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

CONSOLIDATED REPLY BRIEF

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

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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 24, 2023	**[7 RP 2997-3007]**
March 20, 2023	**[7 RP 2962-2974]**	April 24, 2024	**[11 RP 3611-3631]**
March 21, 2023	**[7 RP 2975-2985]**	April 24, 2024 (2)	**[12 RP 3632-3646]**
March 22, 2023	**[7 RP 2986-2996]**	April 30, 2024	**[12 RP 3647-3658]**
March 23, 2023	**[8 RP 3232-3241]**		

Statement of Page Count Compliance

This body of this brief contains more than the permitted 15 pages but fewer than the allowed 4,400 words with a proportionally spaced Times New Roman typeface in 14-point font. The document's body totals 4,381 words, as counted by Microsoft® Word for Mac, Version 16.104.

TABLE OF AUTHORITIES

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INTRODUCTION[1]

The issues raised in this appeal present matters of fundamental concern for this Court. Is it acceptable for an agency to substitute its own statutory interpretation for the Legislature's policy, permitting the agency to reject evidence by a party based on an incorrect limitation on its jurisdiction, apply an incomplete test for efficacy, and approve a program regardless of its impact on public health, safety, or welfare? More specifically, can the New Mexico Public Regulation Commission ("Commission" or "PRC"), using only its interpretation of a statute to deny jurisdiction granted by the Legislature, approve a public utility proposal without any consideration of the public's health, safety, and welfare? Yes, this reflects the Final Order in this case, although such a policy is unjust in the instant matter and absurd if applied globally.

Under NMSA 1978, Section 62-8-13(A) (2021) ("Grid Modernization Application Statute" or "GMAS"), the Legislature provided that a public utility may apply to the PRC for approval of grid modernization projects, including advanced metering infrastructure ("AMI"). GMAS does not require installing grid modernization projects, and does not demand AMI be preferred. GMAS does not force a utility to apply, nor does it require the PRC to approve an application.

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[1] This Reply will refer to the Answer filed by the PRC as **[AB-PRC]** and by PNM as **[AB-PNM]**.

In considering an application, GMAS requires PRC to review the reasonableness of the proposal. § 62-8-13(B), and requires PRC to include as part of that review whether the application meets a set of elements laid out in Section 62-8-13(B)(1) to (7). These elements are nested within a single factor that PRC must consider; however, while the GMAS requires consideration of the elements, the outcome of that consideration is not necessarily dispositive, as the GMAS provides no correct answer, merely a framework for consideration based on reasonableness.[2] The GMAS does not compel PRC to approve an application. The statute requires PRC to conduct a specific inquiry as part of its review, but does not prevent PRC from conducting additional inquiries.

Therefore, a plain reading of GMAS shows that implementation, application, and approval are all optional. The decision whether to approve an application must include, but is not limited to, a prescribed analysis and must be reasonable.

In their replies, PRC and PNM speak in almost one voice, contending that PRC alone had the discretion to interpret the statute against the consideration of health, safety, and welfare, and exclude evidence based on PRC's interpretation

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[2] Furthermore, as part of reasonableness, PRC must consider seven additional factors in Section 62-8-13(G), including air pollutants, which were not included in Appellant's Brief in Chief but are disclosed here in candor to the Court.

that GMAS prohibited evidence relating to health, safety, and welfare and PRC's own determination of jurisdiction.

Appellees suggest that GMAS is exempt from the declared policy of the state provided in Sections 62-3-1(A) ("public utilities are affected with the public interest"), 62-3-1(B) ("the public interest requires regulation and supervision so that reasonable and proper services shall be available at fair, just and reasonable rates…"), and 62-3-2 (preservation of the public health, safety, and welfare requires regulation to avoid duplication and economic waste), of the Public Utility Act ("PUA").

Having made that determination, Appellees argue that Appellant had, in effect, all the due process it could want because it received notice and attended hearings, although not all hearings, and had an opportunity to speak on a single provision, knowing it was forbidden from raising any of its other issues.

Appellees' arguments are both interesting and misleading. Contrary to their positions, it was fundamentally unfair for the PRC's hearing examiner to permit Appellant's intervention as a party only to declare Appellant's entire position to be invalid, and then use that determination to exclude all testimony on the basis that the PRC was unable to consider evidence because the PRC had, itself, decided it was irrelevant. This is circular logic.

