



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Supreme Court No. S-1-SC-40723

NEW MEXICANS FOR UTILITY SAFETY,
Appellant,

v.

NEW MEXICO PUBLIC REGULATION COMMISSION,
Appellee,

and

PUBLIC SERVICE COMPANY OF NEW MEXICO,
Intervenor-Appellee.

In The Matter of Public Service Company of New Mexico's Application for Authorization to Implement Grid Modernization Components that Include Advanced Metering Infrastructure and Application to Recover the Associated Costs through a Rider, Issuance of Related Accounting Orders, and Other Associated Relief. NMPRC Case No. 22-00058-UT

BRIEF IN CHIEF

Appeal from the New Mexico Public Regulation Commission
Christopher P. Ryan, Hearing Examiner

Submitted by:



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Appellant requests oral argument pursuant to Rules 12-305(G)(4) and 12-319 NMRA.

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Statement Regarding Transcript

Pursuant to Rule 12-209 (2016) NMRA and NMSA 1978, Section 62-11-2 (1982), the parties agreed to designate a partial transcript into the Record Proper as follows:

March 17, 2023	[7 RP 3008-3231]	March 21, 2023	[7 RP 2975-2985]
March 20, 2023	[7 RP 2962-2974]	March 22, 2023	[7 RP 2986-2996]

March 23, 2023 [8 RP 3232-3241] April 24, 2024 (2) [12 RP 3632-3646]
 March 24, 2023 [7 RP 2997-3007] April 30, 2024 [12 RP 3647-3658]
 April 24, 2024 [11 RP 3611-3631]

Statement of Page Count Compliance

This brief is less than 35 pages, and does not exceed the page limit of Rule 12-318(F)(2) NMRA.

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SUMMARY OF PROCEEDINGS

Nature of the Case

This is a direct appeal from a *Final Order* of the New Mexico Public Regulation Commission (“Commission” or “PRC”) in Docket No. 22-00058-UT [12 RP 3970]. The Commission approved the modified application by the Public Service Company of New Mexico (“PNM”) to implement Advanced Metering Infrastructure (“AMI” or “smart meters”) pursuant to the Public Utility Act, NMSA 1978, §§ 62-1-1 through 62-6-28 (1909, as amended) and NMSA 1978, §§ 62-8-1 through 62-13-16 (1941, as amended) (or the “PUA”), and specifically NMSA 1978, Section 62-8-13 (2021) (“grid modernization application statute” or “GMAS”)¹ [1 RP 0010-0854], modified by [13 RP 3823-3917] and [14 RP 3970-4114].

¹ The legislature amended the statute in 2025. The amendment specified the standards to determine reasonableness of the advanced grid technology projects, but did not otherwise materially change the substance of the statute as it relates to this appeal and Appellant’s argument that the Public Utility Act mandates consideration of health, safety, and welfare by the Commission. Citations in this Brief in Chief are to the 2021 act, which controls.

Appellant New Mexicans for Utility Safety (“NMUS”) intervened to present evidence regarding the public health, safety, welfare, and environmental impacts of the proposed AMI technology, specifically concerning radio frequency (RF) radiation emissions [2 RP 0861] [2 RP 0929].

This appeal challenges the Commission’s legal determination that it is “affirmatively forbidden” from considering evidence related to public health and safety when reviewing an application under the GMAS [14 RP 3998].

Course of Proceedings and Disposition

On October 3, 2022, PNM filed its application seeking authorization for a six-year grid modernization implementation plan, including system-wide AMI deployment, at an estimated cost of \$344 million [1 RP 0010].

NMUS moved to intervene on December 9, 2022, identifying its interest in the dangers to public health, safety, and welfare posed by the technology [2 RP 0861]. The Hearing Examiner granted intervention on January 19, 2023. [2 RP 0929].

On January 27, 2023, NMUS pre-filed direct testimony from multiple expert and lay witnesses concerning alleged health, safety, and environmental effects of RF radiation emitted by AMI. [2 RP 0941-1219] and [4 RP 1232-1315].

