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NM Supreme Court affirms financing order for utility's abandonment of coal-fired power plant near Farmington

SANTA FE – The state Supreme Court today rejected constitutional challenges to the Energy Transition Act (ETA), which requires electric utilities to move to carbon-free power generation.

In a unanimous opinion, the court affirmed a Public Regulation Commission financing order for the Public Service Company of New Mexico's (PNM) abandonment of the San Juan Generating Station. The ETA, which was enacted in 2019, provides a financing framework for utilities to stop using coal-fired power plants.

Citizens for Fair Rates and the Environment (CFRE) and New Energy Economy, Inc. (NEE) challenged portions of the ETA in appealing the approval of the April 2020 financing order, which allows PNM to issue up to $361 million in bonds for "energy transition costs" in abandoning the power plant near Farmington. The costs include recovery of undepreciated investments in the plant, decommissioning, assistance to coal mine and power plant workers losing their jobs and payments to state-administered funds to help communities economically impacted by the plant's retirement. The bonds will be repaid through a surcharge on PNM customers.

CFRE and NEE argued that the ETA law infringes on the due process rights of energy customers in how it allows utilities to charge ratepayers for energy transition costs. The groups also contended that the law unconstitutionally constrains the commission's ability to limit a utility's recovery of those costs.

The Court rejected those arguments, concluding in an opinion written by Justice David Thomson that CFRE and NEE had not shown that the Energy Transition Act “will result in charges beyond the 'significant zone of reasonableness in which rates are neither ratepayer extortion nor utility confiscation.'" The Court also determined that the Legislature had not unconstitutionally constrained the Commission, explaining that “while the New Mexico Constitution delegates to the Commission the exclusive responsibility for carrying out public utility regulatory policy, the parameters of that policy are, in the first instance, for the Legislature to decide.”

The Court declined to address a question about the commission's authority in a future ratemaking to review and potentially disallow some of the energy transition costs finally incurred by PNM. The Court noted that the commission has made no decisions yet to disallow any energy transition costs, stating: “We do not believe that the Court can effectively consider the lawfulness of a *potential* disallowance in the absence of a relevant record."

The justices concluded that the ETA did not violate a constitutional prohibition on having multiple subjects contained in a single piece of legislation – a practice known as legislative log-rolling. The Court also rejected an argument that the law violated the New Mexico Constitution's prohibition on "special laws" because it applied only to PNM and its abandonment of coal-fired power plants.

"Although the language of the ETA is general, in practice the Act only applies to a limited class of public utilities abandoning coal-fired generating facilities in New Mexico," the Court wrote. "Given the unique nature of the class and issued involved, the Legislature could reasonably conclude that the circumstances surrounding a public utility's abandonment of its coal-fired generating facilities are of such a special character that a general law could not be made to apply."

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To read the decision in *Citizens for Fair Rates & the Env't v. NMPRC,* No. S-1-SC-38247, please visit the New Mexico Compilation Commission's website using the following link:

https://nmonesource.com/nmos/nmsc/en/item/518898/index.do