

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE COMP ANY OF )  
NEW MEXICO’S APPLICATION FOR AUTHORIZATION )  
TO IMPLEMENT GRID MODERNIZATION )  
COMPONENTS THAT INCLUDE ADVANCED METERING )  
INFRASTRUCTURE AND APPLICATION TO RECOVER ) Case No. 22-00058-UT  
THE ASSOCIATED COSTS THROUGH A RIDER, )  
ISSUANCE OF RELATED ACCOUNTING ORDERS, )  
AND OTHER ASSOCIATED RELIEF )**

**NEW MEXICANS FOR UTILITY SAFETY’S AMENDED MOTION FOR REHEARING**

COMES NOW New Mexicans for Utility Safety (“NMUS”) and files this Amended Motion for Rehearing of the Final Order of the Public Regulation Commission (“PRC” or Commission”) in Case No. 22-00058-UT, issued on October 17, 2024. It is amended only to state that the positions of all parties have been requested and that this motion is opposed by PNM.

NMUS requests rehearing on the matters in paragraphs 77 and 78 of the Final Order. The Commission’s complete refusal to evaluate the health and environmental effects of smart meters is unlawful, unjust, and unreasonable. The Commission’s threat to fine NMUS up to \$100,000 for continuing to urge the Commission to fulfill its mandate to protect the public health and welfare is likewise unlawful, unjust, and unreasonable.

**I. THE COMMISSION HAS VIOLATED ITS ORDER ADMITTING NMUS AS A PARTY.**

In its Motion for Leave to Intervene (December 8, 2022), NMUS made explicit that it was intervening for the sole purpose of exposing the harm to health and environment of smart meters, and *not* to advocate for opt-outs or for any other reason:

NMUS’s organizational mission has to do with the health, safety and environment of all New Mexicans... NMUS is not concerned with opt-outs...

Motion for Leave to Intervene, at 4. PNM opposed NMUS's Motion for Leave to Intervene, and in its reply of December 27, 2022,<sup>1</sup> NMUS further clarified:

An opt-out program is completely irrelevant to whether [PNM's] smart meters will injure and kill people...

(at 9).

After NMUS filed these unambiguous statements of its purpose for requesting party status, the Commission granted NMUS's Motion for Leave to Intervene. In its order granting NMUS party status, the Commission acknowledged NMUS's mission and purpose for intervening:

In its motion to intervene, NMUS states that it "is an association of residential customers of PNM and other investor-owned public utilities and rural electric cooperatives in New Mexico who are concerned about the health, safety and environmental impacts of [AMI] on all New Mexicans."<sup>2</sup>

In the next paragraph, the Commission granted NMUS intervenor status conditioned only on NMUS supplying a list of members and a document showing that Mr. Firstenberg is an officer of the organization who is authorized to represent NMUS before the PRC.<sup>3</sup> The Commission thereby consented to the presentation of evidence and argument by NMUS related to health and environment. NMUS has been a full party to these proceedings for the past two years, without objection from any party, advocating on the issues that were its only and unambiguous purpose for intervening, i.e. health and environment.

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<sup>1</sup> Attached as Exhibit A to Unopposed Motion for Leave to Reply to PNM's Objection to NMUS's Motion to Intervene

<sup>2</sup> Order on Public Service Company of New Mexico's Objection to New Mexicans for Utility Safety's Motion for Intervene (January 19, 2023), ¶ 22

<sup>3</sup> Ordering paragraph A

The Commission's refusal to admit<sup>4</sup> *any* of NMUS's five expert<sup>5</sup> and six lay<sup>6</sup> witnesses, or to evaluate *any* of the thousands of pages of science offered by its experts, violated NMUS's rights as a full party to this proceeding, and violated the Commission's order admitting NMUS as a party.<sup>7</sup>

The Commission's refusal to address, evaluate, or comment on *any* of the comments submitted in writing or orally by approximately 500 members of the public testifying to severe effects of smart meters on their health and environment, including injury, death, and homelessness, violates multiple sections of the Commission's rules.<sup>8</sup>

## **II. THREATENING TO FINE NMUS \$100,000 FOR SPEAKING ABOUT THE ISSUES FOR WHICH IT WAS GRANTED PARTY STATUS VIOLATES NMUS'S LEGAL AND CONSTITUTIONAL RIGHTS**

The Commission's threat to henceforth penalize NMUS up to \$100,000 for simply wanting to protect the public health and welfare and daring to speak about the lethal effects of smart meters (Final Order ¶ 78, invoking NMSA 1978, Section 62-12-4 (1993)) violates NMUS's rights as an intervenor as provided in Section 1.2.2.23 NMAC, as well as the rights of the public whom NMUS represents. It also violates NMSA 1978, Sections 62-3-2(A)(2) and 62-3-2(A)(4), which provide that "preservation of the public health, safety and welfare" is one of the reasons for being of this Commission and *must* be evaluated in every proceeding and every

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<sup>4</sup> Order Granting PNM's Objection and Motion to Strike the Testimony of NMUS (Feb. 14, 2023)

<sup>5</sup> Joshua Hart, Eric Windheim, Arthur Firstenberg, Sharon Goldberg, and Michele Hertz

<sup>6</sup> Melissa Chalmers, Jeanne Ford, Jeromy Johnson, Charlotte Kikel, Ann Mattingley, and Sirpa Autio. All Direct Testimonies were filed on January 27, 2023.

<sup>7</sup> Public Comments, Document ID 1216076; Transcript of Proceedings, March 17, 2023 Public Comment Hearing; April 19, 2024 Public Comment Hearing (not transcribed).

<sup>8</sup> The sections violated include 1.2.2.10(F)(4), 1.2.2.20(C), 1.2.2.37(A)(3), 1.2.2.34(D), 1.2.2.37(C)(2)(c), 1.2.2.7(C)(3), 1.2.2.23(F), 1.2.2.32(A)(2), 1.2.2.32(D)(1), 1.2.2.23(F), and 1.2.2.36(B)(2) NMAC. See Opposition of New Mexicans for Utility Safety to PNM's Motion to Strike Portions of Its Initial Brief (June 30, 2024), pp. 3-5.

decision that the Commission issues. See *Griffith v. New Mexico Public Service Commission*, 1974-NMSC-024, ¶ 8, 86 N.M. 113, 520 P. 2d 269 (“One of the purposes of enacting [the Public Utility] Act is to preserve the public health, safety and welfare”). It also violates NMUS’s rights to freedom of speech under Amendment One of the U.S. Constitution and under Article II, Section 17 of New Mexico’s Constitution. It also violates the rights of all New Mexicans under Amendment Fourteen of the U.S. Constitution and under Article II, Section 18 of New Mexico’s Constitution not to be deprived of life and property without due process of law.

### CONCLUSION

Accordingly, NMUS hereby requests that the Commission:

- (a) reopen Case No. 22-00058-UT;
- (b) hold public hearings on the health and environmental effects of AMI, including in these hearings all the evidence and testimony submitted in Cases Nos. 15-00312-UT and 22-00058-UT;
- (c) draw conclusions about this evidence; and
- (d) reverse its approval of AMI as part of grid modernization in Case No. 22-00058-UT.

Respectfully submitted,

NEW MEXICANS FOR UTILITY SAFETY

*/s/ Arthur Firstenberg*

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November 18, 2024

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**CERTIFICATE OF SERVICE**

I certify that on this date of November 18, 2024, I served a true and correct copy of *New*

*Mexicans for Utility Safety’s Motion for Rehearing* by email on the following parties:

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