Subsequently, on February 7, 2023, the Hearing Examiner ruled that NMUS’s contention that “AMI will kill New Mexicans will not be considered in this case (nor will evidence attempting to prove this be admitted).” **[6 RP 2687]**.

On February 8, 2023, PNM moved to strike the NMUS testimonies, arguing the subject matter was irrelevant to the GMAS proceeding. **[6 RP 2702]**. NMUS responded that the evidence was essential to the Commission’s statutory duties under the PUA. **[6 RP 2769]**.

On February 14, 2023, the Hearing Examiner issued an *Order Granting PNM’s Objection and Motion to Strike the Testimony of NMUS* **[6 RP 2782]**, excluding NMUS’ testimony regarding health and safety impacts on the basis that “[t]he Commission is not authorized to investigate whether AMI can or should be used at all or whether AMI will end up physically harming New Mexicans.” **[6 RP 2788, ¶ 18]**.

On February 17, 2023, NMUS unsuccessfully moved for interlocutory appeal of the Hearing Examiner’s order striking all NMUS testimony **[6 RP 2801]**, but no hearing was held or orders issued; then moved for reconsideration of the order striking NMUS testimonies on February 22, 2023 **[6 RP 2813]**, which was denied on March 8, 2023 **[6 RP 2893]**; and petitioned this Court for a writ of

mandamus or superintending control and stay in Case S-1-SC-39817 on March 3, 2023, which was denied on April 25, 2023 **[DS 13]**.²

On March 14, 2023, by his own motion, the Hearing Examiner struck all PNM witnesses relating to any allegations made by NMUS **[6 RP 2918]**.

Following several hearings³, the Hearing Examiner issued his *Recommended Decision* on August 16, 2024 **[13 RP 3823]**, recommending approval of a modified PNM application. **[13 RP 3914]**.

NMUS filed exceptions to the *Recommended Decision* **[14 RP 3918]** on August 29, 2024, including that the Commission is required to consider whether proposed grid modernizations are designed to contribute to the reduction of air pollution and greenhouse gases,⁴ pursuant to § 62-8-13 (B)(4), and that the

² Appellant sought a writ of mandamus to prohibit the Commission from refusing to consider the health and environmental effects of AMI.

³ March 17 **[7 RP 3008]**; March 20-22 **[7 RP 2962]**, **[7 RP 2975]**, **[7 RP 2986]**; March 23 **[8 RP 3232]**; March 24 **[7 RP 2997]**; April 23 (not in RP); April 24 **[11 RP 3611]**, **[12 RP 3632]**; and April 30 **[12 RP 3647]**.

⁴ NMUS contends that as greenhouse gases are a component of air pollution – and air contaminants include radioactive materials, including any sources that emit radiation, such as electromagnetic radiation, as in the radio frequencies (“RF”) from AMI smart meter technologies – the commission is obliged to consider whether sources of RF contribute to a reduction of air pollution, including RF.

Commission must protect public health, safety, and welfare,⁵ and thereby objected to the *Recommended Decision*. [14 RP 3923] [14 RP 3929]. PNM filed no response to NMUS’s exceptions.⁶

On October 17, 2024, the Commission rejected NMUS’s exceptions [14 RP 3997 ¶ 75] and affirmed the Hearing Examiner’s rulings, also holding that the issues NMUS “continually” raised were inappropriate and affirmatively forbidden. [14 RP 3998 ¶ 77]. Furthermore, the Commission found that NMUS intentionally raised arguments already determined by the presiding officer to be “legally irrelevant, inappropriate, and disallowed for consideration,” while also noting that the exceptions were “not based on record evidence.” [14 RP 3998 ¶ 78].

Also on October 17, 2024, the Commission issued its *Final Order*, adopting an amended *Recommended Decision*, further modifying PNM’s plan, and approving the modified plan [14 RP 4006 ¶¶ A to D], [14 RP 3970-4114].

