PROPOSED REVISIONS TO THE RULES OF APPELLATE PROCEDURE
PROPOSAL 2026-002

March 6, 2026

The Appellate Rules Committee has recommended amendments to Rule 12-601 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/ or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2026 to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

12-601. Direct appeals from administrative decisions where the right to appeal is provided by statute.

A. Scope of rule. This rule governs the procedure for filing and perfecting direct appeals to an appellate court from orders, decisions, or actions of boards, commissions, administrative agencies, or officials when the right to a direct appeal is provided by statute. This rule applies to both rulemaking and adjudicatory proceedings by the administrative entity. To the extent of any conflict, this rule supersedes any statute providing for the time or other procedure for filing or perfecting an appeal with an appellate court. This rule does not create a right of appeal and does not govern petitions for writs filed in the Supreme Court or appeals to the district court.

B. Initiating the appeal.

(1) In accordance with Rule 12-307 NMRA, [~~D~~]direct appeals from final orders, decisions, or actions of boards, commissions, administrative agencies, or officials shall be taken by filing a notice of appeal with the appellate court clerk, together with the docket fee and proof of service on the agency involved and all parties and participants entitled to notice under Paragraphs C and D of this rule. [~~in accordance with Rule 12-307 NMRA,~~] The notice of appeal shall be filed within thirty (30) days of the date of the order, decision, or action being appealed from. The time within which a notice of appeal must be filed may be tolled when a motion that has the potential to affect the finality of the underlying order, decision, or action is authorized under applicable law and is timely filed. In the event such a motion is timely filed, the full time prescribed

in this rule for the filing of a notice of appeal shall commence to run and be computed from the filing of an order expressly disposing of the last remaining motion.

(2) The additional three (3)-day period provided in Rule 12-308(B) NMRA for certain kinds of service shall not apply to the time limits for filing a notice of appeal under this paragraph.

(3) Within thirty (30) days of the filing of the notice of appeal, the appellant shall file a docketing statement in the Court of Appeals or a statement of the issues in the Supreme Court in accordance with Rule 12-208 NMRA[~~, and~~]. The appeal shall proceed in accordance with [~~these rules~~] the Rules of Appellate Procedure, notwithstanding any provision of law to the contrary.

C. Intervention [~~as a party-appellee~~] in rulemaking proceedings.

(1) In any appeal challenging the adoption of a rule by an administrative entity, a participant in the rulemaking proceeding is entitled to notice of the appeal under Paragraph B of this rule and may intervene in the appeal [~~as a party-appellee as of right~~] by filing a notice of intervention as of right if:

(a) the participant was a party to the rulemaking proceeding under the applicable rules or procedures of the administrative entity;

(b) the participant initiated the rulemaking proceeding; or

(c) the participant participated actively in the rulemaking proceeding, during which it presented evidence relating to matters that the administrative entity was required to consider in deciding whether to adopt the rule at issue.

(2) Except as set forth in Subparagraph (1) of this paragraph, a participant in the rulemaking proceeding may move to intervene in the appeal [~~as a party-appellee~~] only at the discretion of the appellate court.

~~[(3) The appellate court may, in its discretion, order consolidated briefing by similarly situated parties or take other measures to promote efficiency and avoid unnecessary duplication.]~~

(3) A participant in the rulemaking proceeding who seeks to intervene under Subparagraphs (1) or (2) of this paragraph shall identify in the notice of intervention or motion to intervene whether it seeks to intervene as an intervenor-appellant or intervenor-appellee.

D. Intervention [~~as a party-appellee~~] in adjudicatory proceedings.

(1) In any appeal challenging an adjudicatory action by an administrative entity, a participant in the adjudicatory proceeding is entitled to notice of the appeal under Paragraph B of this rule and may move to intervene in the appeal [~~as a party-appellee as of right~~] by filing a notice of intervention as of right if the participant was a party to the adjudicatory proceeding under the applicable rules or procedures of the administrative entity.

(2) Except as set forth in Subparagraph (1) of this paragraph, a participant in the adjudicatory proceeding may intervene in the appeal only at the discretion of the appellate court.

~~[(3) The appellate court may, in its discretion, order consolidated briefing by similarly situated parties or take other measures to promote efficiency and avoid unnecessary duplication.]~~

(3) A participant in the adjudicatory proceeding who intervenes as of right shall identify in its notice of intervention whether it seeks to intervene as an intervenor-appellant or intervenor-appellee.

