

1 SENATE BILL 155

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO PUBLIC UTILITIES; REINSTATING REGULATORY AUTHORITY
12 OVER PUBLIC UTILITIES FOR PLANT ABANDONMENT COSTS TO PROTECT
13 RATEPAYERS; AMENDING A SECTION OF THE RENEWABLE ENERGY ACT
14 PERTAINING TO COST RECOVERY; AMENDING THE ENERGY TRANSITION
15 ACT; PROVIDING ADDITIONAL REQUIREMENTS FOR APPROVAL OF A
16 FINANCING ORDER; CONFORMING FINANCING ORDER APPEAL AND
17 REHEARING FILING DEADLINES WITH COURT RULES.

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

20 SECTION 1. Section 62-16-6 NMSA 1978 (being Laws 2004,
21 Chapter 65, Section 6, as amended) is amended to read:

22 "62-16-6. COST RECOVERY FOR RENEWABLE ENERGY AND
23 EMISSIONS REDUCTION.--

24 A. A public utility that procures or generates
25 renewable energy shall recover, through the rate-making

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1 process, the reasonable costs of complying with the renewable
2 portfolio standard. Costs that are consistent with commission
3 approval of procurement plans or transitional procurement plans
4 shall be deemed to be reasonable.

5 B. The commission shall not exclude from such cost
6 recovery reasonable interconnection and transmission costs and
7 costs to comply with electric industry reliability standards
8 incurred by the public utility in order to deliver renewable
9 energy to retail New Mexico customers.

10 C. If a public utility has been granted a
11 certificate of public convenience and necessity prior to
12 January 1, 2015 to construct or operate an electric generation
13 facility and the investment in that facility has been allowed
14 recovery as part of the utility's rate-base, the commission may
15 require the facility to discontinue serving customers within
16 New Mexico if the replacement has less or zero carbon dioxide
17 emissions into the atmosphere [~~provided that no order of the~~
18 ~~commission shall disallow recovery of any undepreciated~~
19 ~~investments or decommissioning costs associated with the~~
20 ~~facility]."~~

21 SECTION 2. Section 62-18-5 NMSA 1978 (being Laws 2019,
22 Chapter 65, Section 5) is amended to read:

23 "62-18-5. FINANCING ORDER--ISSUANCE--TERMS OF BONDS--
24 REPORTS TO COMMISSION OF DISBURSEMENT OF BOND PROCEEDS--REVIEW
25 AND AUDIT OF RECORDS.--

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1 A. The commission may approve an application for a
2 financing order without a formal hearing if no protest
3 establishing good cause for a formal hearing is filed within
4 thirty days of the date when notice is given of the filing of
5 the application for the financing order. If a hearing is held,
6 the commission shall issue an order granting or denying the
7 application for the financing order to a qualifying utility
8 that is abandoning a qualifying generating facility and an
9 order on an accompanying application of the qualifying utility
10 for approval to abandon the qualifying generating facility
11 within six months from the date the application for the
12 financing order is filed with the commission. For good cause
13 shown, the commission may extend the time for issuing the order
14 for an additional three months.

15 B. Failure to issue an order approving the
16 application or advising of the application's noncompliance
17 pursuant to Subsection E of this section within the time
18 prescribed by Subsection A of this section shall be deemed
19 approval of the application for a financing order and approval
20 to abandon the qualifying generating facility, if abandonment
21 approval was requested as part of the application for the
22 financing order pursuant to this subsection. The commission
23 shall issue an order acknowledging the deemed approvals within
24 seven days of the expiration of the time period described in
25 Subsection A of this section.

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1 C. If an application for a financing order is
2 accompanied by a request for approval of new resources, this
3 section provides an alternative time frame to that provided in
4 Subsection C of Section 62-9-1 NMSA 1978, and the time frame
5 specified in this section shall govern, unless the request has
6 been deferred to a separate proceeding pursuant to Subsection D
7 of Section ~~[4 of the Energy Transition Act]~~ 62-18-4 NMSA 1978.

8 D. The issuance of a financing order shall be the
9 only approval required for the authority granted in the
10 financing order.