⁵ See Appellant’s Motion for Leave to Intervene and Request for Discovery, filed December 8, 2022 [2 RP 0863], for NMUS’s claim that the proposed smart meters violate Article XX, Section 21 of the New Mexico Constitution, which mandates the legislature “provide for control of pollution and control of despoilment of the air.”

⁶ Other parties also filed exceptions; however, the parties agreed to all other objections pursuant to § 62-11-2 (1982).

NMUS filed an *Amended Motion for Rehearing* [14 RP 4123]. No hearing was noticed or held, and no recommended decision or final order has been issued on this motion by the Hearing Examiner or the Commission.

Summary of Relevant Facts

Under the GMAS, § 62-8-13, PNM applied to deploy AMI technology system-wide [1 RP 0010]. The GMAS requires the Commission to “review the reasonableness” of such projects and consider factors including whether the investments provide “customer protection, information or education” and contribute to the “reduction of air pollution” § 62-8-13(B)(4), (5).

NMUS sought to introduce testimonial evidence asserting that the RF radiation utilized by this technology causes significant adverse health and environmental impacts [2 RP 0941], [3 RP 1232], which NMUS alleged is the cause of “immediate and obvious disease, death, and environmental destruction.” [14 RP 3923].

The Hearing Examiner refused to admit or consider this evidence, in part because he determined that the witnesses opinions were not relevant to the issues in this proceeding [6 RP 2783] as “[t]he Commission is not authorized to investigate whether AMI can or should be used at all or whether AMI will end up physically harming New Mexicans” [6 RP 2788], and that grid modernization was only concerned with “the types of protection, information, and education

envisioned is that designed to help customers to make informed decisions about their energy usage which will in turn enable them to save money, reduce demand during peak hours, and contribute towards reduction in emissions” [6 RP 2790].

Subsequently, the Hearing Examiner, on his own motion [6 RP 2918], further struck all witness testimony offered by PNM that “touches upon the allegations upon which NMUS is singularly focused” [6 RP 2919], and declared that NMUS improperly asserted “a due process right to file evidence on an issue that is not legally germane...” and, after first reciting large sections of the proffered testimony, declared that he must “strike the [previously admitted] testimony of PNM on the matters NMUS is focused upon” to answer NMUS’ due process claims such that “[t]he playing field is made level.” [6 RP 2928].

Thereafter, the Hearing Examiner recommended, and the Commission adopted and approved PNM’s modified application without weighing any evidence regarding the potential public health, safety, or welfare impacts of the AMI technology, whether from a proponent of the plan or an objector to it. [14 RP 3970].

The *Final Order* also threatened NMUS with penalties pursuant to § 62-12-4 (1993), which includes penalties of up to \$100,000 if NMUS continued to raise issues of health, safety, and welfare, characterizing NMUS’s objections to the *Recommended Decision* as “willful disregard” of prior orders. [14 RP 3998].

ARGUMENT

The Commission committed reversible error by interpreting the GMAS to override the fundamental public interest protections embedded in the PUA. The Commission's conclusion that it is "forbidden" from considering the health, safety, and welfare impacts of utility infrastructure is contrary to the law, and rendered the Commission's determination of PNM's application flawed and unsustainable. Furthermore, by categorically excluding all NMUS evidence based on this faulty legal premise, the Commission violated NMUS's procedural due process rights.

ISSUE 1:

THE COMMISSION MADE A REVERSIBLE LEGAL ERROR BY CONCLUDING THAT THE GRID MODERNIZATION APPLICATION STATUTE PRECLUDES CONSIDERATION OF THE FOUNDATIONAL OBJECTIVES OF THE PUBLIC UTILITY ACT, INCLUDING PUBLIC HEALTH, SAFETY, AND WELFARE.

Issue 1: Standard of Review.