By analogy: You are a lifeguard. The pool's policy is "Protect the swimmers, we want them to live!" There are a few rules lifeguards must follow, such as "don't use your phone on the job," "don't run," and "observe the pool for safety." You decide that "observe" means "watch," not "save," despite the policy to protect the swimmers so they can live. You ignore the policy because the managers did not repeat it in a rule, and you interpret that rule to mean something contrary to the policies, allowing yourself to watch but not to save. "Watch, not save" is a limitation you created for yourself; it's not in the rules. As someone drowns, you say, "I can't save you; I've forbidden myself from saving anyone!" "Watch, not save," is the argument made by the Appellees. But it is bad policy and absurd if applied globally.

Appellees cannot claim that Appellant, represented by Arthur Firstenberg, received due process simply because there was a hearing and they received notice. Notice alone is not an opportunity to meaningfully participate, and appearing before a hearing examiner who has forbidden you from speaking on the topic for which you intervened is not the same as being heard by a neutral adjudicator. Arthur Firstenberg attended hearings. He did not attend when he had nothing to add to the proceeding once the hearing examiner refused to allow him to meaningfully participate, offer exhibits, or call witnesses to discuss health, safety, and welfare. The hearing examiner may have provided notice to discuss topics,

such as the opt-out, but this is not why NMUS intervened, and Mr. Firstenberg should not be posthumously dispatched for failing to show up for hearings that were a waste of time.

This Court should reject Appellees' arguments, hold in favor of the Appellant, and remand this case to the PRC with instructions to consider relevant evidence relating to health, safety, and welfare as part of a more complete reasonableness analysis of PNM's AMI application, which is within the PRC's subject matter jurisdiction.

REPLY ARGUMENTS

1. *The GMAS must be read in harmony with the broad policy goals of the PUA.*

Appellants argue that it is unnecessary to harmonize the GMAS with the Public Utility Act ("PUA") **[AB-PRC 19 ¶ 2]** relative to public health, and PRC lacks the authority to do so **[AB-PNM 4 ¶ 2]**. PRC further argues that the GMAS is unambiguous and requires no examination of the PUA **[AB-PRC 19]** since the Legislature omitted instruction **[AB-PRC 21]**. These arguments are contrary to Appellant's view. GMAS must be read *in pari materia* with the PUA **[BIC 16]**, which establishes subject matter jurisdiction over the issue. This is a fundamental disagreement between the parties that only this Court can adjudicate. The parameters of the state's policy are for the Legislature to decide **[AB-PRC 25]** and

reading the GMAS *in pari materia* with the PUA is straightforward. The PUA declares the state's policy, and the Legislature did not draft the GMAS to allow the PRC to disregard the policy, including protections for health, safety, and welfare. Therefore, it was contrary to the state's declared policy for the PRC to read GMAS in isolation from the policy in the PUA, and to deny subject matter jurisdiction over Appellant's concerns, despite Appellant's status as an intervening party. Had the Legislature wanted to liberate PRC from subject matter over health, safety, and welfare in grid modernization, it would have done so.

PNM argues that Appellant's claims that Section 62-3 of the PUA does not indicate foundational requirements for the PRC **[AB-PNM 14]**; however, this argument shows duplicity. PNM finds no rationale for harmonization in Section 62-3, but either fails to notice or fails to inform the Court that Section 62-3-2 states: "It is the declared policy of the state that preservation of the public health, safety and welfare, [and other interests] require that the construction, development and extension of utility plants and facilities be without unnecessary duplication and economic waste." For the PRC to authorize a system that undermines public health with an inadequate review would be irresponsible and an unnecessary economic waste for the ratepayers. How a major implementation, authorized by the Legislature for application and consideration but not mandated, could bypass any

consideration of health, safety, and welfare as a matter of public policy in light of the PUA is confounding.

PNM mischaracterizes Sections 62-3-1 and 62-3-2 as merely extending regulation to rural cooperatives **[AB-PNM 17]**, which it does; however, Section 62-3-2 also *literally* declares that the policy of the state requires that major implementations should preserve the public health, safety, and welfare by avoiding economic waste in the execution of such projects. Only after declaring this policy does the statute extend this purpose to the rural cooperatives. Before this, Section 62-3-1 explains why it is necessary to extend the coverage and declared policy of the PUA (to provide regulation by PRC and to effectuate other acts). By any plain reading, a declared policy must first exist in non-rural settings before it may be extended to rural cooperatives.

