

BAR BULLETIN

July 27, 2022 • Volume 61, No. 14



Into the Blue, by Jennifer Butler (see page 3)

[Etsy.com/shop/vistaglassonline](https://etsy.com/shop/vistaglassonline)

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Graphic Designer, Julie Sandoval, jsandoval@sbnm.org
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Brandon McIntyre, Communications Coordinator brandon.mcintyre@sbnm.org

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505-797-6000 • 800-876-6227
Fax: 505-828-3765 • address@sbnm.org

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Meetings

July

28
Trial Practice Section
noon, virtual
29
Immigration Law Section
noon, virtual

August

2
Health Law Section
9 a.m., virtual
11
Children's Law Section
noon, virtual
12
Prosecutors Section
noon, virtual
19
Family Law Section
9 a.m., virtual

September

2
Elder Law Section
noon, virtual
13
Appellate Section
noon, virtual

Workshops and Legal Clinics

July

27
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

August

3
Divorce Options Workshop
6-8 p.m., virtual
24
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

September

7
Divorce Options Workshop
6-8 p.m., virtual
28
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

October

5
Divorce Options Workshop
6-8 p.m., virtual
26
Consumer Debt/Bankruptcy Workshop
6-8 p.m., virtual

About Cover Image and Artist: Jenni Butler has been creating original stained glass for over 20 years in the East Mountains. She enjoys creating her own patterns and draws lots of inspiration from nature. Another of her passions is painting. Her favorite mediums are acrylic and watercolors. Her inspiration comes from the endless splendor of nature. One of her favorite activities is hiking, being in the woods and near the water. Fantasy is another common theme in her work. You will see fairies, fanciful settings, lots of animals, both known and strange. As most artists there are many mediums she creates with. Besides Tiffany style stained glass, she paints, sketches, creates mosaics and fuses glass for jewelry. She loves learning new art forms, whatever suits the project best!

Notices

COURT NEWS

New Mexico Supreme Court Rule-Making Activity

To view recent Supreme Court rule-making activity, visit the Court's website at <https://supremecourt.nmcourts.gov/>. To view all New Mexico Rules Annotated, visit New Mexico OneSource at <https://nmonesource.com/nmos/en/nav.do..>

Supreme Court Law Library

The Supreme Court Law Library is open to the legal community and public at large. The Library has an extensive legal research collection of print and online resources. The Law Library is located in the Supreme Court Building at 237 Don Gaspar in Santa Fe. Building hours: Monday-Friday 8 a.m.-5 p.m. Library Hours: Monday-Friday 8 a.m.-noon and 1-5 p.m. For more information call: 505-827-4850, email: libref@nmcourts.gov or visit <https://lawlibrary.nmcourts.gov>.

Bernalillo County Metropolitan Court Reassignment of Criminal Cases

Bernalillo County Metropolitan Court Chief Judge Maria I. Dominguez announced that, as a result of the recent appointment of Judge Asra I. Elliott by Gov. Lujan Grisham to Division I, effective July 5, all criminal cases previously assigned to Division I will be reassigned to Judge Elliott.

Announcement of Vacancy

A vacancy on the Bernalillo County Metropolitan Court will exist as of July 23 due to the appointment of the Honorable Judge David Murphy to the Second Judicial District Court, effective July 22. Inquiries regarding the details or assignment of this judicial vacancy should be directed to the Administrator of the Court. Applicants seeking information regarding election or retention if appointed should contact the Bureau of Elections in the Office of the Secretary of State. Camille Carey, Chair of the Bernalillo County Metropolitan Court Judicial Nominating Commission, invites applications for this position from lawyers who meet the statutory qualifications in Article VI, Section 28 of the New Mexico Constitution. Applications may be obtained from the Judicial Selection website: <https://lawschool.unm.edu/judsel/applica->

Professionalism Tip

With respect to opposing parties and their counsel:

I will not serve motions and pleadings that will unfairly limit the other party's opportunity to respond.

tion.html, or emailed to you by contacting the Judicial Selection Office at akin@law.unm.edu. The deadline for applications has been set for Aug. 5 at 5 p.m. Applications received after that time will not be considered. The Bernalillo County Metropolitan Court Nominating Commission will meet beginning at 9:30 a.m. on Aug. 19 to interview applicants for the position at the Bernalillo Metropolitan Courthouse, located at 401 Lomas NE, Albuquerque, New Mexico. The Commission meeting is open to the public, and anyone who wishes to be heard about any of the candidates will have an opportunity to be heard. All attendees of the meeting of the Bernalillo County Metropolitan Court Judicial Nominating Commission will be required to wear a face mask at all times while at the meeting regardless of their vaccination status.

Second Judicial District Court Appointment to Second Judicial District Court Bench

Gov. Michelle Lujan Grisham has announced the appointment of David A. Murphy to the Second Judicial District Court bench. Effective July 23, Judge Murphy will be assigned to fill Division XXX, the new judgeship created when Gov. Lujan Grisham recently signed into law House Bill 68. Judge Murphy will be assigned Criminal Court cases previously assigned to Judge Alisa Hart, Division XXI. Pursuant to New Mexico Supreme Court Order 22-8500-007, peremptory excusals have been temporarily suspended during the COVID-19 Public Health Emergency.

STATE BAR NEWS

Equity in Justice Program Have Questions?

Do you have specific questions about equity and inclusion in your workplace or in general? Send in anonymous questions to our Equity in Justice Program Manager, Dr. Amanda Parker. Each month, Dr. Parker will choose one or two questions to answer for the *Bar Bulletin*. Visit www.sbnm.org/eij, click on the Ask Amanda link and submit your question. No question is too big or too small.

New Mexico Judges and Lawyers Assistance Program The Judicial Wellness Program

The newly established Judicial Wellness Program aids in focusing on the short-term and long-term needs of the New Mexico Judicial Community. The New Mexico Judicial Wellness Program was created to promote health and wellness among New Mexico Judges by creating and facilitating programs (educational or otherwise) and practices that encourage a supportive environment for the restoration and maintenance of overall mental, emotional, physical and spiritual health of judges. Learn more about the program at www.sbnm.org/nmjwp.

NMJLAP Committee Meetings

The NMJLAP Committee will meet at 4 p.m. on Oct. 16 and Jan. 12, 2023. The NMJLAP Committee was originally developed to assist lawyers who experienced addiction and substance abuse problems that interfered with their personal lives or their ability to serve professionally in the legal field. The NMJLAP Committee has expanded their scope to include issues of depression, anxiety, and other mental and emotional disorders for members of the legal community. This committee continues to be of service to the New Mexico Judges and Lawyers Assistance Program and is a network of more than 30 New Mexico judges, attorneys and law students.

Free Well-Being Webinars

The State Bar of New Mexico contracts with The Solutions Group to provide a free employee assistance program to members, their staff and their families. Contact the Solutions Group for resources, education, and free counseling. Each month in 2022, The Solutions Group will unveil a new webinar on a different topic. Sign up for "Echopsychology: How Nature Heals" to learn about a growing body of research that points to the beneficial effects that exposure to the natural world has on health. The next webinar, "Pain and Our Brain" addresses why the brain links pain with emotions. Find out the answers to this and other questions

related to the connection between pain and our brains. The final webinar, "Understanding Anxiety and Depression" explores the differentiation between clinical and "normal" depression, while discussing anxiety and the aftereffects of COVID-19 related to depression and anxiety. View all webinars at www.solutionsbiz.com or call 505-254-3555.

Monday Night Attorney Support Group

The Monday Night Attorney Support Group meets at 5:30 p.m. on Mondays by Zoom. This group will be meeting every Monday night via Zoom. The intention of this support group is the sharing of anything you are feeling, trying to manage or struggling with. It is intended as a way to connect with colleagues, to know you are not in this alone and feel a sense of belonging. We laugh, we cry, we BE together. Email Pam Moore at pmoore@sbnm.org or Briggs Cheney at bcheney@dsc-law.com for the Zoom link.

The New Mexico Well-Being Committee

The N.M. Well-Being Committee was established in 2020 by the State Bar of New Mexico's Board of Bar Commissioners. The N.M. Well-Being Committee is a standing committee of key stakeholders that encompass different areas of the legal community and cover state-wide locations. All members have a well-being focus and concern with respect to the N.M. legal community. It is this committee's goal to examine and create initiatives centered on wellness.

Young Lawyers Division Help New Mexico Wildfire Victims

In partnership with the Federal Emergency Management Agency and

the American Bar Association's Disaster Legal Services Program, the State Bar of New Mexico Young Lawyers Division is providing legal resources and assistance for survivors of the New Mexico wildfires. The free legal aid hotline opened on June 6 and we need more volunteers. Fire survivors can call the hotline toll free at 888-985-5141 Monday through Friday, 9 a.m. to 1 p.m. MST. Individuals who qualify for assistance will be matched with New Mexico Lawyers to provide free, limited legal help in areas like securing FEMA benefits, assistance with insurance claims, help with home repair contracts, replacement of legal documents, landlord/tenant issues and mortgage/foreclosure issues. Volunteers do not need extensive experience in any of the areas listed below. FEMA will provide basic training for frequently asked questions. This training will be required for all volunteers. We hope volunteers will be able to commit approximately one hour per week. Visit www.sbnm.org/wildfirehelp for more information and to sign up. You can also contact Lauren E. Riley, ABA YLD District 23, at 505-246-0500 or lauren@batleyfamilylaw.com.

UNM SCHOOL OF LAW Law Library Hours

The UNM Law Library facility is currently closed to guests. Reference services are available remotely Monday through Friday, from 9 a.m.-6 p.m. via email at lawlibrary@unm.edu or phone at 505-277-0935.

OTHER BARS Colorado Bar Association The Annual Rocky Mountain Regional Elder Law Retreat

The Colorado Bar Association will be

— Featured — **Member Benefit**



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hosting the 14th Annual Rocky Mountain Regional Elder Law Retreat, co-sponsored by the Colorado Bar Association Elder Law Section. The retreat will include both in-person and online formats and will offer up-to-date information and recent developments in the Elder Law industry. The annual event will take place Aug. 25-27 at the Grand Hyatt Vail at 1300 Westhaven Dr., Vail, CO 81657. The deadline to R.S.V.P. for a room at the hotel is Aug. 8. Otherwise, people may register up to the day of the event. For more information, visit cle.cobar.org.

Legal Education

July

- 28 **30 Things Every Solo Attorney Needs to Know to Avoid Malpractice**
1.5 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 29 **Immigration Policy in the Biden Era: Promises Kept, Promises Broken and What Comes Next?**
1.0 G
Webinar
UNM School of Law
lawschool.unm.edu

August

- 2 **Due Diligence in Commercial Real Estate Transactions**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org
- 4 **Twenty-Seventh Annual National Federal Habeas Corpus Seminar**
16.0 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov
- 5 **Lawyer Ethics and Disputes with Clients**
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org
- 5 **Afghans and Humanitarian Parole: We Have to Do Better**
1.0 G
Webinar
UNM School of Law
lawschool.unm.edu
- 8 **Persuasive Writing Workshop**
17.2 G
Live Program
Administrative Office of the US Courts
www.uscourts.gov
- 17 **Elder Law Summer Series: Community Property and Debt Considerations**
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 18 **How to Avoid Making the Techno-Ethical Mistakes That Put You on the Front Page**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 19 **The Ethics of Delegation**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org
- 23 **LLC/Partnerships Interests: Collateral, Pledges, and Security Interests**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org
- 25-27 **14th Annual Rocky Mountain Regional Elder Law Retreat**
14.0 G, 1.7 EP, 1.2 EDI
In-Person
Colorado Bar Association (CBA-CLE)
www.cobar.org
- 25-Dec. 1 **Spanish for Lawyers I**
20.0 G
Live Webinar
UNM School of Law
lawschool.unm.edu
- 30 **Choice of Entity for Nonprofits & Obtaining Tax Exempt Status, Part 1**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org
- 31 **Choice of Entity for Nonprofits & Obtaining Tax Exempt Status, Part 2**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

September

- 1 **Parking: Special Issues in Commercial Leases**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org
- 9-11 **Taking and Defending Depositions**
23-25 31.0 G, 4.5 EP
In-Person
UNM School of Law
lawschool.unm.edu
- 13 **Special Lease Issues for Medical/Dentist Offices**
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org

Listings in the *Bar Bulletin* Legal Education Calendar are derived from course provider submissions and from New Mexico Minimum Continuing Legal Education. All MCLE approved continuing legal education courses can be listed free of charge. Send submissions to notices@sbnm.org. Include course title, credits, location/course type, course provider and registration instructions.

September (cont.)

- | | | |
|---|--|--|
| <p>14 Ethics for Business Lawyers
1.0 EP
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>20 Basic Financial Literacy for Lawyers
2.0 G
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 Selling to Consumers: Sales, Finance, Warranty, & Collection Law, Part 1
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>15 2022 Employment and Labor Law Institute - Day 1
2.8 G, 1.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21 Elder Law Summer Series: Client Capacity, Diminished Capacity, and Declining Capacity. Ethical Representation and Tools for Attorneys
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>28 Selling to Consumers: Sales, Finance, Warranty, & Collection Law, Part 2
1.0 G
Teleseminar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>16 2022 Employment and Labor Law Institute - Day 2
2.8 G, 1.0 EP
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | | |

October

- | | | |
|--|--|---|
| <p>5 Basics of Trust Accounting
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>20 Basic Financial Literacy for Lawyers
2.0 G
In-Person and Webcast
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>25 Identifying and Combating Gender Bias: Examining the Roles of Women Attorneys in Movies and TV
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>6 Communication Breakdown: It's Always The Same (But It's Avoidable)
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>21-23 Taking and Defending Depositions
28-30 20.0 G, 2.0 EP
In-Person
UNM School of Law
lawschool.unm.edu</p> | <p>26 Ethics of Social Media Research
1.5 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |
| <p>19 Essential Law Firm Technology: The Best Of What's Out There
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>24 Social Media as Investigative Research and Evidence
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> | <p>27 Law Practice Management For New Lawyers
1.0 G
Webinar
Center for Legal Education of NMSBF
www.sbnm.org</p> |

December

- 5 **Basics of Trust Accounting**
1.0 EP
Webinar
Center for Legal Education of NMSBF
www.sbnm.org

Opinions

As Updated by the Clerk of the New Mexico Court of Appeals

Mark Reynolds, Chief Clerk New Mexico Court of Appeals
PO Box 2008 • Santa Fe, NM 87504-2008 • 505-827-4925

Effective July 8, 2022

PUBLISHED OPINIONS

A-1-CA-38060	B Franklin v. NM Dept. of Public Safety	Reverse/Remand	06/29/2022
A-1-CA-39180	State v. F Moreno-Ortiz	Affirm	06/29/2022
A-1-CA-39391	Ann Morrow & Associates v. Human Services Division	Reverse/Remand	06/30/2022

UNPUBLISHED OPINIONS

A-1-CA-38233	State v. S Romero	Affirm/Reverse	06/27/2022
A-1-CA-38627	T Kirby v. United Parcel Service	Affirm	06/27/2022
A-1-CA-38663	A Scott v. J Leschena	Affirm	06/27/2022
A-1-CA-38722	State v. F Urban	Affirm	06/27/2022
A-1-CA-39226	US Bank National v. D Anaya, et al.	Affirm	06/27/2022
A-1-CA-39737	State v. U Zayasacuria	Affirm	06/27/2022
A-1-CA-40142	J McCoy v. City of Farmington	Affirm	06/27/2022
A-1-CA-39174	J Doe v. WW Healthcare	Affirm	06/28/2022
A-1-CA-39832	J Muir v. A Cianflone	Reverse/Remand	06/28/2022
A-1-CA-40008	CYFD v. Spirit G	Affirm	06/28/2022
A-1-CA-38174	State v. J Abney	Affirm	06/29/2022
A-1-CA-38889	PNC Bank National Association v. C Rote	Affirm	06/29/2022
A-1-CA-40365	State v. M Myers	Affirm	06/29/2022
A-1-CA-38270	State v. M Quarles	Affirm	06/30/2022
A-1-CA-38382	D Garrity v. Board of County Commissioners	Reverse/Remand	06/30/2022
A-1-CA-38810	State v. N Leyba	Reverse/Remand	06/30/2022
A-1-CA-38873	State v. E Tarango	Affirm/Reverse/Remand	06/30/2022
A-1-CA-39600	State v. L Daugherty	Affirm	06/30/2022
A-1-CA-39930	State v. E Ibarra	Affirm/Reverse	06/30/2022
A-1-CA-40015	State v. Saidreck D.	Affirm	06/30/2022
A-1-CA-40144	M Lujan v. W Eyzaguirre, M.D.	Reverse/Remand	06/30/2022
A-1-CA-40237	State v. B Stotts	Affirm	06/30/2022
A-1-CA-40255	CYFD v. Amity M	Affirm	06/30/2022
A-1-CA-40289	CYFD v. Britany W.	Affirm	06/30/2022
A-1-CA-37716	G Baldonado v. E Romero	Affirm	07/07/2022

Slip Opinions for Published Opinions may be read on the Court's website:

<http://coa.nmcourts.gov/documents/index.htm>

Clerk's Certificates

From the Clerk of the New Mexico Supreme Court

Elizabeth A. Garcia, Chief Clerk of the New Mexico Supreme Court
PO Box 848 • Santa Fe, NM 87504-0848 • (505) 827-4860

CLERK'S CERTIFICATE OF ADMISSION

On April 29, 2022:
Susan R. Patten
Archuleta Romaine Law Firm
PC
3010 Sandia Circle
Santa Fe, NM 87507
505-603-0407
susan@arnmlawyers.com