This issue involves the interpretation of the PUA and the GMAS, and the scope of the Commission's statutory authority and obligations. The interpretation of a statute is a question of law reviewed *de novo*. *Moongate Water Co., Inc. v. City of Las Cruces*, 2013-NMSC-018, ¶ 6, 302 P.3d 405.

Issue 1: Argument.

- A. Health, safety, and welfare are foundational objectives of the PUA, whose liberal construction mandate requires these purposes to guide all PRC decision-making.**

As described in Section 62-3-1, public utilities are affected with the public interest, and the PUA mandates that the declared policy of the state is that interests of the public, consumers, and investors require regulation and supervision to ensure that reasonable and proper services are available at fair and reasonable rates, and that construction, development and extension are encouraged and attracted to render service to the general public and industry.

This policy mandate is further refined in Sections 62-3-2(A) and 62-3-2.1 as it relates to the construction, development, and extension of rural utility plants and facilities, as the PUA was intended to ensure regulation and supervision, among other goals, “necessary and vital to the preservation of the public health, safety and welfare.”

Furthermore, the PUA should be liberally construed to realize its purposes, and that nothing in any other act governing the operation of such utilities “shall be construed to conflict with any duty to which such a utility may be subject or with any benefit to which such a utility may be entitled under the Public Utility Act, as now or hereafter amended.” *See* § 62-3-2(B), (C). Such a requirement for liberal construction necessitates the Commission consider the purpose of preserving health, safety, and welfare in all its decision-making, and, after a diligent search, Counsel found no cases on point disputing the PUA’s policy or purposes.

B. The Commission is strictly limited to its statutory authority and cannot abdicate its statutory duties.

The Commission is an administrative agency with the duty to “administer and enforce the laws with which it is charged.” *See* NMSA 1978, § 62-19-9 (2020). The Commission’s authority “goes no further than what has been statutorily authorized” and it violates “the separation of powers doctrine [when it] conflict[s] with or infringe[s] upon what is the essence of legislative authority—the making of law.” *State ex rel. Egolf v. New Mexico Pub. Regulation Comm’n*, 2020-NMSC-018, ¶ 32, 476 P.3d 896. The Commission is “created by statute, and limited to the power and authority expressly granted or necessarily implied by those statutes.” *Citizens for Fair Rates & the Env’t v. New Mexico Pub. Regulation Comm’n*, 2022-NMSC-010, ¶ 21, 503 P.3d 1138. While the Commission cannot exceed the scope of its statutory authority, it also cannot abdicate its statutory responsibilities by interpreting a meaning contrary to statutory mandate. *See State ex rel. Sandel v. New Mexico Pub. Util. Comm’n*, 1999-NMSC-019, ¶ 26, 127 N.M. 272. By ruling that Section 62-8-13 precluded it from considering the health and safety implications of an application to install AMI technology, the Commission unlawfully restricted its own jurisdiction mandated by the PUA, § 62-3-2(A) [6 RP 2687], [6 RP 2782], [6 RP 2918]. The Commission thereby failed to execute its duties under the PUA.

C. The GMAS must be read *in pari materia* with the PUA, requiring the PRC to consider public health, safety, and welfare.

The Commission's fundamental error was treating the GMAS in isolation from the PUA. The GMAS is codified within the PUA, and statutes relating to the same subject must be construed together to harmonize their operation and achievement of their goals under the presumption that the legislature acted with full knowledge of the law. *N.M. Attorney General v. NMPRC*, 2011-NMSC-034, ¶ 10, 150 N.M. 174. The PUA charges the Commission with regulating utilities for the statutory purpose of preserving the public health, safety, and welfare. *Griffith v. New Mexico Pub. Serv. Comm'n*, 1974-NMSC-024, ¶ 6, 86 N.M. 113.

