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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Filing Date: September 26, 2022

No. S-1-SC-38874

EL PASO ELECTRIC COMPANY,

Appellant,

v.

NEW MEXICO PUBLIC REGULATION COMMISSION,

Appellee,

and

**YELLOWBIRD SERVICES, LLC, and
DONA ANA COUNTY,**

Interveners-Appellees.

CONSOLIDATED WITH

No. S-1-SC-38891

CITY OF LAS CRUCES,

Appellant,

v.

NEW MEXICO PUBLIC REGULATION COMMISSION,

Appellee.

**In the Matter of the Application of
El Paso Electric Company for Revision of Its
Retail Electric Rates Pursuant to Advice Notice No 267,
New Mexico Public Regulation Commission Case No. 20-00104-UT**

**APPEAL FROM EL PASO ELECTRIC COMPANY AND
CITY OF LAS CRUCES**

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DISPOSITIONAL ORDER OF DISMISSAL

PER CURIAM.

{1} WHEREAS, this matter came on for consideration by the Court in Case No. S-1-SC-38911 upon the City of Las Cruces' Brief in Chief, El Paso Electric Company's Answer Brief, the Public Regulation Commission's Answer Brief, and the City's Reply Brief;

{2} WHEREAS, the City appeals from the Commission's order in Case No. 20-00104-UT, challenging as non-binding dictum the following language from the hearing examiner's recommended decision:

To the extent that the City argues that the proxy pricing for PVNGS Unit 3 approved in Case No. 09-00171-UT expired when the new rates approved

in the 2015 EPE Rate Case took effect, that argument lacks merit. The Commission has never disapproved nor changed the proxy price approved in Case No. 09-00171-UT, and EPE has continued to apply that proxy price;

{3} WHEREAS, the Commission agrees in its Answer Brief that the Commission did not adopt a “current proxy price” in Case No. 20-00104-UT and that the language challenged by the City is “mere dictum that need not be addressed in this appeal”;

{4} WHEREAS, El Paso Electric argues in its Answer Brief that the City’s appeal should be dismissed because the City concedes that the challenged language is dicta, unnecessary to the decision, not binding, and therefore not appealable;

{5} WHEREAS, an issue is moot “when no actual controversy exists, and the court cannot grant actual relief.” *Gunaji v. Macias*, 2001-NMSC-028, ¶ 9, 130 N.M. 734, 31 P.3d 1008 (internal quotation marks and citation omitted); and

{6} WHEREAS, because of the parties’ unanimous agreement that the language challenged by the City is non-binding dicta, the City’s appeal does not present an actual controversy capable of actual relief;

{7} NOW, THEREFORE, IT IS ORDERED that the City’s appeal in Case No. S-1-SC-38911 is DISMISSED as moot.

{8} IT IS SO ORDERED.

C. SHANNON BACON, Chief Justice

MICHAEL E. VIGIL, Justice

DAVID K. THOMSON, Justice

JULIE J. VARGAS, Justice

BRIANA H. ZAMORA, Justice