Gwendolyn Reshae Payton
9625 S. Emerald Avenue
Chicago, IL 60628
773-957-8590
mattisonivory1@hotmail.com

Jenna Dee Purpura
Law Offices of the Public
Defender
505 Marquette Avenue, N.W.,
Suite 120
Albuquerque, NM 87102
505-369-3600
jenna.purpura@lopdnm.us

Joseph Philip Ramos Jr.
Ramos Law
10190 Bannock Street,
Suite 200
Northglenn, CO 80260
303-733-6353
303-865-5666 (fax)
joe@ramoslaw.com

Robert A. Riether
Wright, Finlay & Zak, LLP
7785 W. Sahara Avenue, Suite
200
Las Vegas, NV 89117
702-475-7967
702-946-1345 (fax)
bobby.riether@gmail.com

Hannah L. Rivera
Lovell, Lovell, Isern &
Farabough, LLP
112 S.W. Eighth Avenue, Suite
1000
Amarillo, TX 79101
806-373-1515
hannah@lovell-law.net

David L. Rodriguez
Office of the Eleventh Judicial
District Attorney
335 S. Miller Avenue
Farmington, NM 87401
505-599-9810
drodriguez@da.state.nm.us

Daniel Louis Rosen
U.S. Court of Appeals for the
Tenth Circuit
P.O. Box 2388
500 N. Richardson Avenue,
Suite 167 (88201)
Roswell, NM 88202
575-625-2388
daniel_rosen@ca10.uscourts.
gov

Katherine Celeste Rozsa
Sherman & Howard LLC
500 Marquette Avenue, N.W.,
Suite 1203
Albuquerque, NM 87102
775-784-0202
krozsa@shermanhoward.com

**Saloumeh Armaiti
Shahidi-Fitzgerald**
Armafitzgerald, Esq.
424 Maplelawn Drive
Plano, TX 75075
214-912-8811
armafitzgeraldlaw@gmail.com

James M. Sheehan
Hinkle Shanor LLP
P.O. Box 2068
218 Montezuma Avenue
(87501)
Santa Fe, NM 87504
703-732-1366
jsheehan@hinklelawfirm.com

Joseph C. Shelley
James Kennedy, PLLC
6216 Gateway Blvd. E.
El Paso, TX 79905
575-219-1986
joseph.shelley55@gmail.com

Kenneth Shiau
1286 Zenobia Street #A
Denver, CO 80204
512-998-3615
kenneth.shiau.91@gmail.com

Travis D. Shimanek
Bliven Law Firm
704 S. Main Street
Kalispell, MT 59901
737-346-2254
travis.shimanek@gmail.com

Lynna B. Shin
New Mexico Legal Aid, Inc.
P.O. Box 25486
505 Marquette Avenue, N.E.,
Suite 700
Albuquerque, NM 87102
505-295-7845
lynnas@nmlegalaid.org

Danika S. Smith
2021 Bluff Creek Street, #1005
El Paso, TX 79911
317-379-6865
dslounds@gmail.com

Max Joseph Spivak
Inner City Law Center
3455 Saint Susan Place
Los Angeles, CA 90066
310-990-8018
mjspivak310@gmail.com

Susanna Lynn Stadjuhar
Mann Morrow, PLLC
665 E. University Avenue,
Suite C
Las Cruces, NM 88005
575-440-0300
575-556-9435 (fax)
susanna.stadjuhar@man-
nmorrow.com

Christopher S. Suarez
Office of the Twelfth Judicial
District Attorney
1000 New York Avenue,
Room 101
Alamogordo, NM 88310
575-443-2636
575-434-2507 (fax)
csuarez@da.state.nm.us

Krista Jean Thompson
Navajo Nation Department of
Justice
P.O. Box 2010
Window Rock, AZ 86515
928-871-6343
928-871-6177 (fax)
kthompson@nndoj.org

Rhonda Joann Thompson
Thompson, Coe, Cousins &
Irons LLC
700 N. Pearl Street, 25th Floor
Dallas, TX 75201
214-871-8200
rthompson@thompsoncoe.com

Itzel Adilene Valencia Soria
123 La Media Road, S.W.
Albuquerque, NM 87105
505-398-1007
valenciasoriajd@gmail.com

Howard W. Wellspring III
9455 Out Crop
Terrell, TX 75160
972-563-3116
wellspring.law4vets@gmail.com

Amy M. Williams
Ahmad Assed and Associates
818 Fifth Street, N.W.
Albuquerque, NM 87102
505-246-8373
505-246-2930 (fax)
amy@assedlaw.com

Sabrina L. Worsham
U.S. Bankruptcy Court for the
District of Colorado
1908 FM 2938
Buna, TX 77612
512-517-9128
worsham.sabrina@gmail.com

Lukasz I. Wozniak
Wright, Finlay & Zak, LLP
4665 MacArthur Court, Suite
200
Newport Beach, CA 92660
949-477-5050
949-608-9142 (fax)
lwozniak@wrightlegal.net

Hailey Marie Zock
Law Offices of the Public
Defender
505 Marquette Avenue, N.W.,
Suite 120
Albuquerque, NM 87102
505-369-3600
hailey.zock@lopdnm.us

Wouter G. Zwart

Rothstein Donatelli LLP
500 Fourth Street, N.W., Suite
400
Albuquerque, NM 87102
505-243-1443
wzwart@rothsteinlaw.com

On May 9, 2022:

Mia A. Montoya Hammersley

New Mexico Environmental
Law Center
1405 Luisa Street, Suite 5
Santa Fe, NM 87505
505-989-9022
mhammersley@nmelc.org

On May 11, 2022:

Cameron Sean Bush

Mayer LLP
9400 Holly Avenue, N.E.,
Bldg. 3B
Albuquerque, NM 87122
505-317-5175
cbush@mayerllp.com

Doris P. Cajiao

349 14th Street
Brooklyn, NY 11215
347-255-3281
doris.cajiao@law.nyls.edu

Riley Leonard Norris

Miller Stratvert P.A.
500 Marquette Avenue, N.W.,
Suite 1100
Albuquerque, NM 87102
913-484-3179
rnorris@mstlaw.com

Eduardo Ramirez

Law Offices of the Public
Defender
419 W. Cain Street
Hobbs, NM 88240
575-263-2272
575-318-2004 (fax)
eduardo.ramirez@lopdnm.us

Antonia Lucia Romero

Rios Law Firm, P.C.
P.O. Box 3398
2001 San Mateo Blvd., N.E.,
Suite C (87110)
Albuquerque, NM 87190
505-232-2298
505-392-5307 (fax)
antonia.romero@lrioslaw.com

On May 23, 2022:

Lee Green

Office of the Fifth Judicial
District Attorney
100 N. Love Street, Suite 2
Lovington, NM 88260
575-602-7247
lgreen@da.state.nm.us

On June 3, 2022:

Daniel J. Baker

Compliance Alliance
879 Little Elm Loop
Temple, TX 76501
719-373-9223
contact.daniel.baker@gmail.
com

Kristen N. Beck

Field, Manning, Stone,
Hawthorne, & Aycock, P.C.
2112 Indiana Avenue
Lubbock, TX 79410
806-792-0810
806-792-9148 (fax)
kbeck@lubbocklawfirm.com

Joe W. Beverly Jr.

Ferguson Braswell Fraser
Kubasta PC
3200 Southwest Frwy., Suite
3200
Houston, TX 77027
713-403-4200
jb@fbfk.law

Edward Lawrence Earle

Lerner & Rowe, P.C.
2711 Carlisle Blvd., N.E.
Albuquerque, NM 87110
505-544-4444
earle@lernerandrowe.com

Jad H. Essayli

18572 Paseo Pizarro
Irvine, CA, 92603
949-310-1993
jadessayli@gmail.com

Kareem Hassan Essayli

18572 Paseo Pizarro
Irvine, CA, 92603
949-310-1995
kareem.essayli@gmail.com

Zachary Joseph Farmer

Keller & Keller, LLC
505 Marquette Avenue, N.W.,
Suite 1300
Albuquerque, NM 87102
505-938-2300
505-938-2301 (fax)
zfarmer@2keller.com

Michelle A. Garza

Law Offices of Juan F.
Hernandez, P.C.
809 Victoria Street, Suite 201
Laredo, TX 78040
956-712-4919
956-712-4136 (fax)
michelle.garza@laredo-law.com

David Gottlieb

Parlatore Law Group
One World Trade Center,
Suite 8500
New York, NY 10007
505-384-6653
david.gottlieb@parlatorelaw-
group.com

Trenton Edward Gray

Quintairos, Prieto, Wood, &
Boyer, P.A.
1700 Pacific Avenue, Suite
4545
Dallas, TX 75201
214-754-8755
214-754-8744 (fax)
trent.gray@qpwbllaw.com

Audrey Lynn Greene

165 S. Kent Street
Miami, AZ 85539
202-316-8150
astevens86@gmail.com

Li-Te Alexander Hsu

1100 Sixth Street, S.W.
Washington, DC 20024
214-998-6793
litehsu588@gmail.com

Kelsey Leiper Imam

Foley & Lardner LLP
1000 Louisiana Street,
Suite 2000
Houston, TX 77002
713-276-5039
kimam@foley.com

Austin Warren Jensen

Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202
303-295-8000
awjensen@hollandhart.com

Mclee Fritz Kerolle

44 Wagon Wheel Lane
Dix Hills, NY 11746
516-650-3398
mclee.kerolle@live.law.cuny.edu

Carlyn M. Kessenich

1575 Voyage Drive
Chula Vista, CA 91915
503-680-3270
cmkessenich@gmail.com

Lindsay Kathleen King

P.O. Box 613
South Fork, CO 81154
505-681-7635
lindsaykkingesq@gmail.com

Ariana L. Lopez

1875 N. 42nd Street
Lincoln, NE 68503
562-355-3611
ari.lopez3611@gmail.com

Alexander N. Marking

Office of the Eleventh Judicial
District Attorney
335 S. Miller Avenue
Farmington, NM 87401
505-599-9810
505-599-9822 (fax)
amarking@da.state.nm.us

Gia A. McGillivray

Office of the Federal Public
Defender
506 S. Main Street
Las Cruces, NM 88001
575-527-6930
575-527-6933 (fax)
gia_mcgillivray@fd.org

Richard D. Mummolo

Hinkle Shanor LLP
218 Montezuma Avenue
Santa Fe, New Mexico 87501
781-775-7709
rmummolo@hinklelawfirm.
com

Stephanie R. Padilla

Stratton Family Law
100 Sun Avenue, N.E., Suite
250
Albuquerque, NM 87109
505-934-4105
stephanie@strattonlawnm.com

Greg D. Patterson

New Mexico Independent
Power Producers
1049 E. Sandpiper Drive
Tempe, AZ 85283
602-369-4368
gpatterson3@cox.net



State Bar of New Mexico
Committee on Women
and the Legal Profession

2020* Justice Pamela B. Minzner Outstanding Advocacy for Women Award

By Sheryl L. Saavedra, Peak Legal Group, LLC and CWLP Member

The Committee on Women and the Legal Profession celebrated its 30-year anniversary in 2021, having been developed by the New Mexico Board of Bar Commissioners in 1991 as a standing committee designed to address issues adversely affecting female lawyers and judges and to promote systemic changes and opportunities to advance the role of women in the legal profession.

In addition to various educational and networking events, the Committee has drafted and helped pass gender-neutral legislation, created a #LawMom speaking series, organized a clothing closet to benefit UNM School of Law students, attorneys and other individuals in need of professional clothing; held numerous golf clinics and golf networking events for women, hosted financial literacy seminars, published the “Ask Pat” column in the State Bar of New Mexico *Bar Bulletin*, updated, printed, and distributed domestic violence assistance cards statewide, and hosted various CLEs on issues affecting women in the legal profession. In addition, the Committee presents the Justice Pamela B. Minzner Outstanding Advocacy for Women Award to a New Mexico attorney, female or male, who has distinguished herself or himself by providing legal assistance to women who are underrepresented or underserved or by advocating for causes that will ultimately benefit and/or further the rights of women.

By all accounts, Chief Justice Pamela Minzner was one of the most renowned examples of New Mexico’s most successful female leaders, attorneys and judges. The first female Chief Justice of the New Mexico Supreme Court is remembered for her integrity, strong principles and compassion. It is in this spirit that the Committee presents the award.



The 2020 Award Recipient for the Justice Pamela B. Minzner Outstanding Advocacy for Women Award is **Elizabeth A. Garcia, Chief Clerk of the Supreme Court of New Mexico**. While the COVID-19 pandemic set back the Committee’s annual award, the nominations for Ms. Garcia were not lacking; having received multiple nominations, including from attorneys DeAnza Valencia and Erin Marshall, Chief Judge Marie Ward, former Chief Judge Stan Whitaker and Sandra Sanchez, the former HR Director for the 2nd Judicial District Court. Present at the Award Ceremony were four of the five New Mexico Supreme Court Justices; Chief Justice Shannon Bacon, Justice David Thompson, Justice Julie Vargas and by Zoom, Justice Briana Zamora.

In the midst of the one of the worst international pandemics our nation has ever known, Elizabeth “Liz” Garcia, stepped in the acting CEO role for the largest District Court in the State of New Mexico: the Second Judicial District Court. She gracefully and without hesitation accepted the responsibility of safe-guarding the continued operations of the court, implementing the availability of remote hearings, ensuring continued access to the court and serving the needs of the public.

Liz Garcia didn’t just raise issues, she “walked the talk” by being part of the solution. She knew one the most vulnerable populations to be affected by the pandemic would be victims of domestic violence; the majority of whom are woman, so she worked until she could ensure them access. While leading a courthouse staff consisting of 73% women, she developed important policies and procedures that fairly considered family obligations while still maintaining adequate coverage to keep the courthouse doors open. She took into account working parents who had children at home who participated in on-line learning and employees who had immunocompromised family members they cared for.

When the courthouse implemented mandatory temperature checks, she used personal funds to buy gift cards for employees that volunteered to conduct temperature checks. She reached out to the Bernalillo County Fire Department and arranged to have their staff provide additional courthouse coverage for temperature checks. At times, she even went one step further and picked up a thermometer and helped take temperatures herself.

She held memorials for courthouse employees that passed during the pandemic and had a plaque made with their names to commemorate their service to the Court. She went out of her way to ensure that the UNM Law School interns continued to feel connected, even if by Zoom. She was described by her co-nominator and mentee, Erin Marshall, as a woman who ignited passion in students for the legal field by helping them to find a connection and then supporting each student's individual interests. She continued in her support of a Girl Scout troop so the girls wouldn't feel left behind. She instituted new troop video meetings and interactive art activities to ensure the children feel connected and supported.

As a small-town girl from Belen, New Mexico, Liz always dreamed of becoming an attorney. She attributes her value of education, hard work and perseverance to her grandfather, who dreamed one day of having a parade down the main street of Belen when Liz got her law degree. A first-generation attorney in her family, Liz recalled fondly those who contributed to her success, including Paul Melendres, a friend and colleague in the ASUNM student government; Art Melendres, Paul's father, who gave Liz her first job out of law school and whom she fondly referred to as her "Atticus Finch," and Judge James Noel, a colleague throughout her years who not only taught Liz how to be a better lawyer, but how to be a better person. She gave tribute to her husband Steven, her two daughters Izzy and Kaleigh, her mother Matilda and the Owls.

Her message to the Committee and the State Bar in general was one of service, a call to other attorneys to take the time to mentor a student, a young lawyer, an aspiring female. In the words of Justice Minzner, Liz reminded us that we must continue to help our profession move closer to true equality. She noted how Justice Minzner would have wanted us to move forward on our path toward a greater gender equality and in making the legal profession more inclusive. In the spirit of Justice Minzner, Liz closed her remarks for the evening by exclaiming, "Adelante", onward we go.

** The Minzner Outstanding Advocacy for Women Award is awarded each year, but the Committee did not have an opportunity to present the 2020 award until recently.*



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For further questions or information, please contact Morgan Pettit at morgan.pettit@sbnm.org



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From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2022-NMSC-010

No: S-1-SC-38247 (filed January 10, 2022)

CITIZENS FOR FAIR RATES AND THE ENVIRONMENT, and NEW ENERGY ECONOMY, INC., Appellants,

v.

NEW MEXICO PUBLIC REGULATION COMMISSION, Appellee,

and

PUBLIC SERVICE COMPANY OF NEW MEXICO,
WESTERN RESOURCE ADVOCATES, COALITION FOR CLEAN AFFORDABLE ENERGY, and SIERRA CLUB, Intervenor-Appellees.

In the Matter of Public Service Company of New Mexico's Abandonment of San Juan Generating Station Units 1 and 4, NMPRC Case No. 19-00018-UT.

APPEAL FROM THE NEW MEXICO PUBLIC REGULATION COMMISSION

Gerald E. Baca, District Judge

Released for Publication March 1, 2022.

Freedman Boyd Hollander Goldberg
Urias & Ward, P.A.
John Warwick Boyd, Esq.
Albuquerque, NM

PNM Resources, Inc.
Stacey J. Goodwin
Ryan T. Jerman
Albuquerque, NM

for Appellant Citizens for Fair Rates
& the Environment

Miller Stratvert P.A.
Richard L. Alvidrez
Samantha Kelly
Albuquerque, NM

New Energy Economy, Inc.
Mariel Nanasi, Esq.
Santa Fe, NM

for Intervenor-Appellee Public
Service Company of New Mexico

for Appellant
New Energy Economy, Inc.