Regardless, New Mexico is a rural state, and it is reasonable that health, safety, and welfare protections from rural cooperatives would also apply to ratepayers in rural-urban and exurban areas connected to larger utility providers. To miss this is to miss the analogy. Combined with PNM's assertion that Section 62-3-2 only relates to rural cooperatives, PNM's argument seems to be that the PRC should only be concerned about public health in rural settings, while an investor-owned public utility need not be concerned with it at all. Indisputably, the Legislature has public welfare in mind as it approves legislation, and it is

objectively unreasonable to suppose that the Legislature wished for public health, safety, and welfare to be a concern only in rural cooperatives.

PNM argues that Section 62-3-2 does not create an overarching mandate to regulate every aspect of public health, safety, and welfare **[AB-PNM 18]**. Appellant generally agrees, but Sections 62-3-1 and 62-3-2, together, create a framework that the public interest includes the preservation of public health, safety, and welfare, which requires the implementation of major utility projects without unnecessary duplication or economic waste to ensure reasonable and proper services for ratepayers at fair, just, and reasonable rates. Appellant does not argue for a PRC mandate covering every aspect of public health. Suggesting that a reasonable review of PNM's application would create such a mandate is simply hyperbolic. Appellant asks only that PRC conduct a comprehensive review based on the reasonableness tests implied by Section 62-8-13(B) and (G), and that, as an intervenor representing its ratepaying members, Appellant should be allowed to make its case in chief.

PNM argues that Appellant fails to prove the PUA applies to PNM **[AB-PNM 18]**. This argument misses the point that whether the PUA applies to PNM is irrelevant; the PUA applies to the PRC, which is the fact finder responsible for adjudicating PNM's application for grid modernization. PNM is an object of this appeal only by virtue of its intervention **[2-4-2025 Ord. 1]**.

Both PRC and PNC complained about Appellant's use of *Griffith v. New Mexico Pub. Serv. Comm'n*, 1974-NMSC-024, 86 N.M. 113 **[BIC 16]**, **[AB-PRC 30]**, **[AB-PNM 15]**. PRC states that Appellant misapplied *Griffith*, and PNM is confused by Appellant's suggestion that the PRC introduced ambiguity into the proceedings where PNM found none in the statute. A plain reading of GMAS, with its several elements and considerations, is inherently ambiguous; however, Appellees fail to acknowledge GMAS ambiguities or address Appellant's argument that the PRC's interpretation also created an ambiguity by refusing to consider the plain text of GMAS and replacing the Legislature's plan with its own. As to the PRC, the analogy between the instant case and *Griffith* rests on the premise of ambiguity. In *Griffith*, this Court found that the purpose of the PUA helped to resolve the ambiguity and clarify a definition. *Id.* ¶¶ 6 and 8. In this appeal, the Court should act analogously to *Griffith* and look to the purpose of the PUA to clear ambiguity, however derived, as to the PRC's duties under GMAS and determine whether the PRC made the right decision as to its jurisdiction and scope of review of PNM's application.

Appellant does not argue that PRC is widely charged with every aspect of public health and safety regarding the regulation of public utility services; however, this case is about approval of an application for a substantial

implementation where, in the public interest, some consideration of health, safety, and welfare is in the public interest and consistent with the state's declared policy.

Contrary to the PRC's conclusion regarding Appellant's burden **[AB-PRC 39]**, if Appellant is correct that the GMAS must be read *in pari materia* with the PUA, then it was unreasonable, unlawful, and capricious for the PRC to border its review of PNM's application by the elements of Section 62-8-13(B) and not consider a fuller picture of reasonableness, including consideration for the state's declared policy regarding preservation of health, safety, and welfare in Sections 62-3-1 and 62-3-2.

The Court should remand this matter to the hearing examiner for a hearing on evidence germane to Appellant's intervention regarding health, safety, and welfare.

