

2024 APPELLATE ROUND-UP

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NEW MEXICO
**PUBLIC REGULATION
COMMISSION**



Topics

New Mexico Supreme Court Updates

Loper and the *Chevron* Deference

Recent Supreme Court Decisions Affecting the PRC

Summary of PRC Decisions This Year

New Mexico Supreme Court Updates

- Term System
- Oral Arguments held in September, November, December and maybe March
- No changes to allotment of time or named persons after response to Notice of Oral Argument
- All opinions/dispositions for the “term” will (in theory) be filed by July 15 following the term
- Court aims for 6 months after submission
- Extensions of Time/Page Limitations disfavored
 - For PRC matters, file motion EARLY



A photograph of the Aurora Borealis (Northern Lights) in a dark sky, with green and purple hues. The lights are seen over a dark silhouette of a forest of evergreen trees. The image is partially obscured by a teal circular graphic on the right side of the slide.

Recent Appellate Decisions Affecting the PRC



So, in plain language, it's just complicated.

*Loper
Bright
Enterprises
v.
Raimondo*

“*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.”

***Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*,
467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)**

Required courts to defer to “permissible” agency interpretations of the statutes those agencies administer—even when a reviewing court reads the statute differently.

***Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2272–73, 219 L. Ed. 2d 832 (2024)**

- *Chevron* was a judicial invention that required judges to disregard their statutory duties. And the only way to “ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion,” is for us to leave *Chevron* behind. *Id.*, 2273.
- By doing so, however, we do not call into question prior cases that relied on the *Chevron* framework. The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology. *Id.*

Loper does not apply to the PRC (for now)

- Applies to agencies under the federal Administrative Procedures Act, not to state agencies
- The *Chevron* reasoning was adopted in New Mexico by virtue of several cases.
- *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Serv. Comm'n*, 1987-NMSC-124, ¶ 12 (“However, it is well settled that courts should accord deference to the interpretation given to a statute by the agency to which it is addressed.”)
- *Groendyke Transport, Inc. v. New Mexico State Corp. Comm'n*, 101 N.M. 470, 477, 684 P.2d 1135, 1142 (1984) and *N.M Indus. Energy Consumers v. N.M Pub. Regul. Comm 'n*, 2007-NMSC-053, ¶ 19. (“Where an agency is construing the same statutes by which it is governed, we accord sole deference to the agency's interpretation," particularly for "legal questions that implicate special agency expertise or the determination of fundamental policies within the scope of the agency's statutory function.").

Bolen v. New Mexico Racing Commission,

A-1-CA-41120

**April 16, 2024; Cert
granted July 18, 2024,
NMSC S-1-SC-40427,**



Issue: Whether judicial immunity is a defense available to a “public body” under the New Mexico Civil Rights Act, NMSA 1978 §§ 41-4A-1 to -13 (2021).



Stems from Racing Commission matter where the NMRC argued it had “absolute quasi-judicial immunity from suit for its administrative disciplinary prosecution against a trainer.



