



## Administrative Office of the Courts

FOR IMMEDIATE RELEASE

July 23, 2020

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### **Supreme Court rules state regulator cannot initiate utility abandonment proceedings**

SANTA FE – The Public Regulation Commission cannot require a utility to start the regulatory process necessary to abandon a power plant, according to an opinion issued today by the New Mexico Supreme Court.

The Court’s unanimous decision came in a dispute involving the Commission (PRC) and a plan by the Public Service Company of New Mexico (PNM) to stop using the coal-fired San Juan Generating Station near Farmington.

“We hold the Commission does not have the authority to initiate an abandonment proceeding,” the Court concluded in an opinion written by Justice C. Shannon Bacon.

State law “neither expressly establishes nor implies that the Commission has the authority to order a public utility to begin abandonment proceedings,” the Court stated.

Earlier this year, the Court directed the regulatory agency to apply a law enacted in 2019, the Energy Transition Act, to abandonment proceedings for the power plant. Today’s opinion provides the legal rationale for that order.

In January 2019, the PRC ordered the utility to file an application by March of that year for abandonment of two San Juan generating units. The directive came after the utility had informed the PRC it did not plan to operate the power plant past 2022 and would file for abandonment during the second quarter of 2019. The Commission had previously approved retirement of two other San Juan generating units.

“We appreciate the Commission’s commitment to guarding public interest and ensuring proper safeguards in the course of abandonment of a public utility. While those interests are sound, we nevertheless reiterate that the Legislature has not conferred upon the Commission the authority to initiate an abandonment proceeding as an avenue to ensure compliance with Commission directives,” the Court stated.

If regulators believed PNM was violating its order concerning abandonment, the Court stated, “then the appropriate procedure would have been to request the Attorney General to seek an injunction from the district court compelling PNM to file an application for abandonment.”

PNM filed an application on July 1, 2019 for abandonment of the remaining San Juan generating units, which was several weeks after the new Energy Transition Act (ETA) took effect. However, the Commission decided the new law would not apply to its decision-making, contending that the regulatory abandonment process began in January 2019 when it directed the utility to file the abandonment application.

The Court disagreed.

“Having established that the Commission lacks the authority to initiate an abandonment proceeding, we can discern that abandonment proceeding for San Juan Units One and Four effectively began when PNM filed its consolidated application for abandonment on July 1, 2019,” the Court stated. “The effective date of the ETA – June 14, 2019 – predates PNM’s application and is therefore applicable to San Juan abandonment proceedings as a matter of law.”

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To read the decision in *State ex rel. Egolf v. NMPRC*, No. S-1-SC-38041, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/482760/index.do>