2. ***PRC should not receive deference on the statutory interpretation of the GMAS, as the issue is a question of subject matter jurisdiction, and the PRC unreasonably, unlawfully, and capriciously excluded NMUS from participation by denying subject matter jurisdiction on a question within the PRC's scope.***

Appellees argue that the Court must show deference to PRC's interpretation of the GMAS because the statute is not ambiguous and implicates special agency

expertise. **[AB-PRC 19]**, **[AB-PNM 8]**. However, both Answers read GMAS as if Section 62-8-13(B) omits the words "as part of that review."

Appellees state that the GMAS, as written, is not ambiguous because it says that AMI is an authorized grid modernization, and the Legislature failed to direct PRC to consider health, safety, or welfare **[AB-PRC 19]**, **[AB-PNM 16]**, **[AB-PRC 21]**. It is unclear from PRC's Answer whether it supposes it was delegated policy-making authority, but we must presume so since the Answer cites this requirement as attached to PRC's other criteria with an "and." **[AB-PRC 26]**. However, the GMAS is ambiguous because, while it provides consideration of elements of 62-8-13(B) (1) to (7), Sections 62-8-13(A) and (G) also require a reasonableness test, one that is not defined. Appellant's argument that PNM's application would negatively affect the health, safety, and welfare of its members should have been considered in light of a reasonableness analysis, informed by the PUA's declared policy relating to health, safety, and welfare.

The PRC correctly argues that the Court is not bound by the agency's interpretation and should reverse if the interpretation is unreasonable or unlawful. *N.M. Atty. Gen. v. N.M. Pub. Regulation Comm'n.*, 2013-NMSC-042, ¶ 12, 2013-NMSC-042 **[AB-PRC 16]**. However, Appellant and Appellees fundamentally disagree on the PRC's interpretation of the GMAS and whether the GMAS must be read *in pari materia* with the PUA.

In reading a statute, the Court begins with some deference to an agency's interpretation, and that deference is heightened for legal questions that implicate special expertise or determining fundamental policies within the agency's function. *Morningstar Water Users Ass'n v. New Mexico Pub. Util. Comm'n*, 1995-NMSC-062, ¶ 11, 120 N.M. 579.

PRC promotes the holding that our courts are more likely to defer to an agency if 1) the relevant statute is ambiguous, 2) the legal questions implicate special agency expertise or fundamental policies within the agency's scope, and 3) it appears the agency has been delegated policy-making authority. *Doña Ana Mutual Domestic Water Consumers Ass'n v. New Mexico PRC*, 2006-NMSC-032 ¶ 10, 140 N.M. 6. **[AB-PRC 25]** and that the Court may substitute its own interpretation if the agency's determination is unreasonable or unlawful. *City of Albuquerque v. New Mexico Pub. Regulation Comm'n*, 2003-NMSC-028, ¶ 16, 134 N.M. 472 (Internal citations omitted).

However, such deference is not absolute, and the Court will "accord little deference to an agency interpreting its own jurisdiction. *Doña Ana*, 2006-NMSC-032, ¶ 7. Subject matter jurisdiction, which cannot be waived and may be raised on appeal, allows a tribunal to adjudicate the general questions in a claim independent of the state of facts in particular, or even the existence of a valid cause of action, with the only relevant inquiry being whether the kind of claim falls within the

general scope of the tribunal's authority. *Gonzales v. Surgidev Corp.*, 1995-NMSC-036, ¶¶ 11-12, 120 N.M. 133.

In the instant case, special expertise may be required to evaluate the elements of Sections 62-8-13(B) and (G), but the question of whether the PRC must consider health, safety, and welfare under the PUA is an issue of subject matter jurisdiction. Here, Appellees argue that deference to the agency revolves around complicated operational and technical requirements of Section 62-8-13(B); however, PRC unlawfully restricted its own [subject matter] jurisdiction to eliminate the subject of health, safety, and welfare, despite policy declarations in the PUA **[BIC 15]**. Both Answers responded that the GMAS does not grant jurisdiction over these issues **[AB-PRC 29]**, **[AB-PNM 18]**.

Therefore, in reply to Appellee's claims of deference, Appellant more directly asserts that the PRC has subject matter jurisdiction over the claims alleged by Appellant, and was the only trial forum available to Appellant to raise its concerns over health, safety, and welfare for its ratepayer members. It was unreasonable, unlawful, and capricious for the PRC to deny subject matter jurisdiction to Appellant by refusing to consider questions it alone determined were beyond its jurisdiction.

