



IN THE  
TENTH COURT OF APPEALS

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No. 10-20-00121-CV

IN RE TEXAS-NEW MEXICO POWER COMPANY

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**Original Proceeding**

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**MEMORANDUM OPINION**

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Texas-New Mexico Power Company has filed a petition for a writ of mandamus asking this Court to order the trial court to withdraw its “Order Denying Dismissal and Order to Abate” and to further order the trial court to grant TNMP’s motion to dismiss the trial court proceeding for want of jurisdiction. Because we agree that the trial court should have dismissed the proceeding rather than abating it, we conditionally grant relief.

This is the second time that this issue has been brought before us. The Real Parties in Interest, the Faubions, originally filed a proceeding in the trial court seeking damages

against TNMP for damage to their home that they contend occurred because of the negligence and other bad acts of TNMP. The Faubions did not seek administrative relief before the Public Utilities Commission prior to filing that suit. In a prior proceeding in this Court, we granted relief to TNMP and ordered that the proceeding be dismissed until all administrative remedies had been exhausted in the PUC. *See In re Texas-New Mexico Power Co.*, No. 10-19-00166-CV, 2019 WL 3822274, 2019 Tex. App. LEXIS 7131 (Tex. App.—Waco Aug. 14, 2019). The Faubions have now filed proceedings with the PUC which are presently pending. During the pendency of those proceedings, the Faubions also refiled their pleadings with the trial court seeking the same relief as in the original suit. TNMP filed a motion to dismiss the second suit until the proceedings before the PUC are completed. The Faubions asked the trial court to not dismiss but to abate the proceeding until the PUC proceedings have concluded. The trial court denied TNMP's motion and granted the abatement.

While we recognize that similar issues regarding the exclusive jurisdiction of the Public Utilities Commission are presently pending before the Texas Supreme Court, this Court has previously ruled on this issue and at this time, we have found no compelling reason to alter our previous position that the PUC has exclusive jurisdiction over this proceeding and until the administrative remedies have been exhausted, the trial court does not have jurisdiction over this controversy. *See In re Texas New Mexico Power Company*, 579 S.W.3d 784 (Tex. App.—Houston [1st] pet. granted 6/12/2020); *In re Oncor*

*Electric Delivery Co., Inc.*, No. 05-19-00288-CV, 2019 WL 3296974, 2019 Tex. App. LEXIS 6272 (Tex. App.—Dallas July 23, 2019 pet. granted 6/12/20); *In re CenterPoint Energy Houston Electric, Inc.*, No. 01-19-00478-CV, 2019 Tex. App. WL 3783110, 2019 Tex. App. LEXIS 7078 (Tex. App.—Houston [1st] Aug. 13, 2019 pet. granted 6/12/2020). The trial court should have granted the motion to dismiss filed by TNMP.

Relying on our analysis of this issue in the previous proceeding involving these parties, we find that TNMP is entitled to relief. We conditionally grant the writ and order the trial court to withdraw its order entitled “Order Denying Dismissal and Order to Abate” and to enter an order dismissing the trial court proceedings within twenty-eight (28) days of this Opinion.

TOM GRAY  
Chief Justice

Before Chief Justice Gray,  
Justice Davis, and  
Justice Neill  
Writ conditionally granted  
Opinion delivered and filed July 20, 2020  
OT06

