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FISCAL IMPACT REPORT

ORIGINAL DATE 2/08/06

SPONSOR Gonzales, R. LAST UPDATED _____ HB 799

SHORT TITLE PRC Jurisdiction over Generation Cooperatives SB _____

ANALYST Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	None		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		(\$0.1)	(\$0.1)	(\$0.1)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

Energy, Minerals and Natural Resources Department (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 799 amends existing law, Section 62-6-4 NMSA 1978, concerning the New Mexico Public Regulation Commission's (PRC) supervision and regulation of utilities. HB 799 would:

- 1) Expand the regulatory authority of the PRC to include generation and transmission cooperatives;
- 2) Extend the protest period from 20 days to two months member utilities may file protests to notice of rate changes; and
- 3) Allow member cooperatives to generate or obtain their own power from sources other than the generation and transmission cooperative without penalty.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

The rates and resource decisions of generation and transmission cooperatives are currently made with little state or federal regulatory oversight. This leaves approximately 100,000 rural electric ratepayers in New Mexico without effective review of the rate decisions made by generation and transmission cooperatives. HB 799 eliminates the exemption of generation and transmission cooperatives to PRC regulation and oversight.

Tri-State Generation and Transmission Association, Inc. (Tri-State) provides power to 12 New Mexico electricity distribution cooperatives (co-ops). Since their merger of Plains Electric Cooperative in 2000, which resulted in 25 percent rate reductions, there have been significant rate increases. Under current law co-ops have 20 days to file a protest after Tri-State issues an advice notice on proposed rates. According to EMNRD, the Tri-State rate filings have not included adequate cost-of-service information upon which Tri-State's investment and rate decisions can be evaluated. HB 799 would require Tri-State, and any other generation and transmission cooperative, to file with PRC a cost-of-service report when issuing an advice notice. Furthermore, HB 799 would also remove the penalties levied by Tri-State should a member co-op obtain or generate power from other sources.

At its January 24, 2006, hearing, the PRC issued a resolution supporting passage of legislation to increase oversight of Tri-State. PRC heard testimony that co-op member power contracts with Tri-State do not prohibit member cooperatives from obtaining up to 5% of its power from alternative sources. However, members may be penalized pursuant to Tri-State board policy for purchasing renewable energy. Tri-State opposed the resolution.

ADMINISTRATIVE IMPLICATIONS

Although the impact on the operating budget is unclear, there would be additional administrative, legal, and oversight work for the PRC.

TECHNICAL ISSUES

PRC notes that the two-month protest period raises a potential problem. Under the Public Utility Act, advice notices can go into effect after thirty days notice. Therefore, under HB 799, the rates could go into effect before the two-month protest period expires. Tri-State would need to file its advice notices ninety-days in advance (when federal law currently requires coops receiving certain federal funds to file new rates) to avoid uncertainty and billing confusion. PRC suggests further amending Section 62-6-4(D) NMSA 1978 to require advice notices be filed ninety (90) days in advance of a proposed rate change.

The impact on Tri-State posed by PRC's proposed change is unclear.

PRC further recommends specifying contractual obligations and cross-referencing the Renewable Energy Act, as follows in their alternative to Subsection (F):

“A member utility of a generation and transmission cooperative may generate a percentage of its own power or obtain a percentage of power from a source other than the generation and transmission cooperative without penalty by the generation and transmission cooperative if the generation or receipt of that power does not violate any legally enforceable contract term between the member utility and the generation and transmission cooperative. Purchase power contracts may specify the proportion of the energy portfolio that member utilities may purchase from alternative sources. However, agreements that prohibit or penalize the generation of power by a member utility or the purchase of renewable energy by a member utility from another member utility, otherwise within the limits set by contract, shall be contrary to the public policy of the Renewable Energy Act and, for this reason, unenforceable.”

OTHER SUBSTANTIVE ISSUES

The AGO notes a question to the authority of a state to review wholesale rates, but there is precedent for such state review in the context of a cooperative.

EMNRD indicates that it is implementing renewable energy projects—e.g., wind, solar, biomass, geothermal—through a Clean Energy Grants program to demonstrate the potential of renewable energy throughout New Mexico. The clean energy project sites include service territories of the 12 co-ops affected by HB 799. Should the bill be enacted, the adoption of renewable energy would progress faster.

BE/mt