that:

1. PRC was well within its authority to regulate the utility. (pp. 54-55)
2. PRC's finding of imprudence for PNM's investment in unnecessary balanced draft technology at San Juan Generating Station was lawful. (p 56)

When "prudent" investments for generation resources are made ratepayers must pay in terms of rate increases and conversely, when the utility hasn't prudently incurred investments, then ratepayers should be held harmless. "Under the prudent investment theory, 'ratepayers are not to be charged for negligent, wasteful or improvident expenditures, or for the cost of management decisions which are not made in good faith.'" P. 24

"The high Court upheld PRC's authority to regulate PNM and found that PNM was 'imprudent' when it invested in Palo Verde nuclear. That's fair because only prudent investments should be recoverable from customers. Ratepayers should not be stuck with imprudent or dishonest decisions of utility management," stated Mariel Nanasi, Executive Director, New Energy Economy. "This case exemplified imprudence – we submitted evidence that PNM did absolutely no financial analysis before investing hundreds of millions in nuclear in Arizona instead of investing in radioactive-free and affordable solar and wind in Albuquerque and Santa Fe. The PRC found in our favor and now the Supreme Court has ruled to uphold their decision. This is an important victory for ratepayers and for both economic and environmental justice. The regulatory agency and the High Court have made it clear that the utility cannot invest ratepayer money for shareholder benefit alone. This decision is also critically timed. We are approaching the expiration dates of additional leases at Palo Verde that PNM has indicated they intend to purchase. With over twenty New Mexico grassroots organizations, New Energy Economy filed a Petition to Investigate PNM's planned purchase of nuclear. Just last week the NMPRC ordered PNM to respond. As we approach both the expiration of Palo Verde leases and the Abandonment Case with 450 megawatts of replacement energy needed, the Court's decision in 36,115 (appeal of 15-00261-UT) is a welcome reminder of the standards of the law," stated Nanasi.

About New Energy Economy

New Energy Economy is a registered nonprofit organization established in 2004 to create economic opportunity in New Mexico with less carbon pollution and more clean energy. New Energy Economy works in partnership with diverse allies to encourage job growth, investment and innovation in a more efficient, sustainable and equitable energy sector. New Energy Economy grounds its work in the research and findings of the world's leading scientific and technological authorities. Learn more at www.newenergyeconomy.org

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