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## FISCAL IMPACT REPORT

SPONSOR: Sanchez DATE TYPED: 03/04/01 HB  
 SHORT TITLE: Delay 1999 Electric Utility Restructuring Act SB 266/aSCORC/aSCOW/aSFI#1  
 ANALYST: Valenzuela

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			\$ 500.0	Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Report of the Legislative Finance Committee to the 45<sup>th</sup> Legislature, First Session, January 2001  
 Office of The Attorney General (AG)  
 Public Regulation Commission  
 Energy, Minerals, and Natural Resources Department (EMNRD)  
 Economic Development Department  
 General Services Division (GSD)

### SUMMARY

#### Synopsis of SFI#1 Amendment

The Senate Floor #1 amendment makes technical revisions to the SCOW amendments.

#### Synopsis of SCOW Amendment

The Senate Committee of the Whole (SCOW) amendment to the amended Senate Bill 266 makes a series of substantive changes to the original bill that arise from the delay contained in the original bill. A section-by-section summary and substantive issues are outlined below.

SCOW Amendments No. 1 and No. 2. Taken together, these amendments give the Public Regulation Commission (PRC) authority to approve an application submitted by a public utility to form a holding company by July 1, 2001, if the utility has filed before January 1, 2001, as part of its transition plan. The language further stipulates that any action shall not result in any loss of PRC jurisdiction over corporate allocation or over any costs that are charged to ratepayers. The final stipulation is that this section shall not be subject to the provision of the current law that states the PRC has the authority to delay customer choice by one year.

SCOW Amendment No. 3. This amendment requires a distribution utility to guarantee the pollution control bonds of the generation affiliate after asset separation. If the utility only guarantees this debt, then the Commission shall impute a cost of capital and capital structure that includes 50% of this debt. If the utility becomes directly obligated for payment of principal and interest, then 100% of the debt will be allocated to the utility. According to the PRC, such cross obligations placed on the regulated utility can increase the risk exposure of the utility, but pollution control bonds are the cheapest capital available to a utility. The PRC estimates that this amendment could reduce the overall cost of capital of the utility and have a corresponding impact to reduce rates for ratepayers.

SCOW Amendment No. 4. This amendment would allow a public utility to build or invest in unregulated generation within the utility during the delay period. (Normally, unregulated activities should be undertaken in a subsidiary or affiliate.) This generation will not be included in New Mexico jurisdictional utility rates, unless New Mexico jurisdictional utility customers need the additional capacity. If the utility's customers require additional capacity during the delay period, which is very likely according to the PRC, the utility will provide it at the cost of the additional capacity.

SCOW Amendments No. 5 and No. 6. This amendment allows a public utility to amortize unrecovered coal mine decommissioning costs if there is a delay in restructuring over 5 years beginning January 1, 2002. The mechanism would be in a non-bypassable wires charge that the utility will not be required to report to the ratepayers. Rates will not change, but the amount will be amortized. The Commission will have to authorize the amortization. If there is a rate case before the end of the delay, the Commission can further evaluate the appropriate manner and duration of the recovery. The Public Service Company of New Mexico (PNM) has argued that its auditors are requiring it to write off approximately \$125 million of these costs, which result from the closing of the surface mining operations at the San Juan mine as the mining has moved underground.

SCOW Amendment No. 7. Makes technical changes.

SCOW Amendment No. 8. This amendment requires the Commission to report to the Legislature by December 15, 2002 regarding the state of electricity markets in the western states. It also requires the PRC to make recommendations on open access and customer choice in New Mexico.

#### Synopsis of the SCORC Amendment

The Senate Corporations Committee (SCORC) amendment to Senate Bill 266 make two substantive changes to the original bill. First, it amends two definitions (“regulated services” and “standard offer service”) to correspond to the extensions made in the original bill. This section also makes minor technical changes to various definitions.

The second substantive change makes a series of changes to the time line identified in the bill. Details are provided below:

1. Changes the date for availability of customer choice service to “all other customers” (does not include residential, small business public schools or higher education institutions) from July 1, 2008 to July 1, 2007.

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2. Changes the date for PRC approval of utility company transition plans from October 1, 2006 to June 1, 2006.
3. Moves up the date by 21 months for PRC approval of the procurement procedure for electricity supply for standard offer service of the utility company transition plans by changing the mandated date from September 1, 2006 to January 1, 2005.
4. Changes the date for separation of utility companies to not occur until after September 1, 2005 but before January 1, 2006 (original bill mandated July 2, 2006 as the deadline).