Jason A. Marks Law, LLC
Jason A. Marks
Albuquerque, NM

Public Regulation Commission
Michael C. Smith, Acting General
Counsel
Santa Fe, NM

Sierra Club
Matthew Gerhart
Denver, CO

for Appellee

for Intervenor-Appellee Sierra Club

Western Resource Advocates
Steven S. Michel
Cydney Beadles
Santa Fe, NM

Stephanie L. Dzur
Albuquerque, NM

Keleher & McLeod, P.A.
Thomas C. Bird
Albuquerque, NM

for Intervenor-Appellee Coalition
for Clean Affordable Energy

for Intervenor-Appellee Western
Resources Advocates

OPINION

THOMSON, Justice.

I. INTRODUCTION

{1} In *State ex rel. EgoIf v. New Mexico Public Regulation Commission*, 2020-NMSC-018, ¶ 32, 476 P.3d 896, we reaffirmed that the authority of the New Mexico Public Regulation Commission “goes no further than what has been statutorily authorized,” and we directed the Commission to apply the Energy Transition Act (ETA), NMSA 1978, §§ 62-18-1 to -23 (2019), to proceedings relating to Public Service Company of New Mexico’s (PNM) planned abandonment of its interests in the San Juan Generating Station (San Juan) Units One and Four, *EgoIf*, 2020-NMSC-018, ¶¶ 1-2, 33. We now address an appeal from the Commission’s final order on PNM’s request for a financing order in connection with those abandonment proceedings in Case No. 19-00018-UT (April 1, 2020 final order).

{2} This appeal is brought by Citizens for Fair Rates and the Environment and New Energy Economy, Inc., two organizations that represent energy consumers who intervened in the administrative proceedings below. For ease of reference and reader comprehension, we hereinafter refer to both organizations in the singular as “New Energy.” New Energy raises several issues for our review, most of which attack the ETA on constitutional grounds. In addition to these constitutional challenges, New Energy also raises a single claim of error in the findings of the Commission relating to the requirement that PNM submit a “memorandum . . . from a securities firm” in support of its application for a financing order. Section 62-18-4(B)(5).

{3} For the reasons we explain herein, we decline to reach two of New Energy’s issues because they are not properly before the Court and are not essential to our disposition of this appeal. Therefore, we express no opinion on the Commission’s statutory authority to review and disallow recovery of a utility’s “actual final energy transition costs” in the ratemaking proceedings contemplated by Section 62-18-4(B)(10) and Section 62-18-5(F)(8). We further decline to address New Energy’s arguments regarding an invasion of judicial powers under Section 62-18-8(B) and Section 62-18-22.

{4} With respect to the issues we deem properly presented and herein address, we reject New Energy’s constitutional challenges to the ETA. We likewise conclude that the Commission’s final order is based on a reasonable construction of Section 62-18-4(B)(5) and is supported by substantial evidence.

Accordingly, we affirm the Commission's final order. *See* NMSA 1978, § 62-11-5 (1982) ("The [S]upreme [C]ourt shall have no power to modify the [Commission's] action or order appealed from, but shall either affirm or annul and vacate the same.").

II. BACKGROUND

{5} As the matter before this Court is primarily a facial challenge to the constitutionality of the ETA, we begin with a short overview of the challenged Act. We then summarize the proceedings that are relevant to this appeal.

{6} The ETA comprises the most significant part of Senate Bill 489, a 2019 legislative enactment with various measures designed to support New Mexico's renewable portfolio standard. 2019 N.M. Laws, ch. 65, §§ 1 to 23 (enacting the ETA); *see* NMSA 1978, § 62-16-4 (2014, as amended 2019) (setting forth the requirements of public utilities under New Mexico's renewable portfolio standard). Of particular relevance to this dispute, the ETA provides a means whereby a qualifying public utility in New Mexico may finance, through securitization, the "energy transition cost[s]" associated with abandoning a coal-fired generating facility. Section 62-18-2(H), (S). These potentially securitized energy transition costs may include "financing costs," § 62-18-2(H)(1), and up to \$375 million in "abandonment costs," § 62-18-2(H)(2)(a)-(d). These energy transition costs also include anticipated payments into three state-administered funds that will assist various communities affected by the facility's abandonment. *See* § 62-18-16(A), (D), (G).

{7} If a utility desires to securitize these energy transition costs, it may apply to the Commission for a "financing order" that will "authorize[] the issuance of energy transition bonds" in the amount of the utility's estimated costs. Section 62-18-2(K), (L). The financing order will also authorize the utility to collect from its customers a separate "energy transition charge" in repayment of these bonds. Sections 62-18-2(L), (P), 62-18-6(A), 62-18-10. In language only regulators can appreciate, the ETA provides that these energy transition charges are "non-bypassable," meaning that energy consumers receiving electric services from the utility will not be able to avoid paying the charge "for as long as the energy transition bonds . . . are outstanding and the related financing costs have not been recovered in full." Section 62-18-2(P).

{8} A utility that wishes to obtain a financing order from the Commission must submit an application with several estimates, supporting documents, and other specified information as identified in Section 62-18-4, including "a memorandum with supporting exhibits from a securities firm" attesting to the proposed energy transition bonds' AAA rating, § 62-18-4(B)(5).

The Commission is required to "issue a financing order approving the application if the [C]ommission finds that the qualifying utility's application for the financing order complies with the requirements of" Section 62-18-4. Section 62-18-5(E). Once issued, "[a] financing order is irrevocable and the [C]ommission shall not reduce, impair, postpone or terminate the energy transition charges approved in the financing order . . ." Section 62-18-7(A). However, the Commission will continue to supervise the energy transition charges and may approve adjustments "to correct for any over-collection or under-collection" of the charges. Section 62-18-6(B). The Commission must also approve a "ratemaking process to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred by the qualifying utility." Sections 62-18-4(B)(10), 62-18-5(F)(8).

{9} The current appeal is from PNM's application for a financing order in connection with the planned abandonment of its interests in San Juan Units One and Four. *See* Case No. 19-00018-UT. In *Egolf*, 2020-NMSC-018, we concluded that the Commission did not lawfully initiate the proceedings in Case No. 19-00018-UT to compel PNM to abandon San Juan because, at the relevant time, "no statute grant[ed] the Commission authority to compel a public utility to file an abandonment application." *Egolf*, 2020-NMSC-018, ¶ 26. Because abandonment proceedings for San Juan had not lawfully commenced prior to the enactment of the ETA, we issued a writ of mandamus to the Commission, explaining that "the Commission had a nondiscretionary duty to apply the ETA" to the abandonment proceedings subsequently initiated by PNM in Case No. 19-00195-UT. *Egolf*, 2020-NMSC-018, ¶¶ 2, 16, 33.

{10} On remand, the Commission vacated any order in Case Nos. 19-00018-UT and 19-00195-UT determined to be inconsistent with the writ issued by this Court and properly considered PNM's application under the ETA. Shortly thereafter, the hearing examiners issued a recommended decision extensively reviewing the law, arguments, and evidence presented in support of and against PNM's application. The hearing examiners recommended that the Commission approve PNM's application, with several modifications to the terms and language of the financing order as proposed by PNM. The Commission subsequently rejected filed exceptions to the recommended decision and adopted the findings, conclusions, and orders of the recommended decision in its final order.

{11} As a result, the Commission gave leave for PNM to issue energy transition bonds of up to \$361 million in connection with the abandonment of its interests in San Juan Units One and Four and to collect separate and non-bypassable energy transition charges from its customers in repayment of the bonds. New Energy timely filed a notice of appeal of the Commission's final order, raising several questions for our review. We summarize specific findings and conclusions from the hearing examiners' recommended decision and the Commission's final order as relevant to the issues in our discussion below.

III. STANDARD OF REVIEW

{12} "Generally speaking, we review the [Commission's] determinations to decide whether they are arbitrary and capricious, not supported by substantial evidence, outside the scope of the agency's authority, or otherwise inconsistent with law, with the burden on the appellant to make this showing." *New Energy Econ., Inc. v. N.M. Pub. Regul. Comm'n*, 2018-NMSC-024, ¶ 24, 416 P.3d 277 (internal quotation marks and citation omitted). We further refine this general standard of review based upon the nature of the question presented. *Id.* In this case, we are tasked with review of the factual findings of the Commission, questions of statutory construction, and numerous constitutional challenges to the ETA.

{13} In reviewing challenges to the factual findings of the Commission, we will affirm the Commission's order if it is "supported by substantial evidence," which is "evidence that is credible in light of the whole record and that is sufficient for a reasonable mind to accept as adequate to support the conclusion reached by the agency." *N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm'n*, 2019-NMSC-015, ¶ 8, 450 P.3d 393 (internal quotation marks and citation omitted).

{14} On review of an issue of statutory construction, we "will begin by according some deference to the agency's interpretation" of its governing statute. *Morningstar Water Users Ass'n v. N.M. Pub. Util. Comm'n*, 1995-NMSC-062, ¶ 11, 120 N.M. 579, 904 P.2d 28. However, "statutory construction itself is not a matter within the purview of the Commission's expertise," and we will "afford little, if any, deference to the Commission" on questions that do not implicate "agency expertise or the determination of fundamental policies within the scope of the agency's statutory function." *N.M. Indus. Energy Consumers v. N.M. Pub. Regul. Comm'n*, 2007-NMSC-053, ¶ 19, 142 N.M. 533, 168 P.3d 105 (internal quotation marks and citations omitted). We will reverse the Commission's statutory interpretation "if it is unreasonable or unlawful." *Id.*

{15} We review constitutional challenges to a statute de novo, and “[w]e will uphold a statute unless we are satisfied beyond all reasonable doubt that the Legislature went outside the bounds fixed by the Constitution in enacting the challenged legislation.” *Bounds v. State ex rel. D’Antonio*, 2013-NMSC-037, ¶ 11, 306 P.3d 457 (internal quotation marks and citation omitted). “We do not inquire into the wisdom or policy of an act of the Legislature . . . , and the burden of establishing that the statute is invalid rests on the party challenging the constitutionality of the statute.” *Id.* (internal quotation marks and citations omitted). In a facial challenge to a statute, like many of the challenges New Energy raises here, “we consider only the text of the statute itself, not its application.” *Id.* ¶ 14 (brackets, internal quotation marks, and citation omitted). But “in an as-applied challenge, we consider the facts of the case to determine whether application of the statute even if facially valid deprived the challenger of a protected right.” *Id.* (brackets, internal quotation marks, and citation omitted).

IV. DISCUSSION

{16} We turn now to the various issues raised in this appeal. We begin with a discussion of our subject matter jurisdiction over the constitutional challenges raised by New Energy. We decline to reach two of these challenges because the issues are not properly presented for our review. Next, we consider and reject each of New Energy’s remaining constitutional challenges to the ETA. We then address the single claim of error raised about the Commission’s final order. In the end, we affirm the Commission’s final order.

A. Subject Matter Jurisdiction over Constitutional Challenges

{17} As previously mentioned, New Energy alleges one error in the findings of the Commission’s final order. New Energy also raises several constitutional challenges to the ETA. However, the Commission did not reach New Energy’s constitutional challenges in the proceedings below, concluding that New Energy’s “facial challenges to the constitutionality of the ETA are not properly raised before the Commission and should be or have been taken to district court, which is vested with original jurisdiction over such claims under the New Mexico Constitution.”

{18} Now in its briefing on appeal, the Commission asserts that New Energy has not contested “the Commission’s ruling that it lacked jurisdiction to address and rule on [New Energy’s] facial constitutional challenges to the ETA.” The Commission’s response brief therefore “does not address the issue presented by [New Energy] concerning whether [New Energy] may properly raise [its] constitutional

challenges on appeal rather than through a district court action.” Thus, the Commission suggests that this Court should similarly decline to reach New Energy’s constitutional challenges on appeal, in apparent recognition of the Commission’s rulings on subject matter jurisdiction in the final order.

{19} Although the Commission does not clearly identify which legal doctrine supports its argument on appeal, we assess that the Commission relies on the reasoned basis rule of administrative law. The reasoned basis rule holds that, generally, a reviewing court should not “supply a reasoned basis for the agency’s action that the agency itself has not given.” *Rio Grande Chapter of Sierra Club v. N.M. Mining Comm’n*, 2003-NMSC-005, ¶¶ 11-13, 133 N.M. 97, 61 P.3d 806 (internal quotation marks and citation omitted). However, we must emphasize that the Commission’s conclusions about subject matter jurisdiction do not provide a reasoned basis to which this Court will defer. While we generally will not supply a rationale for a decision that an administrative agency has not itself given, “it is the function of the courts to interpret the law,” and we are “in no way bound by the agency’s legal interpretation.” *Id.* ¶ 13 (internal quotation marks and citation omitted). The Commission’s conclusions with respect to subject matter jurisdiction are legal interpretations which neither limit nor affect this Court’s jurisdiction over the issues on appeal.

{20} Nevertheless, the Commission’s brief questions the extent of our subject matter jurisdiction over this appeal. Rule 12-321(B)(1) N.M.R.A. recognizes that “[s]ubject matter jurisdiction of the trial or appellate court may be raised at any time.” We therefore take this opportunity to clarify our subject matter jurisdiction over the questions presented.

{21} We acknowledge that the Commission rightly concluded that it lacked subject matter jurisdiction over New Energy’s constitutional challenges. The Commission is an administrative agency “created by statute, and limited to the power and authority expressly granted or necessarily implied by those statutes.” *Qwest Corp. v. N.M. Pub. Regul. Comm’n*, 2006-NMSC-042, ¶ 20, 140 N.M. 440, 143 P.3d 478; *see also N.M. Elec. Serv. Co. v. N.M. Pub. Serv. Comm’n*, 1970-NMSC-097, ¶ 4, 81 N.M. 683, 472 P.2d 648 (“[The Commission] is created by statute and must therefore find its authority and jurisdiction conferred upon it either expressly or by necessary implication from the same statutory authority.”). It is certainly appropriate for an administrative agency to evaluate the constitutionality of proposed agency action. *See Schuster v. N.M. Dep’t*

of Tax’n & Revenue, Motor Vehicle Div., 2012-NMSC-025, ¶¶ 18, 22, 283 P.3d 288 (holding that the Motor Vehicle Division (MVD) must determine that a driver’s arrest was constitutional as a precondition to revoking the driver’s license). However, agencies lack “subject matter jurisdiction to consider matters beyond the scope of the statute” and cannot rule on constitutional challenges to an enactment. *Maso v. N.M. Tax’n & Revenue Dep’t*, 2004-NMCA-025, ¶¶ 2, 12, 135 N.M. 152, 85 P.3d 276 (concluding that MVD lacked subject matter jurisdiction over a due process challenge to the sufficiency of the notice provided pursuant to an enactment), *aff’d*, 2004-NMSC-028, ¶ 1, 136 N.M. 161, 96 P.3d 286; *Montez v. J & B Radiator, Inc.*, 1989-NMCA-060, ¶ 7, 108 N.M. 752, 779 P.2d 129 (“An administrative agency does not have the authority to determine the constitutionality of a statutory enactment.”). We note, however, that even though an agency has “no authority to rule a statute unconstitutional,” we nevertheless “see advantages in requiring the parties to raise constitutional issues in the [administrative] proceedings.” *Chevron Res. v. N.M. Superintendent of Ins.*, 1992-NMCA-081, ¶ 19, 114 N.M. 371, 838 P.2d 988. Here, New Energy appropriately raised its constitutional challenges in the Commission’s proceedings.

{22} Regarding the proper venue for these challenges, we also agree with the Commission that, in general, constitutional challenges to a legislative enactment may be brought in a declaratory action under the original jurisdiction of the district court, N.M. Const. art. VI, § 13. *See NMSA 1978, §§ 44-6-1 to -15 (1975) (Declaratory Judgment Act); see also Am. Fed’n of State, Cnty. & Mun. Emps. v. Bd. of Cnty. Comm’rs of Bernalillo Cnty. (AF-SCME)*, 2016-NMSC-017, ¶¶ 9, 17, 34, 373 P.3d 989 (requiring a party bringing a declaratory judgment action to satisfy the “jurisdictional prerequisites” of ripeness and standing). However, the district court’s jurisdiction over these challenges is not exclusive. For example, this Court may exercise its original jurisdiction, such as in mandamus or superintending control, concurrently with the original jurisdiction of the district court. *See N.M. Const. art. VI, §§ 3, 13; State ex rel. Sandel v. N.M. Pub. Util. Comm’n*, 1999-NMSC-019, ¶¶ 10-11, 127 N.M. 272, 980 P.2d 55 (discussing this Court’s mandamus jurisdiction as concurrent to that of the district court); *Cnty. of Bernalillo v. N.M. Pub. Regul. Comm’n*, 2000-NMSC-035, ¶ 5, 129 N.M. 787, 14 P.3d 525 (construing a challenge to a Commission order which had not been properly raised on appeal as a petition for mandamus).

Such an extraordinary proceeding would be inappropriate in this case because New Energy's challenges do not "implicate . . . fundamental constitutional question[s] of great public importance" and thus are "not properly the subject of mandamus and do[] not justify our exercise of original jurisdiction." *Cnty. of Bernalillo*, 2000-NMSC-035, ¶ 20.