Questions of subject matter jurisdiction are reviewed de novo. *State v. Chavarria*, 2009-NMSC-020, ¶ 11, 146 N.M. 251.

3. *In light of the PUA, the reasonableness of an application for approval of an AMI project should consider public health as a matter of policy, in addition to the elements required by GMAS.*

The PRC argues that the Legislature created specific, targeted standards for evaluating grid modernization **[AB-PRC 29]**. This is misleading. Sections 62-3-1(B)(1) to (7) are actually mandatory elements, but not an exhaustive list, for consideration as part of a fuller analysis of reasonableness, and the Legislature did not specifically exclude health, safety, and welfare from the GMAS. Both Answers state that the Legislature created a list of grid modernization projects that qualify for approval **[AB-PRC 9]**, **[AB-PNM 8]**. However, per the statutes, approval follows an application and after a reasonableness review. If the Legislature intended to limit review to the elements in Sections 62-8-13(B) and (G), it would have done so; instead, it made the evaluation broad enough to include certain elements without limiting the review to only those elements.

4. *NMUS was admitted as an intervenor but denied due process rights to meet the claims of opponents and to present evidence in support of its case.*

In its Answer, PRC promotes the notion that Appellant was "permitted to intervene for the express purpose of addressing any opt-out provisions" **[AB-PRC 32]**. This is misleading. Appellant was admitted as an intervenor, not merely to participate in the opt-out provision. Appellant was permitted to intervene so that

"at the very least" its members could be heard about opt-out, but this was "not meant as an exhaustive statement" of Appellant's intervention. **[2 RP 0932]**. The only limitation on Appellant's intervention was that NMUS only represented ratepayer-association members **[2 RP 0936]**.

On the question of the admissibility of evidence proffered by Appellant, the parties are at a standstill. 1.2.2.35 NMAC provides that "all relevant evidence is admissible subject to the opinion of the hearing examiner as whether it is the best evidence most easily obtained and considering its necessity, competence, availability, and trustworthiness;" however, the parties need this Court to determine whether health, safety, and welfare are relevant and should have been heard by the PRC hearing examiner. Appellant's testimonies should have been evaluated for necessity, competence, availability, and trustworthiness pursuant to 1.2.2.35 NMAC, instead of being excluded wholesale **[RP 2918]**. Appellees argue that all evidentiary decisions were proper **[AB-PRC 32]**, **[AB-PNM 12]**. The answer then turns on this Court's view of the relevance of health, safety, and welfare raised in this appeal.

PRC argues that PRC addressed Appellant's due process rights under the "*Mathews* test." **[AB-PRC 34]**. *See Albuquerque Bernalillo Co. Water Utility Authority v. NMPRC*, 2010-NMSC-013, ¶ 28, 148 N.M. 21 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

ABCWUA/Mathews provides that due process in administrative hearings is limited to notice of opposing claims and a reasonable opportunity to meet them. *Id.* *ABCWUA/Mathews* provides a balancing test weighing the (1) private interest affected by the official action; (2) risk of erroneous deprivation of such interest and the probable value of other safeguards; and (3) the government's interest, function involved, and the burdens on government that implementing different procedures would cause. PRC further argues that Appellant waived due process rights by not attending a hearing after the hearing examiner declined to consider his proffered testimonies. **[AB-PRC 37]**. Appellant was provided notice of the hearing, but was not given a reasonable opportunity to meet the opposing claims and participate in the hearing by the hearing examiner's decision to exclude all testimony related to health, safety, and welfare. As for any waiver of his due process rights, Appellant is not claiming to have been excluded from attending a hearing, but rather to have lost any meaningful opportunity to participate and be heard by the hearing examiner's exclusion of its evidence. There was no *Mathews* analysis of what private interests of Appellant and its ratepayer members were affected by the exclusion of all testimony, the risk of an erroneous deprivation of Appellant's or its ratepayer members' interests, and whether there were alternative safeguards or findings that implementing any other options might burden the government less **[RP 2783]**.