Insofar as the PUA's mandated declarations of policy might be considered a preamble, it is instructive that this Court has held that a preamble is the legislature's declaration of its reasons for passing the statute, and helpful in interpreting any ambiguities with the statutes to come. *Id.* ¶ 5. Of course, the Court here is not limited to such declarations, but must consider them. *Id.* Therefore, the PUA mandates that a foundational purpose of utility regulation is to protect public interest and welfare. *See* § 62-3-1(B) and § 62-3-2. The Commission's refusal to consider public safety created an ambiguity regarding its duties. The Commission was required to resolve that ambiguity by consulting the PUA's mandate vis-à-vis the declaration of policy. *Griffith*, 1974-NMSC-024, ¶ 5, but did not do so.

By interpreting the GMAS's enumerated factors as an exhaustive list, the Commission repealed the legislature's core PUA mandate by implication that it was superseded by § 62-8-13(B) (2021); however, "[r]epeals by implication are not favored and are not resorted to unless necessary to give effect to the legislative intent." *T-N-T Taxi v. New Mexico Pub. Regulation Comm'n*, 2006-NMSC-016, ¶ 7, 135 P.3d 814. Therefore, the GMAS supplements, but does not supplant, the PUA's foundational mandate to protect the public.

D. The Commission has wide latitude to interpret a mandate, but not to ignore it.

In enacting the PUA and GMAS, the legislature granted the Commission latitude to interpret the statutory mandates. "The separation of powers doctrine directs administrative agencies to their duty of implementing legislation." *City of Albuquerque v. New Mexico Pub. Regulation Comm'n*, 2003-NMSC-028, ¶ 16, 134 N.M. 472 (Internal citations omitted). "When an agency that is governed by a particular statute construes or applies that statute, the court will begin by according some deference to the agency's interpretation... The court should reverse if the agency's interpretation of a law is unreasonable or unlawful." *Id.* However, the *Albuquerque* Court also considered whether the Commission had the authority to go beyond the "specifically expressed" manner the legislature permitted for the Commission's review (of land use regulations) and found that the Commission lacked authority to modify the existing (common) law without an exception from

the legislature. *Id.* The *Albuquerque* Court, therefore, did not grant the Commission the right to ignore legislative mandates. In the instant case, the Commission must comply with the PUA's mandates in conducting its review to consider whether a proposed project reasonably provides adequate customer protection, information, or education as is necessary and vital to the preservation of the public health, safety, and welfare. *See* § 62-8-13(B)(5) (2021) and § 62-3-2(A).

If, in conducting its review, the Commission fails to make a necessary finding of fact relating to a mandate, rather than merely a flawed conclusion of law that the mandate does not apply, the Commission errs. *Plains Elec. Generation & Transmission Co-op., Inc. v. New Mexico Pub. Util. Comm'n*, 1998-NMSC-038, ¶ 26, 126 N.M. 152.

The Commission cannot make a reasonable or lawful determination if it abdicates its responsibility to fulfill its full mandate. Here, the Commission was obliged to use its discretion on **how** to implement the mandates relating to health, safety, and welfare, not **whether** to do so. NMUS and PNM both proffered evidence regarding health and safety impacts that would have allowed the Commission to meet its duty. By rebuking and rejecting this evidence, the Hearing Examiner effectively repealed the legislature's mandate by inference and abdicated the Commission's statutory duty. Such a legal error requires reversal.

Issue 1: Preservation.

THE COMMISSION MADE A REVERSIBLE LEGAL ERROR BY CONCLUDING THAT THE GRID MODERNIZATION APPLICATION STATUTE PRECLUDES CONSIDERATION OF THE FOUNDATIONAL OBJECTIVES OF THE PUBLIC UTILITY ACT, INCLUDING PUBLIC HEALTH, SAFETY, AND WELFARE.

This issue was preserved in NMUS’s *Motion for Leave to Intervene and Request for Discovery* [2 RP 0861], NMUS’s *Response to PNM’s Motion to Strike Testimonies* [6 RP 2769], NMUS’s *Motion to Permit Expedited Interlocutory Appeal* [6 RP 2801], NMUS’s *Motion for Reconsideration of Order Striking Testimonies* [6 RP 2813]; NMUS’s [Initial Post-Hearing] *Brief in Chief* [8 RP 3383], NMUS’s *Initial Brief on PNM’s Cost-Benefit Analysis* [13 RP 3724, 3732], and NMUS’s *Exception to the Recommended Decision* [14 RP 3918].