E. Substitution of administrative entity. Whenever in these rules a duty is to be performed by, service is to be made on, or reference is made to the district court or a judge or clerk of the district court, the board, commission, administrative agency, or official whose action is appealed from shall be substituted for the district court or a judge or clerk of the district court, except that any request for extension of time must be made to the appellate court.

F. Filing and briefing schedules.

(1) Absent a showing of exceptional circumstances, notices of intervention or motions to intervene shall be filed within forty-five (45) days of the filing of the docketing statement or statement of the issues.

(2) If appellant, appellee, or an intervenor is a governmental entity or official, that entity is not required to file joint briefing with other parties but is otherwise subject to the briefing schedule set forth in Subparagraphs (3) through (6) of this paragraph.

(3) Within forty-five (45) days of the expiration of the time for filing a notice of intervention or motion to intervene, appellant and any intervenors-appellant shall file a joint brief in chief, which shall comply with the requirements for a brief in chief under Rule 12-318 NMRA. If a motion to intervene has been filed, the brief in chief shall instead be filed within forty-five (45) days of any order granting or denying the motion.

(4) Within forty-five (45) days of the last filing of any brief in chief, appellee shall file an answer brief, and any intervenors-appellee shall file a joint answer brief. Such briefs shall comply with the requirements for an answer brief under Rule 12-318 NMRA.

(5) Within twenty (20) days of the last filing of any answer brief, appellant and intervenors-appellants may file a joint reply brief, which shall comply with the requirements for a reply brief under Rule 12-318 NMRA.

(6) Any other brief, including any briefs filed by non-governmental entities or officials not filed jointly with other parties pursuant to Subparagraphs (3), (4), or (5) of this subsection, may be filed only on motion and order of the appellate court. A motion for leave to file such a brief shall state good cause why leave to file should be granted. A proposed brief shall be conditionally filed with a motion for leave and shall comply with the requirements for a reply brief under Rule 12-318 NMRA unless otherwise ordered by the Court. A proposed brief shall avoid repetition of facts or legal arguments made in a brief filed under Subparagraphs (1) through (5) of this paragraph.

[~~F.~~]G. Grace period when notice is sent by mail or commercial courier. A notice of appeal that is sent by mail or commercial courier service to the court in which it is to be filed shall be deemed to be timely filed on the day it is received if the notice of appeal contains a certificate of service, which in addition to the information otherwise required by Rule 12-307(E) NMRA, explicitly states that the notice of appeal was sent to the appellate court by mail or commercial courier service and was postmarked by the United States Postal Service or date-stamped by the commercial courier service at least one (1) day before the due date for the notice of appeal otherwise prescribed by this rule. The clerk's office shall file-stamp a notice of appeal with the date on which it is actually received regardless of any postmark date set forth in the certificate of service.

[As amended, effective July 1, 1990; April 1, 1998; June 15, 2000; as amended by Supreme Court Order No. 07-8300-019, effective August 13, 2007; as amended by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. 16-8300-011, effective for all cases pending or filed on or after

December 31, 2016; as amended by Supreme Court Order No. 18-8300-016, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — New Paragraphs C and D were added in 2013 in response to the New Mexico Supreme Court's opinion in *New Energy Economy, Inc. v. Vanzi*, 2012-NMSC-005, 274 P.3d 53, which addresses what level of participation in an administrative proceeding is required before a participant may be considered a "party" that is entitled to notice of an appeal challenging the administrative action and is permitted, but not required, to intervene as an appellee for the purpose of defending the action. The Court held that those who participated in a "legally significant manner" in a rulemaking proceeding before the administrative tribunal have the right to participate as parties to an appeal. *Id.* ¶ 47. Providing technical testimony or the kind of evidence that directly informs the inquiries of the rulemaking tribunal in reaching its decision are listed as non-exclusive examples of the types of evidence that support finding a "legally significant" contribution to a rulemaking proceeding. *Id.* ¶¶ 37-39. In an adjudicatory proceeding, the general rule is that only parties to the administrative proceeding are entitled to notice or have a right to participate in an ensuing appeal. *Id.* ¶ 56.

The new paragraphs are largely based [~~upon~~] on the particular factual and procedural setting of *New Energy Economy* and, in other cases, should be applied with consideration of the factors that the Supreme Court considered important to determining whether participation in a rulemaking process was "legally significant."

The appellate court hearing the appeal may take reasonable steps to encourage efficiency and avoid unnecessary duplication in the event of a considerable number of intervening parties, *e.g.*, by ordering consolidated briefing from similarly situated parties. *Id.* ¶¶ 48-50.

