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FISCAL IMPACT REPORT

SPONSOR Tallman/Sedillo **ORIGINAL DATE** 02/10/21
Lopez/Stefanics **LAST UPDATED** _____ **HB** _____
SHORT TITLE Energy Transition Act Changes **SB** 155
ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Impacts				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Energy Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

SB 156 amends the Renewable Energy Act (“REA”) and the Energy Transition Act (“ETA”). These amendments remove certain prohibitions of any disallowance by the Public Regulation Commission (PRC) for the utility to recover undepreciated investments or decommissioning costs associated with a generating facility to be abandoned. The amendments also no longer obligate the PRC to issue a financing order if certain conditions are met but instead allow such financing orders to be issued by the PRC provided tangible and quantifiable benefits to ratepayers are achieved, along with further conditions. The PRC would also be allowed to adjust the energy transition costs which the utility seeks to recover.

Finally, this bill would provide more time for parties to apply to the PRC for a rehearing of a financing order, and more time for the PRC to act on any rehearing motion before it is deemed to be denied. Similarly, more time would be allowed for appeals to the Supreme Court.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

SB 155 does not contain an appropriation and will not have a fiscal impact on the Public Regulation Commission's operating budget or the Energy Minerals and Natural Resources Department operating budget.

Section 1 of SB156 amends the REA by removing the current prohibition on the Commission from disallowing the utility recovery of any undepreciated investments or decommissioning costs associated with a generating facility approved by the Commission before January 1, 2015 if a replacement facility has fewer carbon dioxide emissions into the atmosphere.

Section 2 of the bill amends the ETA and it permissively allows the Commission to issue a financing order subject to certain findings by the Commission. These findings would further include the existence of tangible and quantifiable benefits to ratepayers from the issuance of energy transition bonds, that assets and investments be prudently incurred, a balancing of the interests of investors and consumers, that fair, just and reasonable rates will result, and that the application is in the public interest. Section 2 also allows the Commission to, after hearing, adjust the energy transition costs which the utility seeks to recover in order to be consistent with the findings described above and to uphold consumer protections. Finally, Section 2 also explicitly provides for any provisions in the Section not to be construed as keeping the Commission from exercising its jurisdiction over rates or from limiting a utility's recovery of reasonable costs.

Section 3 amends the ETA and it extends the time allowed for parties to seek a rehearing of a financing order from 10 days to 30 days. It also extends the time allowed to the Commission to act upon a motion for rehearing from 10 days to 20 days, before the motion for rehearing is deemed to be denied. Similarly, Section 3 provides parties more time to file an appeal of a financing order with Supreme Court. The notice of appeal would be due not later than 30 days, instead of 10 days, after the motion for rehearing is denied, or if no motion for rehearing is filed, not later than 30 days after issuance of the financing order, instead of 10 days after.

Section 2 also includes several updates to statutory references to reflect the existence of the ETA since Laws 2019, Chapter 65 (SB489).

SIGNIFICANT ISSUES

It is important to note that PNM filed an application to exit its share of the coal-fired Four Corners Generating Station on Jan. 8, 2021. They want to sell their 13 percent interest (200 megawatts of generation capacity) in the power plant to Navajo Transitional Energy Company (NTEC). NTEC would take over PNM's ownership interest in the power plant in 2024. NTEC has already acquired a 7 percent interest in the power plant from El Paso Electric. NTEC would continue operating Four Corners along with other plant co-owners through 2031.

The Public Regulation Commission provided the following:

The amendment to Section 62-18-5E NMSA 1978 in Section 2 of the bill creates an inconsistency with Section 62-18-5B NMSA 1978. The amendment essentially changes the Commission's current obligation to issue a financing order under certain conditions to a permissive allowance by the Commission to issue a financing order. However, Section

62-18-5B NMSA 1978 provides for the deemed approval of an application of a financing order in case of a Commission failure to issue a financing order within a certain time frame set out in Section 62-18-5A NMSA 1978. The Commission's authority and prerogative to issue a financing order, as established in this bill, could effectively be rendered moot by the deemed approval of a financing order. See Amendments below for a suggested resolution.

The amendment to Section 62-18-5M NMSA 1978 with addition of subparagraph (3) in Section 2 of the bill concerns the Commission's authority to limit utility recovery of reasonable costs. This could be construed as authorizing the Commission to limit the utility recovery of costs which the Commission finds to be reasonable, which would be inconsistent with the Commission's fundamental ratemaking authority to make a determination about the prudence and reasonableness of utility incurred costs and to allow the recovery of such costs. Also, the reference to a "qualifying utility" is unclear as it is undefined. See Amendments below for a suggested resolution.

Energy Minerals and Natural Resources Department provided the following:

EMNRD believes that these amendments are unnecessary and detrimental to the efforts behind the Energy Transition Act. The ETA has, in the brief time since it was signed into law, been working as designed: utilities and rural electric coops are investing in clean energy generation, the state is providing important economic relief to communities impacted by current or future coal plant closures, and consumers are saving money on utility bills.