### Synopsis of Original Bill

Senate Bill 266 delays implementation of electric utility industry restructuring by amending of relevant statutory mandates outlined in the Electric Utility Industry Restructuring Act of 1999. The following is a breakdown of the specific delays included in the bill:

1. Institution of open access for residential, small business and public schools--5 years from the date currently set by the Commission.
2. Institution of customer choice for all other customers--five years from the latest date that the Commission could have adopted for this class.
3. Filing of transition plans by utilities--four years, nine months from date in Act.
4. Commission approval of standard offer procurement procedure--five years from date in Act.
5. Utility update of standard offer bid--six years from date in Act.
6. Commission approval of stranded costs--six years from date in Act.
7. Commission determination of wires charge--five years from date in Act.
8. Utility separation of generation assets--five years from date in Act.
9. Institution of system benefits charge--five years from date in Act.
10. Distribution cooperative to choose business form--five years from date in Act.
11. Municipal utility choice as to open access--five years from date in Act.
12. Commission recommendations re systems benefits fund--five years from date in Act.

Senate Bill 266 makes minor technical language changes.

### Significant Issues

Dramatic electricity price increases in a newly deregulated market have created considerable concern among residential and small-to-medium-sized business customers nationwide. In San Diego, California, average monthly electricity bills jumped to four times the level of the same month the previous year. During peak hours, the rate per kilowatt hour was almost 10 times higher than the previous year. In some cases, businesses closed down. California is the first state to experience the impact of a deregulated electric market. A number of factors added to the intense price volatility: supply possibly was withheld to drive up the daily power exchange price; supply is two years behind demand because regulatory approval for construction of new power plants have not been approved; and finally, the state regulatory body has no control over investor-owned utilities or the power exchange because it relinquished its authority to the Federal Energy Regulatory Commission (FERC).

New Mexicans could have a similar experience. First, although New Mexico is a net exporter of energy, New Mexico consumers will compete with California's demand in a deregulated market. From the perspective of a utility company, selling power to New Mexicans will mean foregoing the opportunity to sell power in the California market. Furthermore, current transmission capacity into or

throughout the state is either maximized or constrained by contractual limits, even though export capacity is unconstrained.

The Electric Utility Industry Restructuring Act in New Mexico has many similarities to the California law. The bill requires functional separation by utilities between generation and wire assets without divestiture of generation facilities, which effectively turns a formerly retail aspect of a market into a wholesale aspect. The meaning of this shift is that PRC will no longer have authority over prices; the authority will be shifted to FERC. A key difference between the California and New Mexico legislation is that the New Mexico bill gives only residential and small commercial customers the option of choosing the standard-offer service, (i.e., the customer chooses not to switch from its current provider).

Senate Bill 266, by extending the deadline for competition in electric utility markets, seeks to protect consumers in New Mexico from the current electricity market price spikes and shortages being experienced in California and could result in eliminating the need for stranded cost recovery.

### **FISCAL IMPLICATIONS**

Though the bill does not contain an appropriation, enactment could have a substantial fiscal impact. As currently written, the Electric Utility Industry Restructuring Act in New Mexico contains a \$500.0 appropriation from the “systems benefits charge fund” to be made to the PRC for consumer education. Senate Bill 266 will delay the imposition of this fee on consumers for 5 years. However if the bill is not enacted, the PRC would require a one-time \$500.0 general fund appropriation to get a headstart on this consumer education campaign.

According to the PRC, it will see a savings from enactment of Senate Bill 266 because it will cancel its contractual relationship with industry experts that have been hired to analyze those fiscal issues related to stranded costs. In the current operating budget, the Legislature appropriated more than \$400.0 to the PRC specifically to hire experts in electric industry and telecommunications deregulation. Consequently, the agency could have up to \$400.0 available for other purposes. Last year, the Legislature gave the PRC budget transfer authority between all divisions except for ASD. Therefore, any savings may be transferred to other PRC divisions.

### **ADMINISTRATIVE IMPLICATIONS**

Enactment of the bill will have a positive administrative impact on both the Office of the Attorney General and the PRC, who will have an additional year to review utility company transition plans.

### **CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP**

The Electric Utility Industry Restructuring Act of 1999 was to supercede portions of the Public Utility Act. The July 1, 2003 delayed repeal of the Public Utility Act needs to be addressed. If the Electric Utility Industry Restructuring Act of 1999 is delayed, none of the Public utility Act should be repealed.

MFV/ar:njw