The 2025 amendments to Rule 12-601(B) NMRA divide the paragraph into three subparagraphs for clarity. New language is added to subparagraph (B)(1) recognizing the tolling effect of motions filed in the administrative agency, such as motions to reconsider or motions for rehearing, which have the potential to affect the finality of the underlying order, decision, or action, but only when the motions are already authorized under applicable law. Subparagraph (B)(1) does not create new procedural rights, but instead recognizes the tolling effect of certain existing procedures. The amendments to subparagraph (B)(1) are modeled on the language of Rule 12-201(D)(1) NMRA, which sets forth tolling provisions applicable to post-trial or post-judgment motions that affect the time for filing an ordinary appeal from a district court's final judgment.

The 2025 amendments also revise the procedures for briefing by intervenors in rulemaking and adjudicatory proceedings under this Rule. Those revisions require intervenors to identify whether they are intervening as an intervenor-appellant or intervenor-appellee. Intervenors must then engage in coordinated briefing with the other parties unless excused by the Rule or the Court. The purpose of the revision to intervention procedures is to permit parties to intervene as either appellants or appellees and then streamline briefing by requiring joint briefing by parties asserting related arguments.

[Adopted by Supreme Court Order No. 13-8300-032, effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme Court Order No. _____, effective _____.]

New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Public Comment on Proposal 2026-002 — PRC Appeals, Intervention in PRC Cases

1 message

Scott Rapalee <qsgadgets@gmail.com> Tue, Mar 10, 2026 at 11:49 AM
Reply-To: qsgadgets@gmail.com
To: rules.supremecourt@nmcourts.gov

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RE: Public Comment on Proposal 2026-002 — PRC Appeals, Intervention in PRC Cases (Rule 12-601 NMRA)

Dear Chief Clerk Garcia,

I write regarding Proposal 2026-002 and respectfully submit this comment for the Court's consideration before the April 5, 2026 deadline.

I am a pro se complainant in PRC Docket 26-00004-UT, in which IFP status was granted. My family has been without electrical power since December 1, 2025. PNM disconnected service to a household with a brain tumor patient who cannot regulate body temperature and a legally blind child receiving SSI — during the winter disconnection moratorium established by NMAC 17.5.410.

MY EXPERIENCE WITH THE PRC PROCESS THAT THESE AMENDMENTS SHOULD ADDRESS

1. Denial of Emergency Relief on a Technicality

After a 46-day delay, the PRC denied emergency relief on February 20, 2026, claiming I was not a "customer" because the utility account was in my landlord's name — despite LIHEAP payments made directly in my name to PNM for the same account. The PRC treated a billing technicality as dispositive while a disabled family went without heat during winter.

2. Ex Parte Communications

I filed a Notice of Ex Parte Communication (docketed February 16, 2026) documenting improper communications in Docket 26-00004-UT. The proposed amendments to Rule 12-601 address intervention procedures but do not address the fundamental problem of administrative agencies acting on ex parte information.

3. Intervention Barriers for Affected Parties

The proposed amendments refine intervention procedures for rulemaking and adjudicatory proceedings. I respectfully submit that the amendments should also address the rights of individual complainants — particularly pro se parties and persons with disabilities — to meaningful participation in PRC proceedings that directly affect their lives and safety.

In my case, PNM filed objections and responses to my interrogatories on February 2, 2026. The hearing examiner was never assigned despite my emergency motion to compel filed February 16, 2026. The procedural framework being amended in Proposal 2026-002 governs the appeal pathway I will use if the PRC continues to deny relief.

4. Connection to the DFA/PRC Pipeline

The current DFA Secretary, Wayne Propst, previously served as PRC Chief of Staff. He now controls the state budget that funds the PRC. A former PRC CFO, Jim Williamson, filed a whistleblower lawsuit against Propst for retaliation after reporting fraud. The former DFA Secretary, Deborah Romero, is now CEO of First National Bank in Alamogordo. These relationships raise serious questions about whether the PRC can function as an independent regulatory body when budget authority rests with officials who have documented conflicts of interest.

RECOMMENDATIONS

(a) The amendments should include provisions ensuring that pro se complainants with pending emergency matters before the PRC have access to expedited appellate review when the PRC fails to act within a reasonable timeframe.

(b) The tolling provision in proposed Subparagraph (B)(1) should explicitly address situations where the PRC fails to rule on a pending motion, as indefinite administrative delay effectively denies the right of appeal.