ISSUE 2:

THE HEARING EXAMINER’S ERRONEOUS EXCLUSION OF RELEVANT EVIDENCE VIOLATED NMUS’S RIGHT TO PROCEDURAL DUE PROCESS.

Issue 2: Standard of Review.

Whether an administrative proceeding afforded a party procedural due process is a question of law reviewed *de novo*. *Moongate*, 2013-NMSC-018, ¶ 6.

Whether the Commission had subject-matter jurisdiction over a contested issue on appeal is a question of law reviewed *de novo*. *State v. Montoya*, 2008-NMSC-043, ¶ 9, 144 N.M. 458. “Subject matter jurisdiction is the power to

adjudicate the general questions involved in the claim and is not dependent upon the state of facts which may appear in a particular case, or the ultimate existence of a valid cause of action.” *Gonzales v. Surgidev Corp.*, 1995-NMSC-036, ¶ 12, 120 N.M. 133.

Issue 2: Argument.

A. The Hearing Examiner wrongly determined that questions of health, safety, and welfare were outside of the Commission’s subject matter jurisdiction for purposes of evaluating applications for grid modernization.

The legislature provided the Commission with subject-matter jurisdiction to consider grid modernization in light of the required elements of Section 62-8-13(B) (2021) and the policies of the PUA. However, the Hearing Examiner substituted his judgment for the statutory mandate to consider health, safety, and welfare and erroneously decided that he lacked the authority to consider just evidence and issued his various orders and *Recommended Decision* accordingly. He should have determined that, pursuant to Section 62-3-2 of the PUA, he had jurisdiction over issues of health, safety, and welfare, and then exercised the discretion afforded the Commission as to how the discretion should be exercised to determine relevance instead of summarily dismissing all of NMUS’s proposed evidence and reversing his admission of the evidence from PNM. [6 RP 2782], [6 RP 2918].

B. NMUS was denied a meaningful opportunity to be heard on relevant issues.

NMUS was granted intervenor status, recognizing its interest in the proceeding. [6 RP 2687]. As a party, NMUS was entitled to procedural due process, which requires, at a minimum, “notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *State ex rel. Children, Youth & Families Dep’t v. Maria C.*, 2004-NMC-083, ¶ 26, 136 N.M. 53 (internal quotation marks and citation omitted). A meaningful opportunity to be heard includes the right to review and present evidence. *State ex rel. Children, Youth & Families Dep’t v. William M.*, 2007-NMCA-055, ¶ 37, 141 N.M. 765. As argued above, the health and safety impacts of AMI deployment were directly relevant to the statutory criteria of lawfully determining reasonableness in light of the mandate to preserve customer protections under both the PUA and the GMAS.

The Commission violated NMUS’s right to a fair process by deciding a key dispute without considering Appellant’s evidence. *Resolute Wind 1 LLC v. NMPRC*, 2022-NMSC-011, ¶ 21, 506 P.3d 346. As in *Resolute Wind*, the Hearing Examiner improperly adopted his own methodology for summarily resolving a hotly contested factual issue. *Id.* In this *ad hoc* procedure, the Hearing Examiner reviewed the testimony, denied admission of NMUS’s evidence [6 RP 2782] but, nevertheless, cited it in his orders [6 RP 2918], admitted PNM’s evidence, and then rescinded his admissions to “level the playing field” [6 RP 2918] to try and

“un-ring the bell” of relevance and probity. This was not fair due process but a blanket exclusion based on an erroneous legal conclusion that the subject matter was irrelevant. [6 RP 2687].