{23} Subject matter jurisdiction over New Energy's challenges also exists pursuant to the appellate jurisdiction granted to this Court by the ETA itself in Section 62-18-8(B). In *Smith v. City of Santa Fe*, 2007-NMSC-055, ¶ 15, 142 N.M. 786, 171 P.3d 300, we "caution[ed] against using a declaratory judgment action to challenge or review administrative actions if such an approach would . . . disregard an exclusive statutory scheme for the review of administrative decisions." See also *State ex rel. Regents of E.N.M. Univ. v. Baca*, 2008-NMSC-047, ¶ 22, 144 N.M. 530, 189 P.3d 663 (concluding that a party to administrative proceedings who also could bring a declaratory action should be "obligated either to pursue its right to judicial review [of the administrative decision] or to file its declaratory judgment action in compliance with the procedures for administrative appeal"). We conclude that Section 62-18-8(B) creates an exclusive statutory scheme for appellate review.

{24} The Legislature has provided a right of direct appeal to this Court from Commission orders under the ETA and has expressed an intent that such appeals be heard and determined "as expeditiously as practicable." Section 62-18-8(B). That clearly stated legislative intent, as well as the principles of sound judicial administration that motivated our decision in *Smith*, compel us to conclude that we should entertain New Energy's preserved constitutional challenges to the ETA. As in *Smith*, "[w]e perceive no sound judicial policy for allowing [New Energy] to forego an available avenue of judicial review [of those challenges,] only to allow [New Energy] to initiate judicial review in another form at some future date that no one can predict or rely upon with any certainty." *Smith*, 2007-NMSC-055, ¶ 24. Requiring New Energy to pursue what would essentially amount to a collateral attack upon the Commission's final order by initiating a declaratory judgment action in the district court would only "invite chaos and preclude certainty," *id.* ¶ 23, in clear contravention of the Legislature's stated intent for an expeditious resolution to appeals from financing orders under the ETA. Section 62-18-8(B).

{25} While we accept jurisdiction over this appeal, we nonetheless apply the same principles of sound judicial administration regarding the propriety of the issues raised.

Thus, we decline to reach two issues that we conclude are improperly positioned for our review: one out of a concern for finality, and the other because of the lack of any real controversy and inadequate briefing on the issue.

1. The Commission's ratemaking authority under the ETA

{26} The first issue that we conclude is not presently well-postured for our review involves the extent of the Commission's authority in the ratemaking processes contemplated by the ETA "to reconcile and recover or refund any difference between the energy transition costs financed by the energy transition bonds and the actual final energy transition costs incurred" by the utility. Section 62-18-4(B)(10); see § 62-18-5(F)(8). More particularly, New Energy and the other parties to this appeal dispute whether the Commission retains authority to review and disallow any of the actual final energy transition costs that a utility may incur after January 1, 2019. New Energy argues that the ETA strips the Commission of authority to conduct a review or to disallow any of these energy transition costs. The Commission and PNM disagree. They point out that the final order concludes that the Commission will have the statutory authority to review and potentially disallow PNM's final expenditures by adjusting PNM's base rates. Several of New Energy's challenges dispute this finding and attack the other parties' construction of the ETA. However, we conclude that this debate is neither ripe for our review nor essential to our disposition of this appeal.

{27} "Decisions of administrative entities are fit for review only when the agency's decision is final." *AFSCME*, 2016-NMSC-017, ¶ 21. "This proposition serves to prevent judicial interference until an administrative decision has been formalized and finalized and its effects felt in a concrete way by the parties. Moreover, the proposition serves an important role in preserving separation of powers." *Id.* (internal quotation marks and citation omitted). The Commission's final order indicates that it intends to review and *potentially* disallow PNM's finally incurred energy transition costs in future ratemaking proceedings. However, to our knowledge, this review has not yet occurred. The Commission also has not yet disallowed any of PNM's post-January 1, 2019 energy transition costs. We do not believe that the Court can effectively consider the lawfulness of a *potential* disallowance in the absence of a relevant record. Cf. *N.M. Indus. Energy Consumers v. N.M. Pub. Serv. Comm'n*, 1991-NMSC-018, ¶¶ 24, 41, 111 N.M. 622, 808 P.2d 592 (declining to review a Commission order because "the Commission has not yet determined if and to what extent investment in any plant is

imprudent, or how imprudence would [affect] its rate treatment" and because the Commission "has not, by its actions in this case, determined that ratepayers must pay for imprudent investment"). Any dispute about the extent of the Commission's authority in the proceedings contemplated by Sections 62-18-4(B)(10) and 62-18-5(F)(8) would require this Court to set out an advisory opinion, as well as to construe the ETA in light of other relevant considerations of New Mexico public utility law. We will not undertake such an extensive review today. {28} In addition, there is no hardship in deferring ruling upon the unripe challenge to the Commission's ratemaking authority with respect to PNM's yet-to-be-incurred expenditures. See *AFSCME*, 2016-NMSC-017, ¶ 28 ("The second step in the ripeness analysis is whether, and to what extent, the parties will endure hardship if a decision is withheld"). We have explained that "the judicial power to resolve disputes in a government built upon a foundation separating the legislative, executive, and judicial functions should be guided by prudential considerations" and that the "prudential rules of judicial self-governance, like standing, ripeness, and mootness, are founded in [a] concern about the proper—and properly limited—role of courts in a democratic society and are always relevant concerns." *New Energy Econ. Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 16, 149 N.M. 42, 243 P.3d 746 (internal quotation marks and citation omitted). We therefore decline to address the Commission's authority in the ratemaking proceedings contemplated under Sections 62-18-4(B)(10) and 62-18-5(F)(8).

2. Concerns regarding the ETA's appeal process

{29} New Energy also attacks the ETA's ten-day time limit for filing a notice of appeal and the statute indicating that "if any provision of [the ETA] is invalidated, . . . that occurrence shall not affect the validity of any action allowed pursuant to [the ETA]." Section 62-18-22; see also § 62-18-8(B). New Energy argues that these sections improperly constrain meaningful judicial review and thus violate separation of powers, N.M. Const. art. III, § 1; N.M. Const. art. VI, § 1. However, New Energy did not adequately develop these arguments in its briefing on appeal, and we will not review inadequately briefed issues. See *Elane Photography, LLC v. Willock*, 2013-NMSC-040, ¶ 70, 309 P.3d 53 ("We will not review unclear arguments To rule on an inadequately briefed issue, this Court would have to develop the arguments itself, effectively performing the parties' work for them.

This creates a strain on judicial resources and a substantial risk of error” (internal quotation marks and citations omitted)). {30} We also do not believe that resolution of New Energy’s inadequately briefed challenges to Sections 62-18-8(B) and 62-18-22 is essential to the disposition of this appeal. Having timely filed a notice of appeal within ten days of the Commission’s final order, New Energy has not alleged any injury regarding the time limit of Section 62-18-8(B). Nor are we confronted with the perplexing problem of the “validity of any action . . . [if the Act] is held to be invalid,” § 62-18-22, as we here affirm the Commission’s final order and recognize the validity of its actions taken pursuant to the ETA. “It is an enduring principle of constitutional jurisprudence that courts will avoid deciding constitutional questions unless required to do so.” *Schlieter v. Carlos*, 1989-NMSC-037, ¶ 13, 108 N.M. 507, 775 P.2d 709. We therefore decline to reach these challenges as a matter of sound judicial administration and turn to the remaining issues before the Court.

B. New Energy’s Challenges to the ETA

{31} Having answered the question regarding our jurisdiction and established the scope of our review, we next consider the merits of New Energy’s remaining arguments. We first address New Energy’s constitutional challenges to the ETA and then consider the single claim of error presented. As explained below, we conclude that each of these issues lacks merit and affirm the Commission’s final order.

1. Due process

{32} New Energy first argues that the ETA deprives energy consumers of due process by allowing a qualifying public utility to recover its energy transition costs without Commission oversight. We consider, and reject, New Energy’s arguments on both procedural due process and substantive due process grounds.

a. Procedural due process

{33} “Before a procedural due process claim may be asserted, [a challenger to the legislation] must establish that [the challenger] was deprived of a legitimate liberty or property interest and that [the challenger] was not afforded adequate procedural protections in connection with the deprivation.” *Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 1994-NMSC-096, ¶ 21, 118 N.M. 470, 882 P.2d 511. “Procedural due process requirements are not static, and the extent of the hearing required is determined on a case by case basis.” *Mills v. N.M. State Bd. of Psych. Exam’rs*, 1997-NMSC-028, ¶ 19, 123 N.M. 421, 941 P.2d 502. In determining what process is due in an administrative hearing, we balance

(1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regul. Comm’n (ABCWUA), 2010-NMSC-013, ¶ 28, 148 N.M. 21, 229 P.3d 494 (brackets, internal quotation marks, and citations omitted).

{34} In order to claim the protections of the due process clause, an opponent must possess a cognizable property or liberty interest. *Harrell*, 1994-NMSC-096, ¶ 21. “Protected property interests are those to which an individual has a claim of entitlement.” *Mills*, 1997-NMSC-028, ¶ 15. Energy consumers generally do not possess a claim of entitlement to utility property or a right to any fixed utility rate. *See State v. Mountain States Tel. & Tel. Co.*, 1950-NMSC-055, ¶¶ 13-24, 54 N.M. 315, 224 P.2d 155 (“[I]t is generally held . . . that the remedy of the public is an appeal to the legislature or its delegated authority for redress or protection against unreasonably high rates. The theory is that the legislature is acting for the people; and that no property right is involved.” (citations omitted)); *Gas Co. of N.M. v. N.M. Pub. Serv. Comm’n (Gas Co. v. PSC)*, 1984-NMSC-002, ¶ 13, 100 N.M. 740, 676 P.2d 817 (“[A] utility customer is not a partner or beneficiary of the utility. . . . By paying bills for service [customers] do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company.” (internal quotation marks and citation omitted)); *see also Wright v. Cent. Ky. Nat. Gas Co.*, 297 U.S. 537, 542 (1936) (“[W]e find no warrant for a conclusion that appellants had any vested right which precluded the city from effecting a reasonable adjustment of the controversy over rates. . . . In making that settlement, . . . the consumers were represented by the city.”).

{35} However, we have recognized that NMSA 1978, Section 62-3-1(B) (2008) accords to energy consumers an entitlement to “reasonable and proper service at fair, just and reasonable rates.” *ABCWUA*, 2010-NMSC-013, ¶ 30 (internal quotation marks and citation omitted); *see also Mountain States Tel. & Tel.*, 1950-NMSC-055, ¶ 25 (“There are statutes, however, which provide that customers of public service corporations or others may appeal to the courts for determination of the reasonableness of rates.”).

In light of this statutorily created interest, we have explained that energy consumers are entitled to “reasonable notice and opportunity to be heard and present any claim or defense” in proceedings before the Commission. *ABCWUA*, 2010-NMSC-013, ¶ 21 (internal quotation marks and citation omitted).

{36} The ETA provides that “[t]he [C]ommission may approve an application for a financing order without a formal hearing if no protest establishing good cause for a formal hearing is filed within thirty days of . . . when notice is given of the filing.” Section 62-18-5(A). While Section 62-18-5(A) is not a model of clarity, the ETA as written contemplates that energy consumers will be given sufficient notice of the utility’s application and a meaningful opportunity to be heard upon lodging a “protest establishing good cause for a formal hearing” in front of the Commission. *Id.* In the language of the ETA, we see nothing discordant with the procedural requirements of due process. In fact, New Energy and several other objecting parties representing the rights of energy consumers participated extensively in these abandonment proceedings and presented various claims and defenses. As such, we reject New Energy’s procedural due process challenge to the ETA.

b. Substantive due process

{37} New Energy contends that hearings held pursuant to the ETA will not provide energy consumers with a meaningful opportunity to be heard because the Commission’s findings will be limited to the elements defined in the ETA. More particularly, Section 62-18-4 sets forth a specific list of supporting documents—cost estimates and other information—that a qualifying public utility must provide in support of its application for a financing order. Section 62-18-5(E) provides that the Commission “shall issue a financing order approving the application if the [C]ommission finds that the qualifying utility’s application for the financing order complies with the requirements” of Section 62-18-4. New Energy argues that the ETA does not permit the Commission to review a utility’s estimated energy transition costs before issuing a financing order, and that this supposed limitation on the Commission’s authority violates due process and equal protection.

{38} To the extent that New Energy challenges the adequacy of the elements that the Commission must find before approving a utility’s application under the ETA, New Energy’s due process challenge to the Act is not procedural, but a challenge to the substance of the Act itself. *Cf. Conn. Dep’t of Pub. Safety v. Doe*, 538 U.S. 1, 7-8 (2003) (explaining that a defendant who argued that he was entitled to due process to de-

termine a fact not material to a statute did not bring a viable challenge on procedural due process grounds, but on substantive due process grounds); *State v. Druktenis*, 2004-NMCA-032, ¶¶ 47-48, 135 N.M. 223, 86 P.3d 1050 (same). We thus analyze New Energy's challenge under substantive due process standards.

{39} As pertinent to the correct standard of review, we note that the ETA is "economic regulation" that does not implicate important or fundamental rights. *Pub. Serv. Co. of N.M. v. N.M. Pub. Serv. Comm'n*, 1991-NMSC-083, ¶¶ 25-27, 112 N.M. 379, 815 P.2d 1169. We therefore review New Energy's substantive due process challenge to the ETA using a rational basis standard. See *Rodriguez v. Brand W. Dairy*, 2016-NMSC-029, ¶ 23, 378 P.3d 13 ("Rational basis review applies to general. . . economic legislation that does not affect a fundamental or important constitutional right or a suspect or sensitive class." (internal quotation marks and citation omitted)). "Under rational basis review, the challenger must demonstrate that the legislation is not rationally related to a legitimate government purpose." *Id.* In reviewing substantive due process challenges under the United States Constitution, we follow the federal rational basis test "which only requires a reviewing court to divine the *existence* of a conceivable rational basis to uphold legislation against a constitutional challenge." *Id.* ¶ 26 (internal quotation marks and citation omitted).

{40} However, we apply a modified rational basis standard in reviewing substantive due process challenges under the New Mexico Constitution, as we are "cognizant of our constitutional duty to protect discrete groups of New Mexicans from arbitrary discrimination by political majorities and powerful special interests." *Id.* ¶ 27. "To successfully challenge the statute under this standard of review, [the challenger] must demonstrate that . . . the legislation is not supported by a 'firm legal rationale' or evidence in the record." *Wagner v. AGW Consultants*, 2005-NMSC-016, ¶ 24, 137 N.M. 734, 114 P.3d 1050. "In practical terms, our rational basis standard requires the challenger to bring forward record evidence, legislative facts, judicially noticeable materials, case law, or legal argument to prove that the [challenged legislation] is . . . not rationally related to the articulated legitimate government purposes." *Rodriguez*, 2016-NMSC-029, ¶ 28. We conclude that New Energy has not met this initial burden of persuasion.

{41} New Energy primarily challenges the ETA because the Act is unlike other public utility legislation and undoes the "regulatory compact" with respect to a utility's energy transition costs by giving a utility "what is anathema to utility law[:] the right to name its price." As noted previously, we do not

opine on the supposed deregulatory effect of the ETA, or the Legislature's policy choices in this regard. See paragraphs 26-28, *supra*. But we fully disagree with New Energy's assertion that the challenged legislation lacks a rational basis simply because the legislation is unique relative to other utility legislation or because it requires the Commission to issue a financing order once the Commission is satisfied that the utility has met the requirements of the ETA.

{42} The Legislature has declared that it is the "policy of the state" that utilities be regulated so "that reasonable and proper services shall be available at fair, just and reasonable rates" and so "that capital and investment may be encouraged and attracted so as to provide for . . . proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry." Section 62-3-1(B). We have explained that Section 62-3-1(B) expresses an intent to balance the interests of a utility and energy consumers, toward achieving rates that

are neither unreasonably high so as to unjustly burden ratepayers with excessive rates nor unreasonably low so as to constitute a taking of property without just compensation or a violation of due process by preventing the utility from earning a reasonable rate of return on its investment. We have recognized that there is a significant zone of reasonableness in which rates are neither ratepayer extortion nor utility confiscation.

Pub. Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n (PNM v. PRC), 2019-NMSC-012, ¶ 10, 444 P.3d 460 (brackets, internal quotation marks, and citation omitted). In enacting the ETA, the Legislature decided that permitting a public utility to finance the energy transition costs associated with abandoning a coal-fired generating facility in the manner therein provided would promote the legitimate interests reflected in Section 62-3-1(B). New Energy may disagree, as a policy matter, with this legislative decision. But New Energy's policy disagreement does not lay the foundation for judicial interference on substantive due process grounds.

{43} "While our rational basis test is neither toothless nor a rubber stamp for challenged legislation, it nonetheless requires us to defer to the validity of the statute, with the challenger carrying the burden of persuasion." *Wagner*, 2005-NMSC-016, ¶ 24. In addition to New Energy's arguments characterizing the ETA as deregulatory and unprecedented, New Energy also refers us to record testimony expressing uncertainty in the final amount

of energy transition charges that consumers may pay because of financing orders potentially issued under the ETA. But the referenced testimony does not persuasively show that the ETA will result in charges beyond the "significant zone of reasonableness in which rates are neither ratepayer extortion nor utility confiscation." *PNM v. PRC*, 2019-NMSC-012, ¶ 10. Thus, we conclude that New Energy has not brought forth sufficient "record evidence, legislative facts, judicially noticeable materials, case law, or legal argument," *Rodriguez*, 2016-NMSC-029, ¶ 28, to establish that the ETA lacks a rational relationship to the interests expressed in Section 62-3-1(B). We therefore defer to the validity of the enactment and reject New Energy's substantive due process challenges to the ETA.