(c) The intervention provisions should require the PRC to notify affected parties — including utility customers whose service has been disconnected — when matters affecting their rights are before the Commission, regardless of whether they were formal parties to the original proceeding.

My family cannot wait for the PRC to process appeals through standard timelines. As summer temperatures in southern New Mexico approach dangerous levels, the lack of electrical power and climate control is becoming a medical emergency for a person with thermoregulation impairment.

This comment is submitted for the public record.

Respectfully,

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Referenced: PRC Docket 26-00004-UT; NMAC 17.5.410; D-101-CV-2025-02811

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[rules.supremecourt-grp] Comments on Proposed Rule Amendments--Proposal 2026-002

astevens.law@gmail.com <astevens.law@gmail.com> Sun, Apr 5, 2026 at 9:22 PM
Reply-To: astevens.law@gmail.com
To: rules.supremecourt@nmcourts.gov

Please accept the attached comments on the proposed amendments to Rule 12-601 NMRA. I have attempted to upload this document through the Supreme Court's website, but after hitting the send comments button a couple of times, I don't know whether I succeeded. We, or at least I, have come to expect instant feedback whenever putting a cursor on a "button" on a screen. So if you have already received this once, twice, or more, please accept my apologies for burdening you with my technical insecurities.

Thank you, and good evening.

Anastasia Stevens

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Comments on the Proposed Revisions to the Rules of Appellate Procedure.docx
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Comments on the Proposed Revisions to the Rules of Appellate Procedure

Proposal 2026-002, Public Regulation Commission Appeals, Intervention in PRC Cases

Submitted by Anastasia S. Stevens, Esq., dated April 5, 2026

The proposed revisions to Rule 12-601 NMRA are identified as relating to direct appeals from decisions of the New Mexico Public Regulation Commission ("PRC") in the Supreme Court's email notification of pending rule amendment proposals, although that rule applies to direct appeals from other governmental bodies and administrative agencies. The following comments are addressed specifically to appeals from proceedings before the PRC, although in some instances the concerns raised likely are applicable to appeals from other entities.

Some of these comments are technical in nature and involve potential inconsistencies between the provisions of the proposed amended Rule 12-601 and the language of the PRC's governing statutes and its own rules and practices. Some of these comments raise deeper concerns about due process, fundamental fairness, and the potential ethical challenges to attorneys posed by requirements for consolidated briefing. For ease of reference, they will be presented in the order of the subsections of proposed Rule 12-601.

Proposed Rule 12-601(B):

Under NMSA 1978, Section 62-10-16 (1941), parties to PRC proceedings may file motions for rehearing within 30 days after the PRC enters its order. Under NMSA 1978, Section 62-11-1 (1993) and Rule 12-601(B) as it currently exists and as it is proposed to be amended, notices of appeal must be filed within 30 days after the PRC enters its order. This places the parties, the PRC, and ultimately the Supreme Court in the position of not knowing until the end of the thirtieth day whether the PRC has retained jurisdiction to reconsider its decision or whether one or more appeals have been taken.

The proposed new language in Rule 12-601(B)(1) about tolling does not, and perhaps cannot, solve this practical dilemma. The PRC's recent implementation of a new electronic filing system and adoption of a midnight deadline, rather than the traditional 5:00 p.m. close of business deadline, exacerbates this problem.

However, by using the permissive phrase "may be tolled," rather than the mandatory phrase "shall be tolled," the proposed amendment to Rule 12-601(B)(1) has the potential for muddying the waters even more. Unless that language was chosen because of circumstances not applicable to PRC cases, more definitive phrasing could avoid potential disputes about the deadlines for filing notices of appeal.

Of even greater concern, Sections 62-10-16 and 62-11-1 explicitly provide that if the PRC fails to act upon an application for rehearing within 20 days after the application is filed, its inaction shall be deemed a refusal of the application. The last sentence of Proposed Rule 12-601(B)(1) states that the time for filing a notice of appeal shall "be computed from the filing of an order *expressly* disposing of the last remaining motion." In PRC proceedings, there may never be an order "expressly" disposing of the motion or motions for rehearing. Therefore, it is unclear whether Proposed Rule 12-601(B)(1) is intended to supersede the statutory provision for denial of motions for rehearing of PRC orders by operation of law, or whether Sections 62-10-16 and 62-11-1 would control and establish a deadline for filing notices of appeal.