11 E. The commission ~~[shall]~~ may issue a financing
12 order approving the application if the commission finds that:

13 (1) the qualifying utility's application for
14 the financing order complies with the requirements of Section
15 ~~[4 of the Energy Transition Act]~~ 62-18-4 NMSA 1978. If the
16 commission finds that a qualifying utility's application does
17 not comply with Section ~~[4 of the Energy Transition Act]~~
18 62-18-4 NMSA 1978, the commission ~~[shall]~~ may advise the
19 qualifying utility of any changes necessary to comply with that
20 section and provide the applicant an opportunity to amend the
21 application to make such changes; ~~[Upon those changes being~~
22 ~~made, the commission shall issue a financing order approving~~
23 ~~the application]~~ and

24 (2) recovery of energy transition costs by the
25 qualifying utility through the issuance of energy transition

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1 bonds provides tangible and quantifiable benefits to ratepayers
2 greater than would be achieved absent the issuance of energy
3 transition bonds; the assets and investments at issue were
4 prudently incurred; the amount of energy transition costs
5 requested fairly balances the interests of investors and
6 consumers; approval of the application will result in rates
7 that are fair, just and reasonable; and approval of the
8 application is in the public interest. If the commission
9 determines, after hearing, that it is necessary to modify or
10 adjust the energy transition costs requested in order to meet
11 the requirements of this paragraph and uphold consumer
12 protections, the commission shall make those changes to the
13 requested amount before the financing order is issued.

14 F. A financing order shall include the following
15 provisions:

16 (1) approval for the qualifying utility or
17 assignee to issue energy transition bonds as requested in the
18 application, to use energy transition bonds to finance the
19 maximum amount of the energy transition costs as requested in
20 the application, as may be adjusted pursuant to Paragraph (6)
21 of Subsection B of Section [~~4 of the Energy Transition Act~~]
22 62-18-4 NMSA 1978, and to use the proceeds provided in
23 Subsection A of Section [~~10 of the Energy Transition Act~~]
24 62-18-10 NMSA 1978;

25 (2) approval for the qualifying utility to

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1 recover the energy transition costs, as may be adjusted
2 pursuant to Paragraph (6) of Subsection B of Section [~~4 of the~~
3 ~~Energy Transition Act~~] 62-18-4 NMSA 1978, requested in the
4 application through energy transition charges;

5 (3) approval of the energy transition charges
6 necessary to recover the authorized energy transition costs, to
7 be imposed through a non-bypassable energy transition charge as
8 a separate line item on the qualifying utility's customer
9 bills, assessed consistent with energy and demand cost
10 allocations within each customer class, subject to update
11 pursuant to the notice filing contemplated by Paragraph (6) of
12 Subsection B of Section [~~4 of the Energy Transition Act~~]
13 62-18-4 NMSA 1978 and subject to the application of the
14 adjustment mechanism as provided in Section [~~6 of the Energy~~
15 ~~Transition Act~~] 62-18-6 NMSA 1978, until the energy transition
16 bonds issued pursuant to the financing order and the financing
17 costs related to those bonds are paid in full;

18 (4) approval of the adjustment mechanism in
19 compliance with Section [~~6 of the Energy Transition Act~~]
20 62-18-6 NMSA 1978;

21 (5) a description of the energy transition
22 property that is created by the financing order that may be
23 used to pay, and secure the payment of, the energy transition
24 bonds and financing costs authorized to be issued in the
25 financing order;

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1 (6) approval to enter into necessary or
2 appropriate ancillary agreements;

3 (7) approval of any plans for selling,
4 assigning, transferring or conveying, other than as a security,
5 an interest in energy transition property; and

6 (8) approval of the proposed ratemaking
7 process and method included in the application pursuant to
8 Paragraphs (10) and (11) of Subsection B of Section [~~4 of the~~
9 ~~Energy Transition Act~~] 62-18-4 NMSA 1978.

10 G. A financing order shall provide that the
11 creation of energy transition property shall be simultaneous
12 with the sale of the energy transition property to an assignee
13 as provided in the application and the pledge of the energy
14 transition property to secure energy transition bonds.