Furthermore, there is a legitimate concern that amending the ETA could diminish the prospects for sale of the AAA-rated bonds that are important for consumer savings under the Act by diminishing investor confidence.

SB 155 amends ETA Section 31C (NMSA 1978 62-16-6 C). This amendment is unnecessary. Section 31C currently says that, if the PRC proactively requires an already-approved plant to stop operating, it cannot deny some of the cost recovery. Importantly, the PRC has never ordered a utility to stop operating a plant. Typically, such as in the case of San Juan Generating Station, a utility petitions to stop operating a plant and the PRC reviews that petition, rather than the PRC initiating the order.

The provision in Section 31C was included in the ETA to protect utilities against an irrational commission decision reaching back in time to change their minds about something a previous commission approved. Simple approval of a utility's request to abandon a plant does not trigger 31C – only an affirmative action by the PRC which the PRC has never taken before would trigger it. In other words, 31C does not apply unless the PRC wants it to. And since the PRC sets rates anyway, 31C has not impaired ratepayer interests at all.

Furthermore, Section 31C does not apply to PNM's current petition to the PRC to exit its share of the coal-fired Four Corners Generating Station, seven years early. The utility initiated this request, and thus Section 31C does not apply in this case. Ratepayers are not required by Section 31C to shoulder the cost recovery of any particular plant operating with any particular energy source, unless the PRC takes a unilateral action it has never

taken in the past.

SB 155 modifies language concerning cost recovery in ETA Section 2E. This amendment may undermine investor confidence and is likely moot regardless. By changing “shall order” to “may order” for the PRC to issue a financing order, and adding language which would allow the PRC to adjust the amount securitized, the hard-wiring of approvals necessary to secure AAA-rated bonds in the ETA is undercut. Removing these safeguards would undermine investor confidence in the “security” the legislation has provided for their bond purchase. The ETA’s low interest-rate bonds depend on this confidence. Neither the bonds for San Juan nor Four Corners have been issued. This serious effort to amend the ETA two years after it passed, would lower confidence and likely result in higher interest rates – and thus higher utility rates for customers.

It is worth noting that in addition, this language change is likely moot, because PNM has made their Four Corners abandonment filing to the PRC, and thus there are no more coal facilities to retire in New Mexico – and nothing this language could refer to.

SB 155 modifies language in Section 2M of the ETA to give the PRC total jurisdiction over cost recovery and rates. This amendment is unnecessary. The addition of the language “(3) exercise the commission's plenary jurisdiction over rates or limit a qualifying utility's recovery of reasonable costs” is redundant. Nothing in the ETA prevents the PRC from undertaking a prudence inquiry into any utility’s cost recovery amounts. What the ETA prevents is an adjustment to the payoff of the bonds issued for securitization. It does not prevent the PRC from otherwise adjusting rates to protect ratepayers from the consequences of imprudence. For example, while the PRC is required to allow PNM to finance Four Corners costs (which will lower rates), if the PRC later determines that some of those costs were imprudent, there is nothing in the ETA that prevents the PRC from disallowing costs in PNM’s general rates

ADMINISTRATIVE IMPLICATIONS

The Public Regulation Commission provided the following:

This FIR reflects PRC’s technical staff’s analysis consistent with Commission policy, rules, and precedent, but does not reflect a position ratified by a vote of the full Commission.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill conflicts with SB156, Ratepayer Relief Act, which, instead of amending the Energy Transition Act, repeals and replaces it.

ALTERNATIVES

The Public Regulation Commission provided the following:

In order to resolve the inconsistency between the amendment to Section 62-18-5E NMSA 1978 and the existing Section 62-18-5B NMSA 1978 as detailed in Significant Issues above, the entire Section 62-18-5B NMSA 1978 could be deleted in order to support the Commission’s permissive authority to issue a financing order.

In order to address the Commission's authority to limit cost recovery as provided in the additional language in Section 62-18-5 M (3) NMSA 1978 in Section 2 of the bill, the following language is provided as an alternative:

(3) exercise the commission's plenary jurisdiction over rates or limit a public [~~qualifying~~] utility's recovery of unreasonable [~~reasonable~~] costs.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Public Regulation Commission provided the following:

The Commission will remain constrained from exercising its traditional ratemaking authority to act in the public interest with a determination about the prudence and reasonableness of the undepreciated investments or decommissioning costs a public utility seeks to recover upon the abandonment of a generating facility approved before January 1, 2015 which is to be replaced by a facility with fewer carbon dioxide emissions in the atmosphere.

The Commission will also remain obligated to issue a financing order with little ability to exercise discretion and under tight time constraints. Parties seeking to rehear or appeal a financing order will remain very limited in time to pursue such motions and appeals.

JM/al