Due process is further fundamentally violated when the Commission refuses to allow a record to be created at all. *State v. Flores*, S-1-SC-32094, dec. ¶ 15 (N.M. Feb. 24, 2011) (nonprecedential). By striking all of NMUS’s testimony, the Hearing Examiner denied NMUS a meaningful opportunity to present its case, develop a factual record to support its exceptions, and fully participate in the proceeding. The fairness of the proceeding was further compromised by the Commission’s explicit threat of sanctions if NMUS continued to argue the relevance of public health, safety, or welfare. [14 RP 3999], which chilled the ability of an intervenor to exercise its rights, and compounded the due process violation.

C. NMUS was denied a meaningful opportunity to participate in the proceedings by obtaining discovery relevant to its intervention.

NMUS properly attempted to obtain discovery relevant to its purpose for intervention, seeking to learn if the cost-benefit analysis ordered by the Hearing Examiner addressed issues related to public health, safety, and welfare by asking PNM to disclose any analysis relating to the costs of RF radiation on public health, increases in disease and disorders, impacts to fertility, or economic impact from any injuries to public health [12 RP 3632]. In response, PNM objected to all

interrogatories on the basis that, due solely to the Hearing Examiners' pre-determination that the purpose of NMUS's intervention, namely public health, safety, and welfare, is outside the scope of the proceeding [12 RP 3639]. No objections were made due to impossibility. PNM made objections that material might be protected from disclosure, although no privilege log is in the record; might not exist; or might already be in the public domain. However, the specific objections make it clear that, but for the Hearing Examiner's misapplication of the PUA, PNM might have provided useful analysis to assist the Commission in determining the reasonableness and lawfulness of PNM's proposed AMI deployment.

Issue 2: Preservation.

THE HEARING EXAMINER'S ERRONEOUS EXCLUSION OF RELEVANT EVIDENCE VIOLATED NMUS'S RIGHT TO PROCEDURAL DUE PROCESS.

This issue was preserved in *NMUS's Response to PNM's Motion to Strike Testimonies* [6 RP 2769], *NMUS's Motion to Permit Expedited Interlocutory Appeal* [6 RP 2801], *NMUS's Motion for Reconsideration of Order Striking Testimonies* [6 RP 2813], *NMUS's Motion to Require PNM to File a Realistic Cost-Benefit Analysis* [9 RP 3523], *NMUS's [Initial Post-Hearing] Brief in Chief* [8 RP 3383], *New Mexicans for Utility Safety's Third Set of Discovery Requests To Public Service Company of New Mexico* [12 RP 3632], *Transcript of Proceedings*

from April 30, 2024 [12 RP 3611], and NMUS's Exception to the Recommended Decision [14 RP 3918].

CONCLUSION

The Hearing Examiner committed reversible legal error by incorrectly concluding that the grid modernization application statute precluded consideration of public health, safety, and welfare evidence as mandated by the Public Utility Act. In so doing, the Commission substituted its judgment for that of the legislature, exceeded its authority, and effectively repealed by interference the statutory policies and purposes enacted by the legislature. As a result, the Hearing Examiner violated NMUS's due process rights and did not fully develop the reasonableness of the grid modernization project, which the Commission then adopted and approved, lacking evidence of the project's potential impact on the public health, safety, and welfare of the New Mexicans affected by the plan's implementation.

THEREFORE, Appellant NMUS prays the Court:

1. Reverse the Final Order; and
2. Remand to the Commission with instructions to re-convene the proceedings to receive testimony and evidence regarding the public health, safety, and welfare implications and

environmental effects of approving the AMI technology
proposed by PNM.

REQUEST FOR ORAL ARGUMENT

Pursuant to Rules 12-305(G)(4) and 12-319 NMRA, Appellant NMUS requests oral argument. This appeal involves significant questions of law regarding the interpretation of the Public Utility Act and the scope of the Commission's duties to consider health, safety, and welfare, which are of substantial public interest.

Respectfully submitted,



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CERTIFICATE OF SERVICE: I hereby certify that on October 20, 2025,
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