Proposed Rule 12-601(C):

As indicated in the Committee commentary, the current language of Rule 12-601(C)(1) was added in 2013 to reflect the Supreme Court's opinion in *New Energy Economy, Inc. v. Vanzi,* 2012-NMSC-005. Although no changes to these standards are proposed as part of the current amendments, it should be noted that the PRC's rules and practices do not correspond directly to the requirements of Rule 12-601(C)(1).

With respect to Rule 12-601(C)(1)(a), the PRC's rules currently do not characterize participants in rulemaking proceedings as "parties." Under 17.1.120.9 NMAC, "interested persons" may submit "written data, views or arguments" in rulemaking proceedings. Under 1.2.2.7(P) NMAC, a "party" is an entity that initiates a proceeding or is designated as a respondent. In a pending rulemaking proceeding on the PRC's Rules of Procedure, NMPRC Case No. 23-00119-UT, the PRC issued a notice of proposed rulemaking ("NOPR") on May 29, 2025, that would, if adopted, effectively require formal intervention by motion in rulemaking proceedings after the NOPR is issued. That PRC rule revision has not yet been adopted, however.

With respect to Rule 12-601(C)(1)(b), while PRC rulemaking proceedings occasionally are triggered by petitions for rulemaking proceedings, the PRC typically modifies the case caption and takes responsibility for the rulemaking proceeding by the time that it issues a NOPR, if not sooner.

With respect to Rule 12-601(C)(1)(c), participants may participate actively in a PRC rulemaking proceeding, before or after the issuance of a NOPR, by providing "written data, views or arguments" in accordance with 17.1.120.9 NMAC. Under 17.1.120.10 NMAC, the PRC may choose to take "additional comments" at a hearing at which the rules of civil procedure and the rules of evidence do not apply. Neither written materials submitted under 17.1.120.9 NMAC nor comments presented orally at hearing (with occasional documentary support) under 17.1.120.10 NMAC amount to sworn evidence as contemplated by Rule 12-601(C)(1)(c). Moreover, the PRC's rulemaking proceedings tend to be of a policy-making nature; it would be difficult at best to identify information (not "evidence") "relating to matters that the [PRC] was required to consider in deciding whether to adopt the rule at issue."

Therefore, unless and until the PRC amends its own rules to clarify what constitutes a "party" to its rulemaking proceedings, Proposed Rule 12-601(C) likely would require any potential intervenor in an appeal of a PRC rulemaking proceeding to seek leave of the Supreme Court under Rule 12.601(C)(2). That a participant in a PRC rulemaking does not have the right to file a notice of intervention as of right is not a huge obstacle, unless the Court would expect or require that participant to obtain the positions of all other participants in the rulemaking as part of its motion to intervene.

These constraints on intervention by right in an appeal of a PRC rulemaking decision raise a more provocative question. If a participant in the rulemaking does not have formal party status and did not "participate actively" by presenting evidence when the PRC does not take evidence, does any participant have the right to appeal a rulemaking order of the PRC?

Surely, participants in PRC rulemaking proceedings have been appealing from PRC orders for many decades. Indeed, there have been a few cases in the past in which the PRC or its predecessor commission proactively stayed implementation of a newly adopted rule so that an appeal could be taken and the Supreme Court could review the PRC's legal analysis before affected entities were required to comply with the new rule.

Proposed Rule 12-601(F):

Proposed Rule 12-601(F) includes several provisions that require joint briefing by appellants and intervenor-appellants and by appellees and intervenor-appellees. Under Proposed Rule 12-601(F)(2), an appellee, appellant, or intervenor that is a "governmental entity or official" is not required to engage in joint briefing. In the PRC context, that means that the PRC, as appellee, is not required to join in briefing with the intervenor-appellees that seek to support the PRC's challenged order. In the PRC context, that means that a public utility that appeals from the PRC's order would be required to join in briefing with other parties to the PRC proceeding that elect to align with the public utility-appellant.

The proposed Committee commentary on Proposed Rule 12-601(F) is brief and does not explain the reasons for the distinction between governmental and non-governmental entities. In fact, neither the proposed rule nor the proposed commentary defines what a "governmental entity or official" is. In my practice, I generally represent the City of Las Cruces in PRC proceedings that affect the City and its residents and businesses, including adjudicatory proceedings involving El Paso Electric Company and PRC rulemaking proceedings. I assume that my frequent client would be "excused" from the requirement for join briefing, per the Committee commentary, because it is a governmental entity.

