

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

[CAPTION]

MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE*

The New Mexico Utility Shareholders Alliance (“NMUSA”) conditionally files a *amicus curiae* brief along with this motion for leave in support of the position of the Public Service Company of New Mexico (“PNM”). Rule 12-215 NMRA 2007.

NMUSA is a grassroots organization representing the interests of shareholders of gas and electric utility companies operating in New Mexico in public policy matters. As of September 30, 2007, NMUSA showed 7399 shareholders it represents held stock in PNM. The vast majority of these shareholders live in New Mexico.

NMUSA believes, based upon its own information, that the profile of a typical electric utility shareholder as researched by the Edison Electric Institute would apply to the typical PNM shareholder NMUSA represents, though PNM also is a gas utility. That profile shows the typical utility shareholder to be 65 years old or older, to have held the stock for more than 10 years, and to earn less than \$75,000 annually. Often, these shareholders are working-class or middle-class investors who hold utility stocks. Utility shareholders

traditionally are the most conservative of investors. Often aiming towards retirement investments, they have opted for a limited, regulated rate of return in exchange for long-term security.

NMUSA, representing the thousands of PNM shareholders in New Mexico, has a straightforward interest in this case. PNM must receive a fair rate of return on equity from its natural gas utility if the company is to continue to be a safe, reliable and viable one. In turn, the typical NMUSA shareholder has relied upon PNM, as a regulated utility, making a fair rate of return on equity in deciding to invest in the stock in the first place. Otherwise, the conservative and prudent goals of that investor could be illegitimately thwarted.

The amicus curiae brief of NMUSA is desirable. It will bring the perspectives of the shareholders as to why the Public Regulation Commission's decision to approve a substandard rate of return on equity must be reversed. These shareholders, everyday investors relying upon their PNM stock for retirement or education or income, have a singular view of the commission decision, one parallel to PNM's but also different.

The law recognizes this, as investor interests are to be independently weighed by the commission. NMSA 1978, § 62-3-1(B) (1967). *See also PNM Gas Serv. v. N.M.P.U.C. (In re Petition of PNM Gas Serv.)*, 2000-NMSC-012,

¶ 8, 129 N.M. 1, 9, 1 P.3d 383, 391 (“A reasonable rate of return is one that provides a fair opportunity for the utility to receive just compensation for its investments, [citation omitted] . . . and that fulfills the statutory goal in Section 62-3-1(B) of enabling the utility ‘to attract new capital to maintain, improve, and expand its services in response to consumer demand.’”). Part of the Commission’s calculus, in setting an authorized rate of return, must be “the rate of return of other enterprises having corresponding risk[.]” *S. Union Gas Co. v. N.M. Pub. Serv. Comm’n*, 84 N.M. 330, 333, 503 P.2d 310, 313 (1972). The Commission’s authorized rate of 9.53% places PNM well below rates authorized for other enterprises that it competes with for capital investment.

In reaching its decision below, the Commission omitted consideration of evidence that reflected investor’s interests and expectations: The resulting return on equity did not properly balance investor interests.

WHEREFORE, NMUSA moves this court to accept its *amicus curiae* brief submitted together with this motion.

Respectfully submitted,

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JONES, SNEAD, WERTHEIM
& WENTWORTH, P. A.

By _____
JERRY WERTHEIM

JERRY TODD WERTHEIM
CAROL A. CLIFFORD
1800 Old Pecos Trail
P. O. Box 2228
Santa Fe, New Mexico 87504-2228
(505) 982-0011

Attorneys for the New Mexico Utility
Shareholders Alliance