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Joint Motion to Dismiss Avangrid Merger Appeal and Remand to the PRC by Avangrid/Iberdrola, PNM and the PRC Denied by the Supreme Court. Oral Arguments on the Merger Appeal Set for September 12th, 2023

SANTA FE, N.M. May 15th, 2023 — Today the New Mexico Supreme Court denied the Joint Motion filed by Avangrid/Iberdrola and PNM (Joint Applicants) and the PRC on March 8th to dismiss the appeal filed by the Joint Applicants challenging the merger's rejection in 2021, and to remand the case for expedited rehearing and reconsideration by the newly appointed PRC. Oral arguments on the merger appeal are scheduled for September 12th, 2023.

New Energy Economy objected to the Joint Motion, arguing in our March 22nd response brief that Joint Applicants and the PRC's motion asked the Court to create a new, illegal process under which Rule 1.2.2.37(F) would be applied to allow for a rehearing and reconsideration without due process, even though the 10-day deadline for a request under that rule to the PRC had long expired.

As previously reported, the PRC subsequently admitted it had erred in supporting rehearing under that rule and withdrew its support for that request.

The Joint Motion proposed conditions of dismissal that would permit the two deciding PRC Commissioners to reverse the merger's rejection based on no new evidence, no new law, and no independent public interest determination, infringing on the due process rights of parties, with the only "change" being the appointment of new Commissioners.

Our brief reminded the Justices that creating avenues for legal decisions to be reversed with no new evidence is a dangerous practice - citing to the US Supreme Court's recent reversal on woman's right to privacy and access to reproductive health services, which has done incalculable damage to public perceptions of the legitimacy of that body, stating specifically:

While new evidence has become known since 2021 (which facts are not in the record and will never be, under Movant's preferred approach), it is clear that the Motion arises, not from a change in the facts or the law, but from a change in the fact-finders. (Response Brief p. 6-7)

The PRC cannot arbitrarily decide to reconsider the merger denial because it offends the Principle of Finality - the decision of a duly elected or appointed regulatory body is considered final until and unless significant new evidence emerges.

The Joint Motion filed by the PRC, PNM and Avangrid/Iberdrola arose from weeks of previously undisclosed *ex parte* email communications. The closed door communications reflect the rapid consummation of an *ex parte* agreement to summarily “reconsider” the 2021 final decision to reject the merger. In joining this motion the PRC not only *granted* reconsideration – without the filing of a written motion, upon the *ex parte* request of Avangrid/Iberdrola and PNM, but even prejudged the merits of the motion to reconsider, before having heard argument or evidence from any of the other parties. The ongoing *ex parte* communications demonstrated conclusively that the PRC was not acting in the unbiased and impartial manner required by the law. NMSA 1978 § 8-8-18 (2021).^[1]

Following the Court’s ruling trading on PNM and Avangrid stock has been halted.

Said Mariel Nanasi, “The Court’s ruling today is a vindication of our rights as New Mexicans to protection from arbitrary legal reversals at the behest and under the influence of powerful corporations. The system of regulatory oversight intended to protect ordinary New Mexicans from utility overreach was threatened. The Court has restored integrity and confidence in the legal process that PNM and Avangrid/Iberdrola sought to disrupt and manipulate.”

^[1] NMSA 1978 § 8-8-18: “A commissioner or hearing examiner shall recuse himself in any adjudicatory proceeding in which he is unable to make a fair and impartial decision or in which there is reasonable doubt about whether he can make a fair and impartial decision[.]”