However, the governmental/non-governmental distinction does not make sense in terms of the degree of interest or involvement or financial exposure that a party has in a PRC proceeding and a subsequent appeal of the PRC's final order. Each PRC case is unique and raises a myriad of issues of varying importance to the participants in the proceeding. Most frequently, of course, the public utility has the strongest interest in challenging or defending a PRC order . . . but Proposed Rule 12-601(F) does not give the utility the right to file a brief of its own if there are intervenor-appellants. And there are cases in which public interest groups or private business interests are deeply interested in the outcome, more so perhaps than the New Mexico Department of Justice or the City of Las Cruces or the City of Albuquerque or other local governmental entities. This unexplained inequality in the appellate process is troubling from a due process perspective.

The proposed Committee commentary's stated purpose to "streamline briefing by requiring joint briefing by parties asserting related arguments" raises several questions.

PRC decisions tend to be quite complicated and often entail numerous rulings on legal and factual issues. Proposed Rule 12-601(F)(2) would require the filing of notices of intervention or motions to intervene to be filed within 45 days of the filing of the statement of the issues. In concurrent Proposal 2026-001, the Supreme Court is not proposing substantive changes to the requirements of Rule 12-208(E) for the statement of the issues in PRC appeals. Although that rule states that general conclusory statements are not acceptable, to my knowledge the Court has not rejected statements of the issues in PRC proceedings that identify specific holdings and assert that the PRC's rulings are "arbitrary, capricious, and contrary to law" or "not supported by substantial evidence." The statement of the issues filed by the appellant may provide a potential intervenor with some guidance as to which issues decided by the PRC may be challenged on appeal. The statement of the issues may not necessarily provide guidance about whether the potential intervenor would make similar arguments regarding those issues or might oppose the PRC's rulings for entirely different reasons.

Therefore, if the Court adopts Proposed Rule 12-601(F), it should consider establishing more explicit requirements for the statement of the issues in appeals from PRC cases to enable intervenors and potential intervenors to evaluate, as early as possible, the "side" of the appeal with

which they would align. More detailed statements of the issues also would facilitate an intervenor filing a motion for leave to submit separate briefing under Proposed Rule 12-601(F)(6) earlier than that proposed rule seems to contemplate.

Proposed Rule 12-601(F)(6) alludes to some of the complications that the requirement for joint briefing will engender. As stated in the Proposed Committee commentary, after having been required to identify itself as an intervenor-appellant or an intervenor-appellee, an intervenor must "engage in coordinated briefing with the other parties unless excused by the Rule or the Court." The Rule excuses governmental entities and officials. Proposed Rule 12-601(F)(6) anticipates that a motion to be excused from joining a brief will be filed after the joint brief is filed. Proposed Rule 12-601(F)(6) thus requires the parties that have nominally aligned themselves to coordinate and share their positions on legal and factual matters until one or more of them reaches the point at which that party determines that it cannot join in the joint brief. The Court has required joint briefing of this sort in some PRC appeals in recent years and has expressed a similar desire for joint oral arguments in PRC cases.

However, before making "streamlining" of this sort mandatory in all PRC appeals, the Court and the Committee should reassess the implications for lawyers attempting to comply with the Rules of Professional Conduct. Not only does "engag[ing] in coordinated briefing" compel parties—through their attorneys—to share their analysis of the factual and legal issues in the case on appeal. The nature of the utility regulatory process means that the same or very similar issues will arise in future cases before the PRC. Mandatory coordinated briefing may well have a chilling effect on the taking of appeals from PRC orders and intervention in such appeals. Even if parties are not deterred from participating in appeals, the content and quality of their briefs to the Supreme Court is not necessarily going to be improved by compulsory coordination. Instead, the parties aligned as appellants and as appellees will have to exercise restraint in discussing and putting onto paper the arguments that they can safely discuss without disclosing present and future positions in PRC cases, that they can agree upon, and that they believe will not constrain their positions in future proceedings before the PRC or the Supreme Court.

Finally, another potential consequence of Proposed Rule 12-601(F) may be to encourage the filing of cross-appeals. Proposed Rule 12-601 does not address whether the requirements for consolidated briefing may be circumvented by filing multiple appeals of the same PRC order. At minimum, cross-appeals might be viewed as a route to initiating motions practice and inducing the Supreme Court to examine some of the concerns about alignment and joint briefing discussed above at a point in time before briefing begins.

Respectfully submitted this 5th day of April, 2026.

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