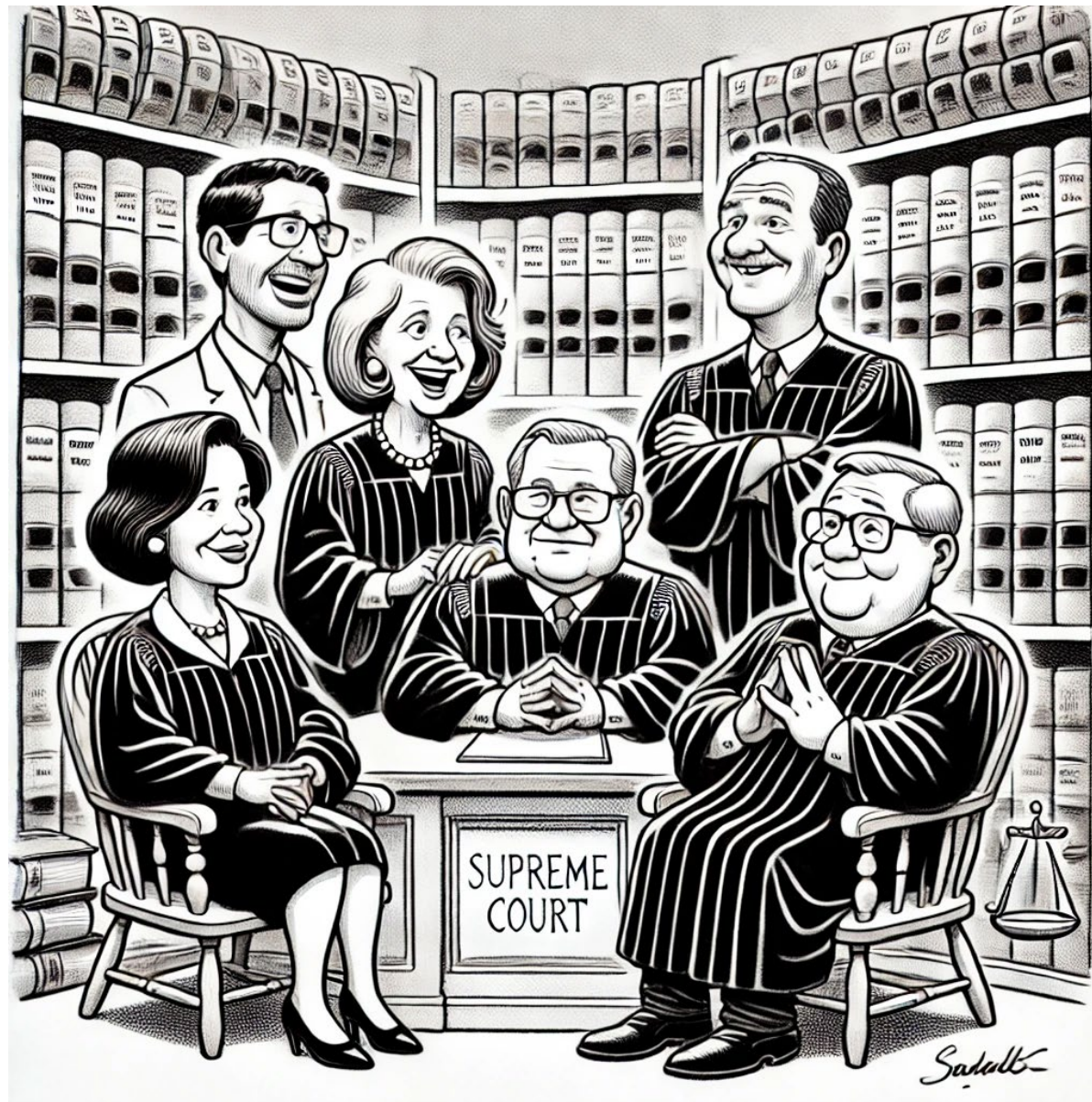
The Court of Appeals held that the plain language of the statute is clear in affirming “a public body that is sued under the CRA may raise judicial immunity, as well as quasi-judicial immunity, as a defense.” Opinion ¶12.

Court of Appeals found:

- **Quasi-judicial immunity:** extension of judicial immunity to “various persons whose adjudicatory functions or other involvement with the judicial process have been thought to warrant protection from harassment, intimidation, or other interference with their ability to engage in impartial decision-making.” *Hunnicuttt v. Sewell*, 2009-NMCA-121, ¶ 9.
- CRA allows a person to bring an action to establish liability and recover actual damages and equitable or injunctive relief in any NM district court for the deprivation of their rights under the NM Constitution “**due to acts or omissions of a public body** or person acting on behalf of, under color of or within the course and scope of the authority of a public body.” § 41-4A-3(B).
- CRA defines a “**public body**” as a “state or local government, an advisory board, a commission, an agency or entity created by the constitution of New Mexico or any branch of government that receives public funding.” § 41-4A-2.
- Section 41-4A-10 states: “The prohibition on the use of the defense of qualified immunity . . . Of the New Mexico CRA . . . **Shall not abrogate judicial immunity, legislative immunity or any other constitutional, statutory or common law immunity.**”



Summary of PRC Decisions this Year



Another one? They must love us at the PRC!

Summary

Case	Topic/Type of Case	Relevancy/Takeaways
Southwest Public Service v. NMPRC et al.	Statutory Interpretation	The Court determined that the use of “incentives” as used in Commission Rule 17.9.572 was consistent with the REA and therefore permitted
SPS, EPE, and PNM v. PRC	Statutory Interpretation/Due Process	Community Solar Rule Affirmed; No opinion yet
CCAE and REIA v. PRC	PRC Declaratory Order Vacated	Section 62-17-5(F) plainly describes full decoupling; Commission is not bound to accept a decoupling petition
Socorro Electric Cooperative, Inc. v. PRC	Statutory Interpretation/Commission Jurisdiction	Once the Commission’s jurisdiction is invoked under Section 62-8-7(H) for RECs, the Commission has authority and mandate to determine whether proposed rates are just and reasonable, and may fix rates if found to be unreasonable.

Southwest Public Service v. NMPRC et al. (S-1-SC-38815)

The use of “incentives” as used in Commission Rule 17.9.572 is consistent with the REA and therefore permitted.