2. Separation of powers: legislative powers

{44} New Energy next argues that the ETA invades the Commission's "responsibility for regulating public utilities" under Article XI, Section 2 of the New Mexico Constitution by purportedly eliminating the Commission's authority to review and disallow a public utility's energy transition costs for imprudence or unreasonableness. As we discussed in paragraph 27, *supra*, we do not reach the unripe question regarding the extent of the Commission's authority in the ratemaking proceedings contemplated by the ETA. See § 62-18-4(B)(10); § 62-18-5(F)(8). Yet, even if we were to accept New Energy's construction of the Act, we would still reject New Energy's separation of powers challenges.

{45} We once again emphasize that the Commission is constitutionally tasked with the "responsibility for regulating public utilities *as provided by law*." N.M. Const. art. XI, § 2 (emphasis added); *Egolf*, 2020-NMSC-018, ¶ 33 (quoting the 2012 amendment of Article XI, Section 2 of the New Mexico Constitution and noting that "[t]he Commission has a constitutional duty to regulate public utilities 'in such manner as the legislature shall provide'"). Thus, while the New Mexico Constitution delegates to the Commission the exclusive responsibility for carrying out public utility regulatory policy, the parameters of that policy are, in the first instance, for the Legislature to decide. See, e.g., *Egolf*, 2020-NMSC-018, ¶ 33 (explaining that the discretion to make or modify applicable law "is not within the discretion of the Commission and is instead a function of our Legislature"); *Sandel*, 1999-NMSC-019, ¶ 13 ("The nature and extent of the [Commission's] authority was defined by the Legislature when it enacted and amended the [New Mexico Public Utility Act]."); *City of Albuquerque v. N.M. Pub. Regul. Comm'n*, 2003-NMSC-028, ¶¶ 16-22, 134 N.M. 472, 79 P.3d 297 (discussing

the Commission's rulemaking authority as deriving from the Legislature); *accord Duquesne Light Co. v. Barasch*, 488 U.S. 299, 313 (1989) ("We have never doubted that state legislatures are competent bodies to set utility rates.").

{46} We do not mean to suggest that the Legislature's power to set rates or enact utility legislation is unbounded, as the legislation must still accord with the mandates of the Constitution. "But if the system fails to pass muster, it will not be because the legislature has performed part of the work." *Duquesne Light Co.*, 488 U.S. at 314. We must reject New Energy's separation of powers arguments under Article III, Section 1 and Article XI, Section 2 in light of this fundamental principle of constitutional law.

{47} New Energy also insists that the Legislature is constitutionally required to confer upon the Commission the authority to disallow, as imprudent, some or all of a utility's energy transition costs. We disagree. "The prudent investment theory provides that ratepayers are not to be charged for negligent, wasteful or improvident expenditures, or for the cost of management decisions which are not made in good faith." *In re Pub. Serv. Co. of N.M.*, 101 P.U.R. 4th 126 (1989). However, the prudent investment theory is but one of many accepted ratemaking methodologies, and we have repeatedly recognized that "[t]he Commission is not bound to the use of any single formula or combination of formulae in determining rates." *PNM v. PRC*, 2019-NMSC-012, ¶ 10 (brackets, internal quotation marks, and citation omitted); *accord Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 601-02 (1944) (recognizing that legislatures may regulate rates under their police powers and that legislatively enabled commissions are "not bound to the use of any single formula or combination of formulae in determining rates"). To the contrary, "[n]o one of the many formulas from time to time used to determine a rate base such as prudent investment . . . is imposed by the Constitution upon the [C]ommission for use in determining rates." *State Corp. Comm'n v. Mountain States Tel. & Tel. Co.*, 1954-NMSC-044, ¶ 19, 58 N.M. 260, 270 P.2d 685; *Duquesne Light Co.*, 488 U.S. at 316 ("The Constitution within broad limits leaves the States free to decide what ratesetting methodology best meets their needs in balancing the interests of the utility and the public.").

{48} We thus reject New Energy's assertion that the Legislature violated separation of powers by failing to explicitly provide for a prudence review under the ETA. As we discussed in paragraph 27, *supra*, we do not reach the unripe question whether such a review is statutorily authorized, but it is apparent that this review is not constitutionally required.

3. Whether the ETA affects rights in a pending case

{49} New Energy next argues that the ETA violates Article IV, Section 34 of the New Mexico Constitution because it affects the rights of energy consumers in a pending case. In support of this challenge, New Energy asserts that the ETA interferes with proceedings relating to San Juan, the Four Corners Generating Station (Four Corners), and the Palo Verde Nuclear Generating Station (Palo Verde). We disagree. {50} Article IV, Section 34 provides, "No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case." In *Egolf*, we concluded that the enactment of the ETA did not interfere with a "pending case" with respect to San Juan because "abandonment proceedings can only begin with a public utility's voluntary request for abandonment." 2020-NMSC-018, ¶¶ 20, 26. Given that conclusion, we see no violation of Article IV, Section 34 under the arguments New Energy presents here. The ETA permits "[a] qualifying utility that is abandoning a qualifying generating facility [to] apply to the [C]ommission for a financing order . . . to recover all of its energy transition costs through the issuance of energy transition bonds." Section 62-18-4(A). New Energy has not shown that PNM voluntarily initiated abandonment proceedings for either San Juan, Four Corners, or Palo Verde before the ETA's effective date of June 14, 2019.

{51} We also do not see any pending case with respect to the Commission's authority under NMSA 1978, Section 62-16-6(C) (2019) of the Renewable Energy Act. Section 62-16-6(C) authorizes the Commission to "require [a] facility to discontinue serving customers within New Mexico" in specified circumstances. New Energy argues that the ETA interferes with proceedings relating to PNM's non-coal-fired generating facilities, such as Palo Verde, because of the authority conferred by this statute. However, it does not appear that the Commission actually invoked its authority under Section 62-16-6(C) prior to the enactment of the ETA. Indeed, we note that the authority granted in Section 62-16-6(C) was first granted by the very same bill that enacted the ETA. See 2019 N.M. Laws, ch. 65, § 31 (amending Section 62-16-6 (2007) and adding the authority granted under Subsection (C)). We fail to see how proceedings relating to Section 62-16-6(C) could be characterized as "pending" at the time of the ETA's enactment.

{52} Thus, as in *Egolf*, we conclude that the ETA does not affect the rights or remedy of any party in a pending case. We therefore reject New Energy's challenge to the ETA under Article IV, Section 34 of the

New Mexico Constitution. Our decision in *Egolf*, 2020-NMSC-018, thoroughly and conclusively decided this issue. New Energy's undeveloped and unsupported assertion that this Court improperly decided *Egolf* has not convinced us to reconsider that opinion.

4. Whether the ETA impairs contractual or vested rights

{53} New Energy alleges that the ETA contravenes Article II, Section 19 of the New Mexico Constitution, which provides, "No ex post facto law, bill of attainder nor law impairing the obligation of contracts shall be enacted by the legislature." In support of this challenge, New Energy argues that the ETA impairs (1) the modified stipulation between PNM and the Commission with respect to San Juan, as referenced in *Egolf*, 2020-NMSC-018, ¶ 4; (2) a prior order of the Commission regarding Palo Verde, as reviewed by this Court in *PNM v. PRC*, 2019-NMSC-012; and (3) a decision by the Commission in Case No. 16-00276-UT to defer review of some issues related to Four Corners. New Energy asserts that energy consumers had contractual or vested rights in this stipulation and these Commission decisions and that the ETA improperly interferes with those rights. We disagree.

{54} As an initial step in our analysis under Article II, Section 19, we must determine whether energy consumers possessed either contractual or vested property rights that could have been impaired. See *Pierce v. State*, 1996-NMSC-001, ¶ 17, 121 N.M. 212, 910 P.2d 288 (noting that the "first inquiry in determining" whether a claimant has a cognizable contract clause claim is whether the claimant had "either contractual or vested rights"); see also *Whitely v. N.M. State Pers. Bd.*, 1993-NMSC-019, ¶ 9, 115 N.M. 308, 850 P.2d 1011 ("A prerequisite to a finding that a contract obligation is unconstitutionally impaired is proof of the existence of a contract, the benefits of which are somehow denied to the claimant due to the effect of legislation or other governmental action."). A vested right is defined as "the power to do certain actions or possess certain things lawfully," which "may be created either by common law, by statute, or by contract." *Rubalcava v. Garst*, 1949-NMSC-035, ¶ 10, 53 N.M. 295, 206 P.2d 1154 (internal quotation marks and citation omitted), *superseded in part and remanded for inclusion of indispensable parties*, 1952-NMSC-057, ¶¶ 10-11, 56 N.M. 647, 248 P.2d 207. Such vested rights, when created, are "protected from the invasion of the Legislature by those provisions in the Constitution which apply to such rights." *Rubalcava*, 1949-NMSC-035, ¶ 10.

{55} Vested rights, however, are “not synonymous with contractual rights.” *Pierce*, 1996-NMSC-001, ¶ 17. We note that the stipulation and Commission decisions that New Energy claims conferred contractual rights to consumers were made by the Commission pursuant to its authority under relevant provisions of the New Mexico Public Utility Act, NMSA 1978, §§ 62-1-1 to 62-6-28, 62-8-1 to 62-13-16 (1887, as amended through 2021); see § 62-3-3 (specifying “Chapter 62, Articles 1 to 6 and 8 to 13” as the “Public Utility Act”). We do not generally assume that statutes create private rights of a contractual nature, as “this Court presumes that the Legislature is implementing public policy when it enacts a statute, policy which it is free to change in the future.” *Bartlett v. Cameron*, 2014-NMSC-002, ¶ 19, 316 P.3d 889; see also *Pierce*, 1996-NMSC-001, ¶ 48 (“We presume that statutes establish current public policy subject to legislative revision rather than creating either contractual or vested rights.”). “To presume otherwise would upset the balance of the separation of powers, and affect the Legislature’s ability to respond to changing economic conditions.” *Bartlett*, 2014-NMSC-002, ¶ 19. Thus, “[c]ontractual rights are not created by statute unless the language of the statute and the circumstances . . . manifest a legislative intent to create private rights of a contractual nature enforceable against the State.” *Whitely*, 1993-NMSC-019, ¶ 10 (second alteration in original) (internal quotation marks and citation omitted). Accordingly, “[w]e will not infer a legislative intent to create private rights of a contractual nature enforceable against the State unless the legislative intent [to do so] is clearly and unambiguously stated.” *Pierce*, 1996-NMSC-001, ¶ 53 (internal quotation marks and citation omitted).

{56} New Energy has not shown that energy consumers possessed any cognizable contractual or vested rights in the referenced stipulation or Commission decisions for purposes of Article II, Section 19. New Energy does not identify with any clarity what part of the referenced stipulation or Commission decisions may have conferred contractual or vested rights to consumers. This Court will not scour the voluminous records of the Commission’s prior proceedings in an attempt to substantiate New Energy’s generalized contentions. See *State v. Torres*, 2005-NMCA-070, ¶ 34, 137 N.M. 607, 113 P.3d 877 (“[I]ssues not argued and supported by authority [are] deemed abandoned.”); Rule 12-318(A) NMRA.

{57} We also will not assume that the referenced stipulation or Commission decisions conferred contractual or vested rights to consumers. As we have discussed, paragraphs 33-34, *supra*, energy consumers generally do not possess rights

in utility property or a right to a fixed utility rate. *Mountain States Tel. & Tel.*, 1950-NMSC-055, ¶¶ 13-24; *Gas Co. v. PSC*, 1984-NMSC-002, ¶ 13. Further, we find no indication of a legislative intent to confer either contractual or vested rights to energy consumers in light of the arguments New Energy presents here. Even though we have recognized that Section 62-3-1 reflects energy consumers’ entitlement to “fair, just[,] and reasonable rates,” *ABC-WUA*, 2010-NMSC-013, ¶ 30, this statute does not clearly express an intent to confer contractual or vested rights to energy consumers. Rather, the Public Utility Act embodies the Legislature’s declared public policy regarding the availability of a public utility’s services. See § 62-3-1(B) (“It is the declared policy of the state that the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities . . .”). The stipulation and Commission decisions to which New Energy refers therefore were made upon statutes embodying current legislative policy with respect to the regulation of public utilities in New Mexico. This was policy that the Legislature was “free to change” by duly enacting the ETA. *Bartlett*, 2014-NMSC-002, ¶ 19.

{58} New Energy therefore has not shown that consumers possessed cognizable contractual or vested rights in any of the referenced stipulation or Commission orders, and we reject New Energy’s challenge under Article II, Section 19.

5. Whether the ETA is log-rolling or hodge-podge legislation

{59} New Energy argues next that the ETA violates the constitutional prohibition against log-rolling or hodge-podge legislation contained in Article IV, Section 16 of the New Mexico Constitution. We find little merit to these arguments.

{60} Article IV, Section 16 provides, in relevant part, “The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws.” “We have long held that the test of a statute’s constitutional validity under [Article IV,] Section 16 is whether the title fairly gives such reasonable notice of the subject matter of the statute itself as to prevent the mischief intended to be guarded against.” *U.S. Brewers Ass’n v. Dir. of N.M. Dept. of Alcoholic Beverage Control*, 1983-NMSC-059, ¶ 11, 100 N.M. 216, 668 P.2d 1093. “The mischief to be prevented [is] hodge-podge or log-rolling legislation, surprise or fraud on the legislature, or not fairly apprising the people of the subjects of legislation so that they would have no opportunity to be heard on the subject.” *Martinez v. Jaramillo*, 1974-NMSC-069, ¶ 9, 86 N.M. 506, 525 P.2d 866.

We are slow to deem the title of an act insufficient under Article IV, Section 16 as “[t]he objections should be grave, and the conflict between the statute and the constitution palpable.” *City of Albuquerque v. Garcia*, 1973-NMSC-036, ¶ 7, 84 N.M. 776, 508 P.2d 585 (internal quotation marks and citation omitted). We do not require the title to provide an index or table of contents of the enactment, and it is sufficient if the title “give[s] notice of the subject matter of the legislation and . . . if, applying every reasonable intendment in favor of its validity, it may be said that the subject of the legislative enactment is expressed in its title.” *Gallegos v. Wallace*, 1964-NMSC-224, ¶ 6, 74 N.M. 760, 398 P.2d 982, *overruled on other grounds by McGeehan v. Bunch*, 1975-NMSC-055, ¶¶ 25-26, 88 N.M. 308, 540 P.2d 238.

{61} New Energy argues that the ETA violates Article IV, Section 16 because the title of Senate Bill 489 does not fairly apprise the public that the Act essentially deregulates a public utility with respect to its energy transition costs. As noted previously, we do not necessarily agree with New Energy’s characterization of the deregulatory effect of the enactment. See paragraphs 26-28, *supra*. But even assuming, for the sake of argument, that this was the ETA’s effect, we conclude that the title of its bill gives reasonable notice of its subject.

{62} The ETA was enacted as one part of Senate Bill 489, a bill that contained several measures germane to New Mexico’s revised renewable portfolio standard. 2019 N.M. Laws, ch. 65. With respect to those portions describing the ETA, the title of Senate Bill 489 provides that it is

AN ACT RELATING TO PUBLIC UTILITIES; ENACTING THE ENERGY TRANSITION ACT; AUTHORIZING CERTAIN UTILITIES THAT ABANDON CERTAIN GENERATING FACILITIES TO ISSUE BONDS PURSUANT TO A FINANCING ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION; . . . PROVIDING FOR THE TREATMENT OF ENERGY TRANSITION BONDS BY THE COMMISSION; . . . PROVIDING FOR NONIMPAIRMENT OF ENERGY TRANSITION CHARGES AND BONDS . . .

2019 N.M. Laws, ch. 65. We conclude that the information in this title provides reasonable notice that the enactment relates to the regulation of public utilities and authorizes the Commission to approve a financing order allowing a public utility to issue bonds for the abandonment of certain generating facilities.

The title does not need to outline every detail of the Act, recite the mechanism for issuing the bonds, or index every cost so financed. We therefore deem the title of Senate Bill 489 sufficient under the circumstances and reject New Energy's challenge under Article IV, Section 16.

6. Whether the ETA amends other statutes by reference

{63} New Energy contends that the ETA improperly amends other sections of New Mexico public utility law "by reference to its title only," N.M. Const. Art. IV, § 18. We disagree with this contention.

{64} Article IV, Section 18 of the New Mexico Constitution provides, "No law shall be revised or amended, or the provisions thereof extended by reference to its title only; but each section thereof as revised, amended or extended shall be set out in full." The purpose of this constitutional provision is to prevent the Legislature from altering an existing statute without fully setting forth the statute thereby altered; Article IV, Section 18 does not prohibit the Legislature from referring to an existing statute or body of law, which is not altered, when enacting new legislation. *State v. Armstrong*, 1924-NMSC-089, ¶ 93, 31 N.M. 220, 243 P. 333 ("[T]his constitutional provision applies only to enactments whose purpose is to amend, extend, or enlarge the provisions of a former law or laws, and thereby change their operation and effect."). New Energy does not identify with any certainty any legislation that the ETA revises, amends, or extends without setting forth the provisions of the altered legislation in full.

{65} New Energy instead argues that various provisions of New Mexico public utility law regarding the Commission's authority are impliedly, "almost surreptitiously," repealed or amended through the ETA. However, this Court recognized in *State ex rel. Taylor v. Mirabal*, 1928-NMSC-056, ¶ 13, 33 N.M. 553, 273 P. 928, that Article IV, Section 18 does not prohibit the amendment or repeal of other statutes by mere implication. Also, "[r]epeals by implication are not favored." *T-N-T Taxi v. N.M. Pub. Regul. Comm'n*, 2006-NMSC-016, ¶ 7, 139 N.M. 550, 135 P.3d 814.

