F I S C A L I M P A C T R E P O R T

SPONSOR Soules **ORIGINAL DATE** 3/09/17 **LAST UPDATED** **HB**

SHORT TITLE Utility Early Rate Cases **SB** 370

ANALYST Martinez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 235 "Limit Utility Rate-Change Frequency"

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Committee (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 370 (SB 370) establishes a rebuttable presumption that rate case expenses are not prudently incurred in an "early rate case", defining an "early rate case" as filed sooner than three (3) years following the filing of a rate case by that utility that resulted in a rate increase.

FISCAL IMPLICATIONS

SB370 carries no appropriation and will not have a fiscal impact on the Public Regulation Commission.

SIGNIFICANT ISSUES

The Public Regulation Commission provided the following significant issues:

Section 62-13-3 of the Public Utility Act, Sections 62-1-1, et seq., NMSA 1978, currently provides for no presumption at all that litigation expenses are either prudently or not prudently incurred. Subsection 62-13-3(B) states plainly that:

> "In any commission rate proceeding in which the utility seeks rates to recover adjusted test-year litigation expenses there shall be no presumption that the litigation expenses are prudent. Nothing in this section shall be construed to create or imply a presumption of prudence for any utility expenditures not addressed in this section."

Litigation expense is mostly used synonymously with "rate case" expense, but "litigation" is somewhat more broadly defined by the Public Regulation Commission (PRC) rule as "all contested matters before regulatory commissions, administrative bodies, and state or federal court." PRC rule no. 17.9.530.7(P) NMAC.

Public utilities are in an era of frequent rate cases. Both Public Service Company of New Mexico (PNM) and Southwestern Public Service Company (SPS) filed rate cases in late 2015 (NMPRC Case Nos. 15-00261 and 15-00296-UT, respectively) and again in late 2016 (NMPRC Case Nos. 16-00276-UT and 16-00269-UT, respectively). In the last round, PNM sought and received $3,790,023 in rate case expense, SPS sought and received approximately $2,047,000, and El Paso Electric Company (EPE) [NMPRC Case No. 15-00127-UT] sought and received $1,288,300.1

In the current round, PNM is seeking $2,145,339 in litigation expense and SPS is seeking an estimated $1,720,775.2 If the statutory amendments proposed by SB 370 had been in place, the presumption would be that these amounts were not prudently incurred and therefore, not recoverable from ratepayers, meaning that the expense would have to be borne by the shareholders or investors of PNM and SPS. However, that presumption is a rebuttable one so both PNM and SPS would have an opportunity to file expert testimony and other evidence that its claimed rate case expense was prudently incurred and should be recovered through rates.

PERFORMANCE IMPLICATIONS

At its regular open meeting on September 28, 2016, when it approved the Final Order in PNM's last rate case, 15-00261-UT, the Commission voiced a concern about the increase in rate case spending by the utilities and voiced an interest in researching the Texas model where the utilities cover the costs of rate case participation by interveners and the New Jersey model where attorney fees are awarded 50% to consumers and 50% to stockholders. See p. 37 of Commission Open Meeting minutes for September 28, 2016.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 370 relates to SB 235. SB 235 imposes a prohibition on rate cases filed less than three years from the last increase. This bill, SB 370, avoids the concern raised by the PRC in its FIR on SB 235 that that bill, by imposing a limitation on the frequency of rate changes or rate-change requests, may impinge the right of utilities to rates that provide an opportunity to earn a reasonable rate of return on its investment. Utilities have a legal right to rates that recover its revenue requirement. "Ultimately, the PRC must ensure that rates are neither unreasonably high so as to unjustly burden ratepayers with excessive rates nor unreasonably low so as to constitute

[1] NMPRC Case Nos. 15-00261-UT, 15-00296-UT, 15-00127-UT, respectively. Final Orders were issued September 28, 2016, August 10, 206 and June 8, 2016, respectively.
[2] NMPRC Case Nos. 16-00276-UT [PNM's] and 16-00269-UT [SPS's], filed on December 7, 2016 and November 1, 2016, respectively.

a taking of property without just compensation or a violation of due process by preventing the utility from earning a reasonable rate of return on its investment." In the Matter of the Petition of PNM Gas Services v. NMPUC, 129 N.M. 1, 27, 1 P.3d 383, 409 (2000) (this court opinion also stands for the proposition that "When confronted with a questionable estimate of rate case expenses on one hand and irrefutable evidence that a utility has prudently incurred substantial, if un-quantified, rate case expenses on the other, the PRC cannot simply deny recovery altogether; the PRC instead must determine the amount of reasonable and prudent rate case expenses incurred by the utility.")

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Public utilities will continue to bear the burden of proof that their litigation or rate case expense is reasonable and prudent and will not be obligated to overcome a rebuttable presumption that such expense is imprudent when their rate increase request is filed within three years of the last.

JM/sb