PRC also argues that, under a *Mathews* analysis, the only private interests are those related to the taxpayer or the utilities' costs **[AB-PRC 35]**, a misreading of *Mathews*. The *ABCWUA/Mathews* Court merely found that two appellant parties had a private interest, satisfying the first prong of *Mathews*, and then moved to the second prong. *ABCWUA/Mathews, 2010-NMSC-013*, ¶¶ 20, 28-29. In the instant case, the PRC made no *Mathews* analysis before rejecting all testimony proposed by Appellant **[RP 2783].** While the interests of *ABCWUA/Mathews* may have been financial, ratepayers' private interests might include concerns beyond financial costs, such as good health and long life. Whether this is explicit in the *Mathews* test is for this Court to determine, but as a matter of policy, the possibility should not be ignored.

Appellant does not dispute that PRC has a strong interest in efficient hearings on relevant matters. But it subtly misleads the Court by claiming "a directive from the Legislature" **[AB-PRC 36]**. The Commission directives in Sections 62-8-13(B) and (G) were not exhaustive lists. The Legislature did not direct PRC to "consider these factors and nothing else," which would be contrary to the plain reading of the statute.

As to the PRC's argument that they are "required to treat these applications consistently for each utility" **[AB-PRC 36]**, the PRC fails to inform the Court that in case 15-00312-UT **[AB-PRC 3-4]**, the PRC denied PNM's application for

approval of AMI and held that "[t]he plan presented in the Application does not provide a net public benefit and it does not promote the public interest. *See* NMPRC 15-00312-UT, *Final Order*, April 11, 2018. Instead, PRC tells the Court that later, after 15-00312-UT, the Legislature enacted GMAS, which "carved out a path for the Commission to follow § 62-8-13," but does not acknowledge that GMAS authorized applications and review; it did not mandate approval of any proposal for AMI. The AMI review should be consistent with other AMI applications or state what has substantively changed to turn a proposal that was not in the public interest into one that satisfies the regulator.[3]

Finally, PNM argues that Appellant was able to argue the relevance of its proffered health and safety testimony, and, in a footnote, argues that Appellant could not have been chilled, as the threat of sanctions occurred in the Final Order **[AB-PNM 36]**. This Answer fails to note that Appellant had to argue the relevance of his proffers against a finding that the topic was irrelevant and the PRC had, for all intents and purposes, no jurisdiction over the issue, because the PRC had limited itself beyond what the Legislature intended. Once the PRC decided not to consider the issue, any argument by Appellant was moot. Such an approach does not ensure due process of law.

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[3] PRC's Answer cites to a document not in the Record Proper **[AB-PRC 3 ¶ 3]**.

Although Appellant was permitted to intervene as a party, on conditions met by the Appellant, Appellant was not permitted to fully participate or address the claims of its opponents. Appellant was not permitted to present testimony germane to its application for intervention, and was threatened with sanctions if it attempted to raise these forbidden questions again.

CONCLUSION

The PRC committed a reversible legal error by incorrectly concluding that the grid modernization application statute precluded consideration of health, safety, and welfare as mandated by the Public Utility Act, and denying itself jurisdiction over the issue. In so doing, PRC substituted its judgment for that of the Legislature, exceeded its authority, and effectively repealed the state's declared policies and purposes enacted by the Legislature. As a result, PRC violated Appellant's due process rights and did not fully develop the reasonableness of the grid modernization project, which PRC then adopted and approved, lacking evidence of the project's potential impact on the health, safety, and welfare of the New Mexicans affected by the plan's implementation, especially those ratepayers represented by Appellant as an intervenor. In embracing the equivalent of "Watch, not save," the Final Order was unreasonable, unlawful, and capricious, and should be reversed.

THEREFORE, Appellant NMUS prays this Court:

1. Find the Final Order unreasonably or unlawfully violated the Public Utility Act;

2. Find that Appellant's due process rights to be heard by and present evidence germane to its intervention to a neutral tribunal were violated by the PRC;

3. Reverse the Final Order; and

4. Remand to PRC with instructions to re-convene the proceedings to consider relevant evidence regarding public health, safety, and welfare implications and environmental effects of approving the project proposed by PNM.

REQUEST FOR ORAL ARGUMENT

Pursuant to Rules 12-305(G)(4) and 12-319 NMRA, Appellant NMUS renews its request for oral argument **[BIC 25]**.

Respectfully submitted,

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CERTIFICATE OF SERVICE:

I hereby certify that I submitted a true and correct copy of the document above for electronic service upon all counsel of record through the Court's Odyssey E-File and Serve System on December 24, 2025.

Deian McBryde, Esq.