{66} Further, Article IV, Section 18 does not prohibit the Legislature from enacting a new law that "provide[s] an additional or alternative method" of taking authorized action. *State ex rel. State Park & Recreation Comm'n v. N.M. State Auth.*, 1966-NMSC-033, ¶ 45, 76 N.M. 1, 411 P.2d 984 (internal quotation marks and citation omitted).

We note, without specifically deciding, that it is possible to construe the provisions of the ETA as new legislation that exists either in harmony with or as an alternative to other provisions governing the Commission's authority to regulate a "public utility in respect to its rates and service regulations and in respect to its securities" Section 62-6-4(A). We therefore conclude that New Energy has not established that the ETA violates Article IV, Section 18.

7. Whether the ETA is unconstitutional special legislation

{67} New Energy's final constitutional challenge attacks the ETA under Article IV, Section 24 of the New Mexico Constitution, which prohibits special legislation "where a general law can be made applicable." New Energy asserts that the ETA is special legislation because only San Juan and Four Corners may qualify as a "qualifying generating facility" and that only PNM may qualify as a "qualifying utility" under the Act. Section 62-18-2(S), (T).

{68} However, the Constitution "does not exclude special legislation . . . when a law is required and general legislation cannot apply." *Thompson v. McKinley Cnty.*, 1991-NMSC-076, ¶ 4, 112 N.M. 425, 816 P.2d 494. "There is nothing in the Constitution which would invalidate a legislative act merely because it is special in character provided a local situation exists which under particular facts makes a general law inapplicable." *Albuquerque Metro. Arroyo Flood Control Auth. v. Swinburne*, 1964-NMSC-206, ¶ 6, 74 N.M. 487, 394 P.2d 998. In assessing the constitutionality of legislation under Article IV, Section 24, "we give great weight to the [L]egislature's classification: Only if a statutory classification is so devoid of reason to support it, as to amount to mere caprice, will it be stricken down." *Thompson*, 1991-NMSC-076, ¶ 4 (internal quotation marks and citation omitted). We are of the view that the classification drawn by the ETA is special, but is not "so devoid of reason" that the classification "amount[s] to mere caprice." *Id.* Although the language of the ETA is general, in practice the Act only applies to a limited class of public utilities abandoning coal-fired generating facilities in New Mexico. Given the unique nature of the class and issues involved, the Legislature could reasonably conclude that the circumstances surrounding a public utility's abandonment of its coal-fired generating facilities are of such a special character that a general law could not be made to apply. We therefore reject this constitutional challenge to the ETA and

turn to the sole error that New Energy alleges in the Commission's final order.

C. Statutory and Factual Dispute about Section 62-18-4(B)(5)

{69} New Energy challenges the Commission's finding that PNM provided "a memorandum . . . from a securities firm . . . that the proposed issuance satisfies the current published AAA rating." Section 62-18-4(B)(5). New Energy points out that the memorandum PNM provided in satisfaction of this requirement was authored by a senior advisor at Guggenheim Securities, LLC, and contained a boilerplate disclaimer suggesting that "[t]he views expressed herein are solely those of the author(s) and may differ from the views of other Representatives of Guggenheim Securities." The Commission accepted this memorandum in satisfaction of the statutory requirement, despite the existence of this disclaimer.

{70} New Energy suggests that this finding was in error, as the memorandum so provided was authored by an employee of a securities firm and not authored by the firm itself. The Commission disputes this claim of error, noting that the senior advisor consistently testified that he was authorized to represent Guggenheim in the proceedings and that he was acting within the scope of his authority.

{71} We conclude that the Commission's finding that this memorandum satisfied the requirements of Section 62-18-4(B)(5) is based upon a reasonable interpretation of the statute and is supported by substantial evidence in the record. In light of the whole record on this issue, the Commission reasonably found that the senior advisor possessed actual or apparent authority to speak on behalf of the securities firm. *Cf. Diversified Dev. & Inv., Inc. v. Heil*, 1995-NMSC-005, ¶¶ 29, 31, 119 N.M. 290, 889 P.2d 1212 (reviewing the requirements for an agent's actual or apparent authority to speak on behalf of a principal). We therefore reject New Energy's challenge and affirm the Commission's final order on the claim of error so presented.

V. CONCLUSION

{72} In view of the foregoing, we reject New Energy's constitutional challenges to the ETA on the issues we reach herein, and we affirm the final order of the Commission granting PNM's application for a financing order in connection with its abandonment of San Juan Units One and Four.

{73} IT IS SO ORDERED.

DAVID K. THOMSON, Justice
WE CONCUR:

MICHAEL E. VIGIL, Chief Justice
C. SHANNON BACON, Justice
JULIE J. VARGAS, Justice

Advance Opinions

From the New Mexico Supreme Court and Court of Appeals

From the New Mexico Supreme Court

Opinion Number: 2022-NMSC-011

No: S-1-SC-37320 (filed February 9, 2022)

RESOLUTE WIND 1 LLC,
Appellant,
v.
NEW MEXICO PUBLIC
REGULATION COMMISSION,
Appellee,
and
LEA COUNTY ELECTRIC COOPERATIVE, INC., and
WESTERN FARMERS ELECTRIC COOPERATIVE, INC.,
Intervenors-Appellees.

In the Matter of the Formal
Complaint of Resolute Wind 1
Against Lea County Electric
Cooperative, Inc. Case No. 18-00211-UT

APPEAL FROM THE NEW MEXICO PUBLIC REGULATION COMMISSION

Released for Publication March 29, 2022.

Jason Marks Law, LLC
Jason A. Marks
Albuquerque, NM

for Appellant

Judith Ellen Amer
Associate General Counsel
Santa Fe, NM

for Appellee

Newell Law Firm, LLC
Michael T. Newell
Lovington, NM

for Intervenor-Appellee Lea County
Electric Cooperative, Inc.

The Law Office of
Jamison Barkley, LLC
Jamison Barkley
Santa Fe, NM

for Intervenor-Appellee Western
Farmers Electric Cooperative, Inc.

Charles F. Noble
Santa Fe, NM

for Amicus Curiae Coalition for Clean
Affordable Energy

Earthjustice
Sara Gersen
Los Angeles, CA

Robin L. Cooley
Denver, CO

David C. Bender
Madison, WI

for Amici Curiae Vote Solar, Sierra
Club, Coalition for Clean Affordable
Energy

Virtue & Najjar, PC
Daniel A. Najjar
Carla Rossana Najjar
Santa Fe, NM

for Amicus Curiae New Mexico Rural
Electric Cooperative Association

OPINION

VIGIL, Chief Justice.

{1} This appeal turns on a familiar and straightforward legal principle: contested proceedings—whether judicial or, as in this case, administrative—are not susceptible to summary disposition in the face of disputed issues of material fact. The New Mexico Public Regulation Commission (the Commission) ignored this blackletter principle when it summarily dismissed the complaint brought by Resolute Wind 1 LLC (Resolute Wind). The Commission’s summary dismissal violated the procedural due process rights of Resolute Wind and was at a minimum arbitrary, capricious, or an abuse of discretion.

{2} The Commission also erred in relying on a federal agency’s determination in an earlier, unrelated matter to dismiss the complaint.

{3} The Commission’s procedural and substantive missteps, whether considered separately or together, require us to annul and vacate the final order appealed from and remand the matter to the Commission for further proceedings so as to afford all parties an opportunity to present evidence in support of their respective positions. In view of this result, and as Resolute Wind readily acknowledges, it is not necessary to address the merits of the federal compliance issue Resolute Wind also raises on appeal. Nor, by extension, is it necessary to consider any jurisdictional implications that the compliance issue might create.

I. BACKGROUND

{4} The outcome of the underlying administrative proceeding ultimately may turn on the proper interpretation and application of various federal and New Mexico statutes and regulations, all highly technical in nature. Because our determination of the distinct and narrow issues outlined above is sufficient to dispose of the present appeal, a full description of the statutory and regulatory frameworks is unnecessary. Instead, we offer a glimpse of the basic aspects of those provisions that govern the dispositive issues and briefly summarize the factual and procedural backdrop of the case to give context to the Commission’s rulings.

A. Relevant Statutory and Regulatory Frameworks

{5} This case arises under the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended at 16 U.S.C. §§ 2601-2645).

PURPA was designed “to encourage the development of cogeneration and small power production facilities” in order to diversify the nation’s energy sources and thereby “reduce the demand for traditional fossil fuels.” *Fed. Energy Regul. Comm’n v. Mississippi*, 456 U.S. 742, 750-51 (1982). “Cogeneration facilities capture otherwise-wasted heat and turn it into thermal energy; small power-production facilities produce energy (fewer than 80 megawatts) primarily by using ‘biomass, waste, renewable resources, geothermal resources, or any combination thereof.’” *Portland Gen. Elec. Co. v. Fed. Energy Regul. Comm’n*, 854 F.3d 692, 695 (D.C. Cir. 2017) (quoting 16 U.S.C. § 796(17)). PURPA designates both cogeneration and small power facilities as “qualifying facilities,” and “[S]ection 210(a) of PURPA direct[s] the Federal Energy Regulatory Commission (‘FERC’) to promulgate rules mandating that electric utilities purchase energy from [qualifying facilities].” *Allco Renewable Energy, Ltd. v. Mass. Elec. Co.*, 875 F.3d 64, 67 (1st Cir. 2017). Those FERC regulations are codified at 18 C.F.R. §§ 292.101-292.602 (2018)¹. Under 18 C.F.R. § 292.303(a), an electric utility is required to purchase “any energy and capacity which is made available from a qualifying facility.” We refer to this as the *mandatory purchase obligation*.

{6} The mandatory purchase obligation is not absolute. Two exceptions are applicable in this case. First, an electric utility may transfer its mandatory purchase obligation to another electric utility which serves as the transferring utility’s *full- or all-requirements supplier*. See 18 C.F.R. § 292.303(d). However, for such a transfer to be effective, the qualifying facility must consent. See *id.* (requiring that the “qualifying facility agrees”); Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of [PURPA], 45 Fed. Reg. 12,214, 12,235 (Feb. 25, 1980) (stating that such “an all-requirements” transfer is permissible “if the qualifying facility consents”). Second, an electric utility may apply to FERC for a waiver of the mandatory purchase requirement. See 18 C.F.R. § 292.402(a). However, the utility must provide public notice that it is seeking the waiver. *Id.*

{7} On the state level, the Commission has promulgated and adopted a counterpart transfer regulation giving a “distribution cooperative having a full power requirements contract with its supplier . . . the option of transferring the purchase obligation . . . to its power supplier.” 17.9.570.13(F) (1) NMAC (Rule 570). Unlike the FERC transfer provision set out in 18 C.F.R. § 292.303(d), the Commission’s rule does not by its terms require a qualifying facility’s

consent to transfer the purchase obligation. See Rule 570.

{8} PURPA requires the rate at which the utility purchases a qualifying facility’s power to “be just and reasonable to the [customers] of the electric utility” and bars FERC from prescribing a rate that “exceeds the incremental cost to the electric utility of alternative electric energy.” 16 U.S.C. § 824a-3(b). PURPA defines the term *incremental cost of alternative electric energy* as “the cost to the electric utility of the electric energy which, but for the purchase from [the] small power producer, such utility would generate or purchase from another source.” Section 824a-3(d). In adopting its rules to implement PURPA, FERC substituted the term “avoided costs” for the term “incremental cost” that Congress chose. See *Sierra Club v. Pub. Serv. Comm’n of W. Va.*, 827 S.E.2d 224, 228 (W. Va. 2019) (internal quotation marks omitted) (recognizing that costs “incremental” and “avoided” are synonymous (internal quotation marks omitted)). Stated simply, a utility’s avoided cost “is the cost [the] utility would otherwise incur in obtaining the same quantity of electricity from a different source.” *In re Investigation to Review the Avoided Costs That Serve as Prices for the Standard-Offer Program in 2020, 2021* VT 28, ¶ 5, 254 A.3d 178.

B. Factual Background and Commission Proceedings

{9} Intervenor-Appellee Western Farmers Electric Cooperative, Inc. (Western Farmers Electric) “is a cooperative association engaged in the wholesale generation[,] . . . transmission[,] and distribution of electric power to its member rural electric cooperatives[,] which then provide retail electric service to the public.” Intervenor-Appellee Lea County Electric Cooperative, Inc. (Lea County Electric) “is a rural electric cooperative organized pursuant to the New Mexico Rural Electric Cooperative Act,” NMSA 1978, §§ 62-15-1 to -37 (1939, as amended through 2021), which provides energy to retail customers in Southeastern New Mexico and West Texas. Lea County Electric does not have electrical generation sources of its own and must obtain its electrical power and energy from another source, such as Western Farmers Electric.

{10} The case commenced with Resolute Wind filing a petition for declaratory order and a supporting brief with the Commission. The petition was supported by an affidavit attesting to the facts alleged. Resolute Wind contended it is a “qualifying facility” under PURPA and asked the Commission to enter its order, “after notice and hearing,” (1) declaring that Lea County Electric is obligated under PURPA to purchase the energy and capacity that Resolute Wind produces and

(2) determining the proper avoided costs Lea County Electric is required to pay Resolute Wind for its energy and capacity.

{11} Resolute Wind alleged that it purchased “a two megawatt (2MW) wind turbine located in Gaines County, Texas, within 400 feet of the border with Lea County,” New Mexico, which has been certified as a “qualifying facility” by FERC. Resolute Wind contended that Lea County Electric is obligated under PURPA to purchase the energy and capacity that Resolute Wind produces, asserting that the wind turbine is within Lea County Electric’s service territory and is interconnected to Lea County Electric’s service system.

{12} The dispute arose, according to the petition, when Resolute Wind asked Lea County Electric to fulfill the mandatory PURPA purchase obligation and Lea County Electric asserted it had transferred its mandatory PURPA purchase obligation to Western Farmers Electric, one of Lea County Electric’s wholesale suppliers. Resolute Wind contended as follows: (1) Federal regulations allowed Lea County Electric to transfer its purchase obligation, but only with Resolute Wind’s consent, and Resolute Wind had not consented to any transfer. (2) FERC had not granted Lea County Electric a waiver of its purchase obligation. (3) While Rule 570 purports to allow a transfer of Lea County Electric’s purchase obligation if Lea County Electric had a “full-requirements contract” with a supplier, Lea County Electric did not have a “full-requirements contract” with Western Farmers Electric or any other supplier. (4) Even if Lea County Electric had a “full power requirements contract” with a supplier, it could not transfer the purchase obligation pursuant to Rule 570 because Rule 570 conflicts with the federal requirements of 18 C.F.R. § 292.303, which gives the *qualifying facility* (Resolute Wind) the right to approve a transfer, while Rule 570 gives the option to the *utility* (Lea County Electric), and because federal law preempts Rule 570. (5) The parties disputed whether the avoided cost of either Lea County Electric or Western Farmers Electric applied and the method for calculating the avoided cost.

{13} The Commission determined that it would process the Resolute Wind filing “as a complaint, subject to the formal complaint process set forth in [its] Rules of Procedure 1.2.2.13 and 1.2.2.15 [NMAC]” and not as a petition for a declaratory order.

{14} Lea County Electric and Western Farmers Electric (collectively, the Utilities) filed a joint answer. They contended the Commission should dismiss the complaint because “the [c]omplaint failed to provide probable cause for the Commission to pursue the [c]omplaint.”

¹ Although the Code of Federal Regulations is updated annually, this opinion cites the version of the regulations in effect at the time of the order at issue.

In support of this contention, the Utilities denied that Lea County Electric is obligated by PURPA to purchase the energy and capacity that Resolute Wind produces because, they asserted, the obligation was transferred to Lea County Electric's "all-requirements provider" Western Farmers Electric. In response to Resolute Wind's specific contentions, the Utilities (1) denied that Lea County Electric could not transfer its PURPA obligation without Resolute Wind's consent, (2) agreed that FERC had not granted Lea County Electric a waiver of the purchase obligation, (3) affirmatively alleged that Lea County Electric has a full-requirements contract with Western Farmers Electric, (4) denied that PURPA preempts Rule 570, and (5) agreed that the parties dispute whether the avoided cost of either Lea County Electric or Western Farmers Electric applies and the method for calculating the avoided cost.²

{15} On its own initiative and without any input from the parties, the Commission ordered the Utilities to file "a sworn affidavit with supporting documents that testify to and prove" the answer's assertions that Lea County Electric "has a 'full requirements' contract with Western Farmers Electric" and that "Resolute [Wind] is required to negotiate a [purchase power agreement] with [Western Farmers Electric]." Resolute Wind moved for rehearing, strongly objecting to the agency's adoption of a procedure that allowed its opposing parties the opportunity, in effect, to augment their answer by submitting additional or stronger factual support "as dispositive" of the proceeding and asserting that "under the circumstances" and "at a minimum" it was "entitled to pursue discovery" on any new facts presented by the Utilities so as to avoid "hav[ing] the matter prejudged by the Commission."

{16} Consistent with the Commission's order inviting the Utilities to "testify to and prove" their defense of the case on paper, the Utilities filed two affidavits—one submitted by an officer of Lea County Electric and the other submitted by an officer of Western Farmers Electric. The affidavits, each confined to two pages and in virtually identical form, attested to the status of Lea County Electric as a full-requirements member of Western Farmers Electric. To support that contention, the affidavits relied heavily on various contractual agreements entered into by the Utilities—among the earliest

documents being a Transition Agreement dated March 24, 2010 that called for the phased transition of Lea County Electric to full-requirements status by May 31, 2026. With little elaboration, the affiants averred in lockstep that the Utilities by their actions accelerated the transition period well ahead of the stated May 2026 contractual deadline and that the status of Lea County Electric as a full-requirements member of Western Farmers Electric actually came to fruition no later than May 2014.