- Issue: Whether the Commission misconstrued the financial incentive provision of the REA when it denied SPS’s 2021 application for an incentive.
- Section 62-16-4(D) provides for the aware of “financial or other incentives” for exceeding the Act’s minimum requirements. “The Commission shall . . . Develop and provide financial or other incentives to encourage public utilities to produce or acquire renewable energy that exceeds the applicable annual RPS . . . Results in reductions in carbon dioxide emissions earlier than required . . . or causes a reduction in the generation of electricity by coal-fired generating facilities.
- Commission rules is more specific: an incentive is available to “encourage certain behaviors or actions that would not otherwise have occurred in order to further the outcomes described in 62-16-4. 17.9.572.7(F).
- An incentive will not be awarded with respect to a particular investment of the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions. 572.22(D).

*Southwest
Public
Service v.
NMPRC
et al.*

Court held SPS's proposed retirement of banked, renewable energy certificates to exceed the RPS requirements were insufficient to qualify for an incentive under the ETA because the proposed retirement would not have "produced or acquired renewable energy" as required under Section 62-16-4(D). The Court determined that the use of "incentives" as used in Commission Rule 17.9.572 was consistent with the REA and therefore permitted.

SPS, EPE, and PNM v. PRC (S-I-SC-39432)

Community Solar Rule (17.9.573) Affirmed

- Issues: Whether the Commission exceeded its authority when it approved the Community Solar Rule, particularly whether the rule's use of a "Team" violated due process of parties; whether the rule's use of a "Team" was improper ex parte communication with the Commission; whether ordering SPS to implement the rate violated due process; and whether the rule's exclusion of transmission costs violated the CSA.
- Order issued immediately following oral argument, affirming the Commission's Order Adopting the Rule, and the Court has stated an opinion will be issued, though it has not been issued as of today.
- Court issued its order quickly so that the Community Solar Program could proceed to the next phase.

CCAIE and REIA v. PRC (S-1-SC-39406)

Section 62-17-5(F) plainly describes full-decoupling mechanism

- Issue: Whether Section 62-17-5(F) described “partial” decoupling, and, if so, how it should be implemented by the Commission.
- Outcome: Commission declaratory order reversed.
- Court determined the statute plainly described “full decoupling.”
- Additionally, the Court did not read the section of the statute to compel the Commission to approve a full revenue decoupling mechanism whenever a petition is filed.
- Rather, the Court allowed the Commission to consider the interests affected by the mechanism and its effect on rates, holding that the Commission may review the reasonableness of any full revenue decoupling mechanism and that the burden rests upon the utility to show that the proposed mechanism will result in just and reasonable rates.

Socorro Electric Cooperative, Inc. v. PRC (S-1-SC-37948)

Once Commission's jurisdiction is invoked, Commission has plenary authority to approve and/or set rates of an REC

- Issue: Whether the Commission had the authority to fix the rate from the REC, or only approve or deny the proposed rate.
- SEC planned to increase rates. Pursuant to Section 62-8-7, SEC members filed protests, objecting to the rate increase. Because sufficient number of protests were filed, the Commission determined it had just cause to review the proposed rates. The Commission denied the proposed rates and set new rates instead.
- Once the Commission's jurisdiction is invoked in matters of rate-setting for electric cooperatives, the Commission has plenary authority to resolve the issues identified in the ratemaking proceeding and may determine the just and reasonable rates to be charged.

PNM v. PRC et al. (S-1-SC-39152)

Non-precedential

- Court reversed a Commission order that sanctioned both Avangrid and PNM, when the sanction was overbroad and should just have applied to one party.
- The remainder of the Avangrid appeal was dismissed by the Court upon a motion to dismiss by Appellants.

City of Las Cruces v. PRC (S-1-SC-39967)

Non-precedential

- Whether the Commissioner erred by applying the REA's cost limitations to EPE's proposed solar procurement project and failed to include necessary factors in its analysis of the project.
- Court reviewed evidence "in light most favorable to the Commission's decision," and recognized that "Commission decisions requiring expertise in highly technical areas, such as utility rate determinations, are accorded considerable deference." Opinion at para. 8.
- Court vacated oral argument and issued a summary affirmance.
- Court affirmed Commission's Order.
- Motion for Reconsideration filed October 25, 2024

Key Takeaways

Understanding Court Dynamics

The New Mexico Supreme Court aims for timely decisions, filing opinions ideally by July 15 post-term.

Impact of Recent Decisions

Loper signals a shift in judicial deference to agency decisions; implications for state agencies remain to be seen.

PRC Case Highlights

Recent rulings affirm the Commission's authority in setting rates, implementing renewable energy initiatives, and shaping future public utility regulations.

Importance of Early Action

File motions early for PRC matters to avoid extensions and ensure timely consideration.

Future Considerations

Stay informed on how federal interpretations may influence state agency frameworks, especially regarding administrative procedures.



Questions?

Thank you



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