15 H. A financing order shall authorize the qualifying
16 utility to issue one or more series of energy transition bonds
17 for a scheduled final maturity of no more than twenty-five
18 years for each series; provided that a rated final maturity may
19 exceed twenty-five years. With such authorization, the
20 qualifying utility shall not subsequently be required to secure
21 a separate financing order prior to each issuance.

22 I. The commission may require, as a condition of
23 the financing order and in every circumstance subject to the
24 limitations set forth in Subsection A of Section [~~7 of the~~
25 ~~Energy Transition Act~~] 62-18-7 NMSA 1978, that, during any

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1 period in which energy transition bonds issued pursuant to the
2 financing order are outstanding, an assignee that is a non-
3 utility affiliate and issues energy transition bonds shall
4 provide in the affiliate's articles of incorporation,
5 partnership agreement or operating agreement, as applicable,
6 that in order for a person to file a voluntary bankruptcy
7 petition on behalf of that assignee, the prior unanimous
8 consent of the directors, partners, managers or members, as
9 applicable, shall be required. Any such provision shall
10 constitute a legal, valid and binding agreement of such
11 shareholders, partners or members of the assignee and is
12 enforceable against such shareholders, partners or members.

13 J. A financing order may require the qualifying
14 utility to file with the commission a periodic report showing
15 the receipt and disbursement of proceeds of energy transition
16 bonds and any other documents necessary for the qualifying
17 utility to implement the financing order. Upon issuance of the
18 energy transition bonds, the qualifying utility shall file an
19 advice notice with the commission, subject to review by the
20 commission for errors and corrections, that identifies the
21 actual energy transition charges to be included on customers'
22 bills, effective fifteen days from the date the advice notice
23 is filed.

24 K. A financing order may authorize the commission
25 to review and audit the books and records of the qualifying

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1 utility and of an assignee that is a non-utility affiliate and
2 issues energy transition bonds, relating to energy transition
3 property and the receipt and disbursement of proceeds of energy
4 transition bonds.

5 L. After review and approval by the department of
6 finance and administration with regard to reasonableness of
7 contracts for services, a financing order may authorize the
8 commission to impose a fee on the qualifying utility to pay
9 commission expenses for contract bond counsel accredited by a
10 nationally recognized association of bond lawyers to provide
11 advice and assistance to commission staff in reviewing an
12 application for a financing order and the structure and
13 marketing of the proposed energy transition bonds.

14 M. The provisions of this section shall not be
15 construed to limit the authority of the commission to:

16 (1) investigate the practices of or to audit
17 the books and records of a qualifying utility; ~~[or]~~

18 (2) issue such further orders as may be
19 necessary to effectuate the provisions of the Energy Transition
20 Act; or

21 (3) exercise the commission's plenary
22 jurisdiction over rates or limit a qualifying utility's
23 recovery of reasonable costs."

24 SECTION 3. Section 62-18-8 NMSA 1978 (being Laws 2019,
25 Chapter 65, Section 8) is amended to read:

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1 "62-18-8. AGGRIEVED PARTIES--REQUEST FOR REHEARING--
2 JUDICIAL REVIEW.--

3 A. A financing order shall be issued as a separate
4 order from any other order issued by the commission on a
5 requested approval in the application proceeding and is a final
6 order of the commission. A party aggrieved by the issuance of
7 a financing order may apply to the commission for a rehearing
8 in accordance with Section 62-10-16 NMSA 1978; provided that
9 such application shall be due no later than ~~[ten]~~ thirty
10 calendar days after issuance of the financing order. An
11 application for rehearing shall be deemed denied if not acted
12 upon by the commission within ~~[ten]~~ twenty calendar days after
13 the filing of the application.

14 B. An aggrieved party may file a notice of appeal
15 with the supreme court in accordance with Section 62-11-1 NMSA
16 1978; provided that such notice shall be due no later than
17 ~~[ten]~~ thirty calendar days after denial of an application for
18 rehearing or, if rehearing is not applied for, no later than
19 ~~[ten]~~ thirty calendar days after issuance of the financing
20 order. The supreme court shall proceed to hear and determine
21 the appeal as expeditiously as practicable."