{17} Following receipt of the affidavits of the Utilities and without soliciting a response from Resolute Wind, the Commission issued its final order, which dismissed the complaint with prejudice. The Commission's summary disposition was based on a finding that the affidavits and supporting documentation submitted at the Commission's own request constituted substantial evidence that Lea County Electric is a full-requirements member of Western Farmers Electric and that the power purchase contract entered into by the Utilities on March 24, 2010, carried with it an existing and enforceable full-requirements obligation on the part of Lea County Electric to purchase all of its electric power from Western Farmers Electric.

{18} In addition, in its final order, the Commission relied on a FERC ruling dating back to June 2006 that granted Western Farmers Electric and its then eighteen-member full-requirements electric distribution cooperatives a waiver of their respective obligations to sell electric power to and purchase electric power from qualifying facilities. Lea County Electric was, conspicuously, not included in this group of cooperatives. See *Western Farmers Elec. Coop.*, 115 FERC ¶ 61,323, at 62,149 & n.1, 62,150 (2006) (order).

{19} Thus, and despite the undeveloped nature of the factual record, the Commission determined that Western Farmers Electric owes the mandatory PURPA purchase obligation to Resolute Wind at the avoided cost of Western Farmers Electric and not at the avoided cost of Lea County Electric. The Commission concluded that the Resolute Wind complaint "lacks probable cause" and dismissed the complaint with prejudice. Resolute Wind appeals, and as explained next, we annul and vacate the Commission's final order and remand the case to the Commission for further proceedings.

II. DISCUSSION

A. Standard of Review

{20} Resolute Wind, as the party appealing from the Commission's final order, has the burden "to show that the order appealed from is unreasonable, or unlawful." NMSA 1978, § 62-11-4 (1965). "[T]he appropriate inquiry in determining whether an order of the [C]ommission is unreasonable or unlawful is whether the [C]ommission's decision was arbitrary and capricious, unsupported by substantial evidence, or an abuse of the agency's discretion." *Att'y Gen. of N.M. v. N.M. Pub. Util. Comm'n*, 2000-NMSC-008, ¶ 3, 128 N.M. 747, 998 P.2d 1198. As to questions of fact, "we view the evidence in the light most favorable to the [Commission's] decision, [but] we will uphold the decision only if it is supported by substantial evidence." *Albuquerque Bernalillo Cnty. Water Util. Auth. v. N.M. Pub. Regul. Comm'n (ABC-WUA)*, 2010-NMSC-013, ¶ 18, 148 N.M. 21, 229 P.3d 494.

B. The Erroneous Procedure Followed by the Commission in Summarily Resolving the Disputed Full-Requirements Issue

{21} As outlined above, the Commission improperly adopted its own methodology for summarily resolving a hotly contested factual issue: whether Western Farmers Electric is a full-requirements provider of all the power needs of Lea County Electric. The summary fact-finding approach fashioned by the Commission—giving controlling weight to the follow-up affidavits submitted by the Utilities at the Commission's own directive, while implicitly rejecting the competing allegations set out in the verified complaint—represents a clear departure from evidence-weighting principles traditionally applied in contested administrative proceedings. See 1 Kristin E. Hickman & Richard J. Pierce, Jr., *Administrative Law Treatise*, § 6.2.3, at 693 (6th ed. 2019) (recognizing that an administrative hearing is required "to resolve a contested issue of adjudicative fact—as opposed to an issue of policy or of legislative fact—[at least] when credibility is an issue"); Ernest Gellhorn & William F. Robinson, Jr., *Summary Judgment in Administrative Adjudication*, 84 Harv. L. Rev. 612, 630-31 (1971) (endorsing the use of summary judgment in administrative proceedings, at least when "evidentiary facts are undisputed [and] a hearing serves no purpose").

² As stated at the outset of this opinion, and as Resolute Wind candidly concedes, the federal compliance issue created by the absence of an express consent requirement from Rule 570 need not be resolved in this appeal. The issue takes on relevance if, and only if, it is ultimately determined on remand that a full-requirements contractual supply relationship exists between the Utilities. It necessarily follows that the nuanced question as to whether this Court has jurisdiction to decide the federal compliance issue need not now be addressed either. Cf. *In re Investigation to Review the Avoided Costs That Serve as Prices for the Standard-Offer Program in 2020*, 2021 VT 28, ¶¶ 25-30, 254 A.3d 178 (discussing the distinct jurisdictional paths pertinent to "as-applied" challenges to a state regulatory agency's application of PURPA-compliant regulations to an individual petitioner—a state court path—and pertinent to "a broad facial challenge to [state] regulations themselves" as PURPA noncompliant—a federal court path).

And, more specifically, the Commission's summary resolution of the full-requirements issue appears out of step with FERC rulings that signal the need for a hearing when disputed issues arise in the context of this type of inquiry. See, e.g., *W. Tex. Utils. Co.*, 25 FERC ¶ 61,114, at 61,345-46, 61,348 (1983) (ordering a public hearing on the "justness and reasonableness" of a utility's rates and proposed definitional changes that raised "significant issues" relating to "full requirements customers whose loads are partially supplied by cogenerators or small power producers"); *Wis. Pub. Serv. Corp.*, 24 FERC ¶ 61,304, at 61,656 (1983) (ordering a public hearing on, among other issues, "the rates, terms, and conditions of [a utility's] full requirements service").

{22} In practical terms, the procedure followed by the Commission gave the Utilities the last and decisive word on the all-important factual issue concerning the full-requirements relationship—or lack thereof—between the Utilities.

{23} In evaluating the Commission's action, we are mindful of the deference generally accorded both a public utility agency's management of its own proceedings, see *Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regul. Comm'n*, 2015-NMSC-013, ¶ 24, 347 P.3d 274, and the agency's treatment of procedural matters, see *City of Gillette v. FERC*, 737 F.2d 883, 884-85 (10th Cir. 1984). However, we also subscribe to the view that "when [procedural] matters fall outside the norm, experience teaches us to exercise a healthy dose of caution and circumspection." *ABCWUA*, 2010-NMSC-013, ¶ 99 (Bosson, J., dissenting). Considering the unconventional fact-finding course followed by the Commission in this case, the need for judicial "caution and circumspection" on appeal is imperative. See *id.*

{24} With appropriate caution in mind, we cannot say that the problems created by the summary fact-finding procedure employed by the Commission—allowing no means for Resolute Wind to counter the follow-up affidavits from the Utilities—are trifling matters; to the contrary, the problems reach constitutional proportions. The procedural path taken by the Commission plainly violated an essential element of the procedural due process rights of Resolute Wind: the opportunity to be heard. See *TW Telecom of N.M., L.L.C. v. N.M. Pub. Regul. Comm'n*, 2011-NMSC-029, ¶ 17, 150 N.M. 12, 256 P.3d 24 (recognizing that "the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense" (internal quotation marks and citation omitted)). Despite the law's command that an opportunity to be heard in an adminis-

trative matter be granted "at a meaningful time and in a meaningful manner," *id.* (internal quotation marks and citation omitted), the due process rights of Resolute Wind were violated when it was precluded altogether from presenting evidence and developing a record on the disputed full-requirements issue. See *id.* ¶¶ 1, 20-21 (concluding that the Commission's denial of "the opportunity to present evidence and to examine and cross-examine witnesses" or to otherwise "ma[ke] a record" constituted a violation of the appellant's due process rights).

{25} This is not a situation where an administrative agency sets an expedited, but ultimately manageable, procedural schedule limiting discovery. See *ABCWUA*, 2010-NMSC-013, ¶¶ 27, 31 (rejecting a procedural due process challenge to an expedited procedural schedule imposed by the Commission, where the agency twice "extend[ed] the time period in which [appellants] were required to file their responsive testimony"). Instead, it is a situation where a party is denied outright any and all opportunities to conduct discovery or otherwise develop the record on a disputed factual issue. And because the procedural prohibitions imposed by the Commission against Resolute Wind were absolute, not relative, the inherently flexible nature of due process does not assist the Commission here. Cf. *ABCWUA*, 2010-NMSC-013, ¶ 28 (noting as a general proposition that "due process is flexible in nature and may adhere to such requisite procedural protections as the particular situation demands" (internal quotation marks and citation omitted)).

{26} Analyzed from a different perspective, the peremptory fact-finding process imposed by the Commission was—at a minimum—arbitrary, capricious, or an abuse of discretion. The Commission's action constituted an abuse of discretion because, among other infirmities, it was "not in accord with legal procedure," see *Bernalillo Cnty. Health Care Corp. v. N.M. Pub. Regul. Comm'n*, 2014-NMSC-008, ¶ 9, 319 P.3d 1284 (internal quotation marks and citation omitted), and it was arbitrary and capricious because it lacked a rational basis and was not the product of reasoned decision-making. See *N.M. Att'y Gen. v. N.M. Pub. Regul. Comm'n*, 2013-NMSC-042, ¶ 10, 309 P.3d 89 (stating that an agency decision "is arbitrary and capricious if it is unreasonable or without a rational basis, when viewed in light of the whole record"); see also *Pub. Serv. Comm'n of N.Y. v. FERC*, 813 F.2d 448, 451 (D.C. Cir. 1987) (defining reasoned decision-making in the utility ratemaking context as "a process demonstrating the connection between

the facts found and the choice made"). Nor can it be said that the Commission's decision was supported by substantial evidence, which, in the context of this appeal, "is evidence that a reasonable mind would regard as adequate to support a conclusion." *Doña Ana Mut. Domestic Water Consumers Ass'n v. N.M. Pub. Regul. Comm'n*, 2006-NMSC-032, ¶ 11, 140 N.M. 6, 139 P.3d 166 (internal quotation marks and citation omitted). {27} In the final analysis, the Commission's one-sided procedural approach failed to comport with traditional notions of fairness, mandating that we vacate and annul the final order under review here. See *NMSA 1978*, § 62-11-5 (1982) (authorizing this Court to "either affirm or annul and vacate" a Commission order but not to modify it).

{28} Having concluded that the Commission's adjudication of the full-requirements issue was fundamentally flawed from a procedural perspective, we need not and do not address the substantive aspects of the Commission's full-requirements ruling. To be clear, in remanding the matter for further proceedings, we express no view on the merits of the full-requirements arguments of Resolute Wind or responses to them from the Utilities.

C. The Commission's Invocation of FERC Waiver Principles

{29} In dismissing the complaint, the Commission's apparent reliance on waiver principles was also arbitrary, capricious, or an abuse of discretion, thus providing an independent basis on which to annul and vacate the agency's final order.

{30} The Utilities readily acknowledged in their joint answer to the complaint of Resolute Wind that neither has availed itself of the opportunity to apply for a FERC waiver of any qualifying facility purchase or sale obligation in connection with the energy produced by the Resolute Wind turbine facility. Because FERC has not yet passed judgment on the waiver issue, the Utilities may not assert any entitlement to the benefits of a formal, favorable FERC waiver determination. See *Indep. Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 853-54 (9th Cir. 1994) (recognizing that FERC regulations under PURPA carry out congressional intent that FERC "exercise exclusive authority over [qualifying facility] status determinations," including determinations involving the waiver of compliance with qualifying facility standards, and the regulations nowhere "contemplate a role for the state in setting [qualifying facility] standards or determining [qualifying facility] status").

{31} But even if the Commission had a role to play in this arena, nothing in its analysis supports, much less compels, a dismissal of the complaint. This conclusion certainly applies to the Commission's heavy but seemingly misplaced reliance on the previously mentioned 2006 FERC order granting Western Farmers Electric and some of its then member cooperatives a waiver of their respective sales and purchase obligations under PURPA. See *Western Farmers Elec. Coop.*, 115 FERC ¶ 61,323. The dismissal can be taken—as counsel for Resolute Wind puts it—as the “conjuring of a FERC waiver order from thin air.” Granted, the decision issued in the cited case appears to reflect the willingness of FERC, in appropriate circumstances, to view favorably the “requests for waiver submitted by generation and transmission cooperatives (G&Ts) seeking waiver of the G&T's sale obligations and waiver of the member distribution cooperatives' purchase obligations.” *Id.* at 62,152. But the FERC decision also

made clear that the grant of a G&T waiver request is not available just for the asking and instead hinges on a particularized showing that adherence to the mandatory PURPA purchase and sales obligations is “not necessary to encourage cogeneration and small power production” in a particular situation or service area. *Id.* at 62,150, 62,152; see 18 C.F.R. § 292.402(b). Indeed, the FERC decision in that case was quick to point out that it had denied, within the preceding three-year period, a waiver request from another G&T located in a different service area when presented with different circumstances. *Western Farmers Elec. Coop.*, 115 FERC ¶ 61,323, at 62,152 & n.9. Thus, the FERC approach therein seems consistent with the type of individualized, case-specific treatment of qualifying facility waiver requests that forms a common thread throughout the relevant case law. See, e.g., *City of Fremont v. FERC*, 336 F.3d 910, 918 (9th Cir. 2003) (recognizing that FERC waiver decisions are “necessarily exercises of discretion

in light of the facts and equities in the particular cases”); *Greensboro Lumber Co. v. FERC*, 825 F.2d 518, 523 (D.C. Cir. 1987) (noting that FERC waiver analyses require “case-by-case determinations” that are “carefully crafted to fit particular circumstances”).

{32} For the reasons set forth herein, the Commission acted unreasonably or unlawfully to the extent that it relied on favorable treatment by FERC of the 2006 waiver application of Western Farmers Electric as a basis on which to dismiss the complaint.

III. CONCLUSION

{33} Based on the foregoing, we annul and vacate the final order appealed from and remand this case to the Commission for further proceedings in accordance with this opinion.

{34} **IT IS SO ORDERED.**

MICHAEL E. VIGIL, Chief Justice
WE CONCUR:
C. SHANNON BACON, Justice
DAVID K. THOMSON, Justice

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JGA is seeking an attorney, licensed/good standing in NM with at least 3 years of experience in Family Law, Probate, and Civil Litigation. We are an equal opportunity employer and do not tolerate discrimination against anyone. All replies will be maintained as confidential. Please send cover letter, resume, and a references to: jay@jaygoodman.com. All replies will be kept confidential.

Managing Attorney (FT – At-Will)

#00054444

Civil Division

The Second Judicial District Court, Civil Court is accepting applications for an At-Will Managing Attorney. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and eight (8) years of experience in the practice of civil law, of which four years must have been as a supervisor. The Managing Attorney will be responsible for overseeing the operations and administration of the Civil Division. Responsibilities include, but are not limited to, overseeing information provided to the Presiding Judge on behalf of the Civil Division; implement and oversee substantive procedural matters and judicial operations at the direction of the Presiding Judge; legal research and analysis; prepares reports, memoranda and orders; legislative analysis; analyze reports and data and interpret trends or patterns; serve as a subject matter expert; supervise four or more staff; and work with ten judicial officers, court personnel, the Administrative Office of the Courts, and the Supreme Court. Target Range: \$92,556 - \$113,125 annually, plus benefits. Send application or resume supplemental form, proof of education and a writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSSES: August 1, 2022, at 5:00 p.m.

Attorney Opportunities Available in West Texas

Cotton Bledsoe Tighe & Dawson, P.C., is a well-known law firm in Midland, Texas, one of the leading energy centers of the Southwest. Cotton Bledsoe is highly regarded both by the oil and gas industry and among other law firms in Texas and surrounding states. Known particularly for our expertise in oil and gas transactions and oil and gas litigation, we also provide exceptional legal representation in the following areas: Commercial Litigation; Insurance Defense Litigation; Labor and Employment Law; Probate and Estate Planning; Business and Entity Law Cotton Bledsoe is currently seeking associate and of counsel attorneys to join our litigation section. Successful candidates must be self-starters, team players, and capable of handling projects with minimal supervision. Cotton Bledsoe prides itself on being a family oriented law firm and believes in a strong work/life balance. Salary commensurate with experience. For additional information, please visit our website at www.cottonbledsoe.com or email bwrantham@cbtd.com.

Managing Attorney (FT - At-Will)

#00049341

Children's Court

The Second Judicial District Court, Children's Court Division is accepting applications for an At-Will Managing Attorney. Qualifications: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the State of New Mexico and eight (8) years of experience in the practice of children's court matters, of which four years must have been as a supervisor. The Managing Attorney will be responsible for overseeing the operations and administration of the Children's Court Division. Responsibilities include, but are not limited to, overseeing information provided to the Presiding Judge on behalf of the Children's Court; implement and oversee substantive procedural matters and judicial operations at the direction of the Presiding Judge; legal research and analysis; prepares reports, memoranda and orders; legislative analysis; analyze reports and data and interpret trends or patterns; serve as a subject matter expert; supervise four or more staff; and work with ten judicial officers, court personnel, the Administrative Office of the Courts, and the Supreme Court. Target Range: \$92,556 - \$113,125 annually, plus benefits. Send application or resume supplemental form, proof of education and a writing sample to the Second Judicial District Court, Human Resource Office, P.O. Box 488 (400 Lomas Blvd. NW), Albuquerque, NM, 87102. Application and resume supplemental form may be obtained on the Judicial Branch web page at www.nmcourts.gov. CLOSSES: August 1, 2022, at 5:00 p.m.

