

1 HOUSE BILL 637

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Georgene Louis

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10 AN ACT

11 RELATING TO PUBLIC UTILITIES; CREATING A PRESUMPTION OF LIMITED  
12 USEFUL LIFE FOR CERTAIN NEW ELECTRICAL GENERATING PLANTS.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 62-9-1 NMSA 1978 (being Laws 1941,  
16 Chapter 84, Section 46, as amended) is amended to read:

17 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

18 A. No public utility shall begin the construction  
19 or operation of any public utility plant or system or of any  
20 extension of any plant or system without first obtaining from  
21 the commission a certificate that public convenience and  
22 necessity require or will require such construction or  
23 operation. This section does not require a public utility to  
24 secure a certificate for an extension within any municipality  
25 or district within which it lawfully commenced operations

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1 before June 13, 1941 or for an extension within or to territory  
2 already served by it, necessary in the ordinary course of its  
3 business, or for an extension into territory contiguous to that  
4 already occupied by it and that is not receiving similar  
5 service from another utility. If any public utility or mutual  
6 domestic water consumer association in constructing or  
7 extending its line, plant or system unreasonably interferes or  
8 is about to unreasonably interfere with the service or system  
9 of any other public utility or mutual domestic water consumer  
10 association rendering the same type of service, the commission,  
11 on complaint of the public utility or mutual domestic water  
12 consumer association claiming to be injuriously affected, may,  
13 upon and pursuant to the applicable procedure provided in  
14 Chapter 62, Article 10 NMSA 1978, and after giving due regard  
15 to public convenience and necessity, including reasonable  
16 service agreements between the utilities, make an order and  
17 prescribe just and reasonable terms and conditions in harmony  
18 with the Public Utility Act to provide for the construction,  
19 development and extension, without unnecessary duplication and  
20 economic waste.

21 B. If a certificate of public convenience and  
22 necessity is required pursuant to this section for the  
23 construction or extension of a generating plant or transmission  
24 lines and associated facilities, a public utility may include  
25 in the application for the certificate a request that the

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1 commission determine the ratemaking principles and treatment  
2 that will be applicable for the facilities that are the subject  
3 of the application for the certificate. If such a request is  
4 made, the commission shall, in the order granting the  
5 certificate, set forth the ratemaking principles and treatment  
6 that will be applicable to the public utility's stake in the  
7 certified facilities in all ratemaking proceedings on and after  
8 such time as the facilities are placed in service. The  
9 commission shall use the ratemaking principles and treatment  
10 specified in the order in all proceedings in which the cost of  
11 the public utility's stake in the certified facilities is  
12 considered. If the commission later decertifies the  
13 facilities, the commission shall apply the ratemaking  
14 principles and treatment specified in the original  
15 certification order to the costs associated with the facilities  
16 that were incurred by the public utility prior to  
17 decertification.

18 C. The commission may approve the application for  
19 the certificate without a formal hearing if no protest is filed  
20 within sixty days of the date that notice is given, pursuant to  
21 commission order, that the application has been filed. The  
22 commission shall issue its order granting or denying the  
23 application within nine months from the date the application is  
24 filed with the commission. Failure to issue its order within  
25 nine months is deemed to be approval and final disposition of

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1 the application; provided, however, that the commission may  
2 extend the time for granting approval for an additional six  
3 months for good cause shown.

4 D. As used in this section, "mutual domestic water  
5 consumer association" means an association created and  
6 organized pursuant to the provisions of:

7 (1) Laws 1947, Chapter 206; Laws 1949, Chapter  
8 79; or Laws 1951, Chapter 52; or

9 (2) the Sanitary Projects Act.

10 E. In determining whether the public convenience  
11 and necessity require or will require construction or operation  
12 of an electrical generation plant by a public utility on or  
13 after July 1, 2019, the commission shall deem that the useful  
14 life of any plant designed to emit five hundred pounds or more  
15 of carbon dioxide into the atmosphere for every megawatt-hour  
16 of electricity produced shall end no later than December 31,  
17 2039. Approval of construction of a plant designed to emit  
18 five hundred pounds or more of carbon dioxide into the  
19 atmosphere for every megawatt-hour of electricity produced  
20 pursuant to this section shall not be interpreted to prevent  
21 the commission from subsequently determining, prior to December  
22 31, 2039, that such plant is no longer used and useful, or that  
23 the commission shall be required to use December 31, 2039 as  
24 the end of the plant's useful life for ratemaking purposes. As  
25 used in this subsection, "operation" of an electrical

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1 generation plant by a public utility shall include any  
2 contractual arrangement by which the output of such plant is  
3 committed to the service of the public utility's customers for  
4 a period of ten years or longer."

5 SECTION 2. EFFECTIVE DATE.--The effective date of the  
6 provisions of this act is July 1, 2019.

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