Entry Level and Experienced Trial Attorney Positions

The Thirteenth Judicial District Attorney's Office is seeking both entry level and experienced trial attorneys. Positions available in Sandoval, Valencia, and Cibola Counties. Enjoy the convenience of working near a metropolitan area while gaining valuable trial experience in a smaller office, providing the opportunity to advance more quickly than is afforded in larger offices. Salary commensurate with experience. Contact Krissy Fajardo @ kfajardo@da.state.nm.us or visit our website for an application @ <https://www.13th.nmdas.com/> Apply as soon as possible. These positions will fill up fast!

Associate Attorney

Law Offices of Lynda Latta, LLC seeks associate attorney for fast paced law firm specializing in family law and criminal misdemeanor defense. Excellent computer and communication skills, ability to multitask and being a good team player are all required. Pay DOE. Send resume via mail: Attn. Holly English @ 715 Tijeras Ave. NW, 87102 or email: holly@lyndalatta.com

Various Assistant City Attorney Positions

The City of Albuquerque Legal Department is hiring for various Assistant City Attorney positions. The Legal Department's team of attorneys provides a broad range of legal services to the City, as well as represent the City in legal proceedings before state, federal and administrative bodies. The legal services provided may include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and negotiating contracts, litigating matters, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Current open positions include: Assistant City Attorney – Employment/Labor; Assistant City Attorney – Litigation (Tort/Civil Rights); Assistant City Attorney – Municipal Affairs; Assistant City Attorney – Property and Finance. For more information or to apply please go to www.cabq.gov/jobs. Please include a resume and writing sample with your application.

Assistant Compliance Officer Speridian Technologies

Reporting to and coordinating with the Chief Legal Officer, the Assistant Compliance Officer will develop and maintain company-wide compliance programs, policies, and procedures, in multiple areas including corporate governance, HR, data security, data privacy, consumer privacy, HIPAA, health care, and insurance agent/broker licensing and compliance; and will develop and maintain standardized contract templates and perform other compliance-related duties as requested, with minimal supervision. Company offers a competitive salary and benefits package, with the ability to work remotely on a flexible, hybrid basis, with home office in New Mexico. A degree in a relevant field and/or a combination of relevant compliance certifications and experience will be considered. Knowledge of compliance practices and procedures, and the ability to develop compliance modules in relevant legal and regulatory areas. At least 2 years' recent, relevant experience is required. Excellent analytical, problem-solving, and verbal and written communication skills are required. Experience in IT company compliance is a plus. To apply, send cover letter and resume to: SGC Law, PO Box 424, Albuquerque NM 87102-0424

Deputy General Counsel – Office of the State Engineer

The Office of the State Engineer's Litigation and Adjudication Program seeks to hire a Deputy General Counsel. Stewardship of New Mexico's water resources is one of the most critical challenges facing the state in an era of climate change, and we are looking for dedicated leaders who can bring creative thinking to the role. This position will work closely with the General Counsel and the managing attorneys who oversee litigation in the State Engineer's administrative Hearing Unit on behalf of the Water Rights Division, as well as cases in district courts, the Court of Appeals, and the Supreme Court. This position also provides legal counsel to the Office of the State Engineer. Additional duties include providing support to the agency on legislative initiatives, assisting with rule-making, and working with stakeholders to resolve water disputes in a collaborative fashion. Candidates must have extensive civil litigation experience, including first-chair trial experience and experience with complex litigation. Administrative law and water/natural resources law experience are preferred. Candidates should be excellent legal writers. They should also have strong communication and interpersonal skills and be able to work collaboratively with multiple programs within the Office of the State Engineer. Management experience in a government agency is also a plus. Interested candidates can apply at <https://www.spo.state.nm.us/>. Please include a cover letter and writing sample with your application.

Attorney Senior

The Bernalillo County Metropolitan Court is accepting applications for a full-time Attorney Senior position in the Office of General Counsel. Education/Experience: Must be a graduate of a law school meeting the standards of accreditation of the American Bar Association; possess and maintain a license to practice law in the state of New Mexico; and have at least five years' experience in the practice of law. Salary: \$30,995 to \$50,367 hourly DOE plus State of NM benefits package. A complete copy of the job description is available at <https://metro.nmcourts.gov/> or may be obtained in the Human Resource office of the Metropolitan Court. Apply at or send application/resume with a legal writing sample to the Bernalillo County Metropolitan Court, H. R. Division, 401 Lomas NW, Albuquerque, NM 87102. Applications/Resume must be submitted by August 5, 2022.

Environmental, Safety, Health and Regulatory Counsel at Sandia National Laboratories

Environmental, Safety, Health and Regulatory Counsel at Sandia National Laboratories Are you a licensed Attorney who has Environmental, Safety, and Health legal experience? Do you want to join a diverse team that advises on challenging issues of national interest? At Sandia National Laboratories, you will provide environmental, safety, health, and other regulatory legal advice to enable Sandia to comply with laws and regulations while addressing the nation's most pressing national security needs. To apply, please visit <https://sandia.jobs/> and search Job ID "684013."

Assistant City Attorney/Aviation Department

The City of Albuquerque Legal Department is hiring an Assistant City Attorney for the Municipal Affairs Division—Aviation Department. The Legal Department's team of attorneys provides a broad range of general counsel legal services to the City. This specific position will focus on representation of the City's interests with respect to Aviation Department legal issues and regulatory compliance. The position will be responsible for interaction with Aviation Department administration, the Albuquerque Police Department, various other City departments, boards, commissions, and agencies, and various state and federal agencies, including the Federal Aviation Administration and the Transportation Security Administration. The legal services provided will include, but will not be limited to, legal research, drafting legal opinions, reviewing and drafting policies, ordinances, and executive/administrative instructions, reviewing and drafting permits, easements, real estate contracts and procurement contracts and negotiating same, serving as records custodian for the Aviation Department, providing counsel on Inspection of Public Records Act requests and other open government issues, providing advice on City ordinances and State/Federal statutes and regulations, litigating matters as needed, and providing general advice and counsel on day-to-day operations. Attention to detail and strong writing and interpersonal skills are essential. Preferences include: Five (5)+ years' experience as licensed attorney; experience with government agencies, government compliance, real estate, contracts, and policy writing. Aviation background is not essential, but any experience with aviation/airports will be considered. Candidates must be an active member of the State Bar of New Mexico in good standing. Salary will be based upon experience. Please apply on line at www.cabq.gov/jobs and include a resume and writing sample with your application.

New Mexico Compilation Commission ("NMCC")

Notice of Request for Proposals

Request for Proposals ("RFP") Number: 2022-02-0001. TITLE: New Mexico Compilation Commission Lawyer Editor RFP. PURPOSE: The purpose of the RFP is to procure the professional services of a lawyer editor for the New Mexico Statutes Annotated 1978*, New Mexico Rules Annotated, appellate court opinions, NMOneSource.com, and other NMCC publications. Qualifications include a minimum of five (5) years of New Mexico legislative writing experience, 15 years of experience as an attorney in New Mexico and proficiency in electronic legal research. The work commitment ranges from 20 to 30 hours per week. GENERAL INFORMATION: All questions about the contents of the RFP document shall be directed to the Procurement Manager in email to: Wendy Loomis, Procurement Manager, New Mexico Compilation Commission, wendy.loomis@nmcompcomm.us. ISSUANCE: The RFP will issue on August 1, 2022. Firms interested in obtaining a copy may request the RFP from the Procurement Manager. PROPOSAL DUE DATE AND TIME: Proposals must be received by the Procurement Manager no later than 3:00 p.m. Mountain Daylight Savings Time on August 8, 2022. Proposals may be submitted to the Procurement Manager by email and/or may be addressed to the Procurement Manager at the New Mexico Compilation Commission, 4355 Center Place, Santa Fe, NM 87507-9706. Proposals received after the due date and time will not be accepted.

Insurance Contract Manager - Hybrid

Insurance Contract Manager needed for immediate employment to provide management of all payor contracts for all lines of business including approximately 200 active contracts. Degree in business administration, 7-10 years of medical contracting experience in areas of medical practice contracting through Medicare Plans, Medicaid Plans, VA and IHS Governmental Medical Services Contracting, Commercial Health Coverage Plans, Vision Coverage Plans, Optical Durable Goods Contracts, and Ambulatory Surgery Center Contracting. Legal/paralegal experience including the ability to interpret contracts may be substituted for medical contracting experience. Ability to work remotely but must live in the Albuquerque metro area. Eye Associates of New Mexico, voted Top Work Places in 2022, 2020 and 2019, is the largest privately-held Ophthalmology and Optometry practice in the Southwest. We serve our communities with compassionate, state-of-the-art and valued-based care, and offer generous benefits and competitive salaries. Please apply at <https://www.eyenm.com/careers/>

Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys

The Third Judicial District Attorney's Office in Las Cruces is seeking a Deputy District Attorney, Senior Trial Attorneys, Trial Attorneys, and Assistant Trial Attorneys. You will enjoy the convenience of working in a metropolitan area while gaining valuable trial experience alongside experienced Attorney's. Please see the full position descriptions on our website <http://donaanacountyda.com/> Submit Cover Letter, Resume, and references to Whitney Safranek, Human Resources Administrator at wsafranek@da.state.nm.us

City Attorney

The City of Cottonwood, Arizona is seeking applicants to be its next City Attorney. The salary range for the City Attorney is \$124,032 - \$186,048, depending on experience and education. This position is exempt, benefit eligible, and serves at the will of the City Council under contract. This position is eligible for reimbursement up to \$5,000 in qualified moving expenses and a phone allowance of \$960 annually, paid bi-weekly. Requirements for this position are a Juris Doctor degree from a school of law accredited by the American Bar Association and at least five (5) years of progressively responsible experience practicing law including significant experience in the field of municipal/public law, or an equivalent combination of education and professional legal experience to meet the position requirements. The incumbent must be licensed to practice law in the State of Arizona and be in good standing with the Arizona State Bar Association, or licensed in a state with reciprocal admission and have the ability to be admitted to the Arizona State Bar by motion. For more information, see our flyer, job description, benefit packet, and website. Position closes August 31, 2022. To apply, Please e-mail your one document submission (word or pdf) that contains a cover letter, resume, and salary history to awilber@cottonwoodaz.gov.

Assistant General Counsel

Location: Pueblo of Sandia, NM. Main Duties: Under the general supervision of the In-house General Counsel, the Assistant General Counsel is a key member of the Pueblo's legal team. The Assistant General Counsel's responsibilities will cover a variety of legal matters that would typically confront a tribal general counsel's office, including: providing a diverse range of legal advice to the Pueblo and its economic enterprises; performing high level legal research and analysis in various areas of law and policy; and serving as the primary legal contact for the Pueblo's enterprises on contract matters, subject to the direction and oversight of the General Counsel. A background in Indian law is required, without exception. Closing Date: 9/1/2022 or until position filled. Website Link to apply: www.sandiacasino.com/careers

Legal Assistant

Legal Assistant with minimum of 3- 5 years' experience for established commercial civil litigation firm. Requirements include current working knowledge of State and Federal District Court rules and filing procedures, calendaring, trial preparation, document and case management; ability to monitor, organize and distribute large volumes of information; proficient in MS Office, AdobePro, Powerpoint and adept at learning and use of electronic databases and legal-use software; has excellent clerical, computer, and word processing skills. Competitive Benefits. If you are highly skilled, pay attention to detail & enjoy working with a team, email resume to e_info@abrfirm.com or Fax to 505-764-8374.

Paralegal

Robles, Rael & Anaya, P.C. is seeking an experienced paralegal for its civil defense and local government practice. Firm primarily represents governmental entities. Practice involves complex litigation, civil rights defense, and general civil representation. Ideal candidate will have 1-4 years litigation experience. Competitive salary and benefits. Inquiries will be kept confidential. Please e-mail a letter of interest and resume to chelsea@roblesrael.com.

Legal Secretary

The City of Albuquerque Legal Department (Litigation Division) is seeking a Legal Secretary to assist assigned attorneys in performing a variety of legal secretarial/administrative duties, which include but are not limited to: preparing and reviewing legal documents; creating and maintaining case files; calendaring; provide information and assistance, within an area of assignment, to the general public, other departments and governmental agencies. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Paralegal

Personal Injury/Civil litigation firm in the Journal Center area is seeking a Paralegal with minimum of 5+ years' experience, including current working knowledge of State and Federal District Court rules and filing procedures, trial preparation, document and case management, calendaring, and online research, is technologically adept and familiar with use of electronic databases and legal-use software. Qualified candidates must be organized and detail-oriented, with excellent computer and word processing skills and the ability to multi-task and work independently. Experience in summarizing medical records is a plus. Salary commensurate with experience. Please send resume with references and a writing sample to paralegal3.bleuslaw@gmail.com

Paralegal

The City of Albuquerque Legal Department is seeking a Paralegal to assist an assigned attorney or attorneys in performing substantive administrative legal work from time of inception through resolution and perform a variety of paralegal duties, including, but not limited to, performing legal research, managing legal documents, assisting in the preparation of matters for hearing or trial, preparing discovery, drafting pleadings, setting up and maintaining a calendar with deadlines, and other matters as assigned. Excellent organization skills and the ability to multitask are necessary. Must be a team player with the willingness and ability to share responsibilities or work independently. Starting salary is \$21.31 per hour during an initial, proscribed probationary period. Upon successful completion of the proscribed probationary period, the salary will increase to \$22.36 per hour. Competitive benefits provided and available on first day of employment. Please apply at <https://www.governmentjobs.com/careers/cabq>.

Legal Assistant/Paralegal

Santa Fe law firm, whose attorneys primarily practice in medical malpractice and personal injury, is accepting resumes for a legal assistant/paralegal position. Candidate must possess excellent organizational skills, demonstrate initiative, resourcefulness and flexibility. The ability to work in a fast-paced environment, multi task and assess priorities is a must. Responsible for calendaring. High school diploma or equivalent and a minimum of three years' experience as a legal assistant or paralegal in litigation is preferred. Proficiency in Microsoft Office products and electronic filing. Paralegal skills a plus. Competitive salary dependent on experience. Send resume to lee@huntlaw.com and cynthia@huntlaw.com.

Experienced Legal Secretary

Peifer, Hanson, Mullins & Baker, P.A. is hiring a full time experienced legal secretary. The successful candidate must be a detail-oriented team player with strong organization and motivational skills. Salary DOE. Profit-sharing, health insurance, three weeks leave first year, and overtime available. Please send resume, references and salary requirements to Shannon Hidalgo, Firm Administrator, P.O. Box 25245, Albuquerque, NM 87125 or via email shidalgo@peiferlaw.com. No phone calls please.

Paralegal

Peifer, Hanson, Mullins & Baker, P.A., is seeking an experienced commercial litigation paralegal. The successful candidate must be a detail-oriented, team player with strong organizational and writing skills. Experience in database and document management preferred. Please send resume, references and salary requirements via email to Shannon Hidalgo at shidalgo@peiferlaw.com.

Office Space

Santa Fe Office Space

Single office in professional suite with conference rooms. Share with three other attorneys. Quiet setting in converted residential structure. Walking distance to the Plaza. \$380/month + utilities. info@tierralaw.com

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virtual mail, virtual telephone reception service, hourly offices and conference rooms available. Witness and notary services. Office Alternatives provides the infrastructure for attorney practices so you can lower your overhead and appear more professional. 505-796-9600/ officealternatives.com.

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Conveniently located in the North Valley with easy access to I-25, Paseo Del Norte, and Montano. Quick access to Downtown Courthouses. Our all-inclusive, move-in ready executive suites provide simplicity with short term and long-term lease options. Our fully furnished suites offer the best in class amenities, ideal for a small law firm. Visit our website www.sunvalleyabq.com for more details or call Jaclyn Armijo at 505-343-2016.

2022 Bar Bulletin Publishing and Submission Schedule

The Bar Bulletin publishes twice a month on the second and fourth Wednesday. Advertising submission deadlines are also on Wednesdays, three weeks prior to publishing by 4 pm.

Advertising will be accepted for publication in the *Bar Bulletin* in accordance with standards and ad rates set by publisher and subject to the availability of space. No guarantees can be given as to advertising publication dates or placement although every effort will be made to comply with publication request. The publisher reserves the right to review and edit ads, to request that an ad be revised prior to publication or to reject any ad. **Cancellations must be received by 10 a.m. on Thursday, three weeks prior to publication.**

**For more advertising information, contact:
Marcia C. Ulibarri at 505-797-6058 or
email marcia.ulibarri@sbnm.org**

The publication schedule can be found at
www.sbnm.org

Help New Mexico Wildfire Victims

In partnership with the **Federal Emergency Management Agency** and the **American Bar Association's Disaster Legal Services Program**, the **State Bar of New Mexico Young Lawyers Division** is preparing legal resources and assistance for survivors of the New Mexico wildfires.

A free legal aid hotline is available and we need volunteers!

Individuals who qualify for assistance will be matched with New Mexico Lawyers to provide free, limited legal help.

- › Assistance with securing FEMA and other benefits available to disaster survivors
- › Assistance with life, medical, and property insurance claims
- › Help with home repair contracts and contractors
- › Replacement of important legal documents destroyed in the disaster
- › Assistance with consumer protection matters, remedies, and procedures
- › Counseling on landlord/tenant and mortgage/foreclosure problems

Volunteer Expectations

Volunteers do not need extensive experience in any of the areas listed below. FEMA will provide basic training for frequently asked questions. This training will be required for all volunteers. We hope volunteers will be able to commit approximately one hour per week.

Visit www.sbnm.org/wildfirehelp to sign up.
You can also contact Lauren E. Riley, ABA YLD District 23,
at 505-246-0500 or lauren@batleyfamilylaw.com.



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Young Lawyers Division

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