

HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 325

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
REQUIRING A UTILITY TO CONSTRUCT A REPLACEMENT FACILITY IF THE  
UTILITY ABANDONS A PUBLIC UTILITY FACILITY IN CERTAIN  
CIRCUMSTANCES; REQUIRING THE PUBLIC REGULATION COMMISSION TO  
CONSIDER ECONOMIC IMPACTS IN DECIDING TO APPROVE THE  
ABANDONMENT OF A PUBLIC UTILITY FACILITY.

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

SECTION 1. Section 62-9-1 NMSA 1978 (being Laws 1941,  
Chapter 84, Section 46, as amended) is amended to read:

"62-9-1. NEW CONSTRUCTION--REPLACEMENT FACILITIES--  
RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction  
or operation of any public utility plant or system or of any  
extension of any plant or system without first obtaining from

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1 the commission a certificate that public convenience and  
2 necessity require or will require such construction or  
3 operation. This section does not require a public utility to  
4 secure a certificate for an extension within any municipality  
5 or district within which it lawfully commenced operations  
6 before June 13, 1941 or for an extension within or to territory  
7 already served by it, necessary in the ordinary course of its  
8 business, or for an extension into territory contiguous to that  
9 already occupied by it and that is not receiving similar  
10 service from another utility. If any public utility or mutual  
11 domestic water consumer association in constructing or  
12 extending its line, plant or system unreasonably interferes or  
13 is about to unreasonably interfere with the service or system  
14 of any other public utility or mutual domestic water consumer  
15 association rendering the same type of service, the commission,  
16 on complaint of the public utility or mutual domestic water  
17 consumer association claiming to be injuriously affected, may,  
18 upon and pursuant to the applicable procedure provided in  
19 Chapter 62, Article 10 NMSA 1978, and after giving due regard  
20 to public convenience and necessity, including reasonable  
21 service agreements between the utilities, make an order and  
22 prescribe just and reasonable terms and conditions in harmony  
23 with the Public Utility Act to provide for the construction,  
24 development and extension, without unnecessary duplication and  
25 economic waste.

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1           B. If a certificate of public convenience and  
2 necessity is required pursuant to this section for the  
3 construction or extension of a generating plant or transmission  
4 lines and associated facilities, a public utility may include  
5 in the application for the certificate a request that the  
6 commission determine the ratemaking principles and treatment  
7 that will be applicable for the facilities that are the subject  
8 of the application for the certificate. If such a request is  
9 made, the commission shall, in the order granting the  
10 certificate, set forth the ratemaking principles and treatment  
11 that will be applicable to the public utility's stake in the  
12 certified facilities in all ratemaking proceedings on and after  
13 such time as the facilities are placed in service. The  
14 commission shall use the ratemaking principles and treatment  
15 specified in the order in all proceedings in which the cost of  
16 the public utility's stake in the certified facilities is  
17 considered. If the commission later decertifies the  
18 facilities, the commission shall apply the ratemaking  
19 principles and treatment specified in the original  
20 certification order to the costs associated with the facilities  
21 that were incurred by the public utility prior to  
22 decertification.

23           C. The requirements for a replacement facility  
24 located in a school district in which a facility is being  
25 abandoned, pursuant to Subsection B of Section 62-9-5 NMSA

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1 1978, shall not preclude a utility from being granted a  
2 certificate of public convenience and necessity; provided that  
3 the requirements of Section 62-9-3 NMSA 1978 are met.

4 ~~[G.]~~ D. The commission may approve the application  
5 for the certificate without a formal hearing if no protest is  
6 filed within sixty days of the date that notice is given,  
7 pursuant to commission order, that the application has been  
8 filed. The commission shall issue its order granting or  
9 denying the application within nine months from the date the  
10 application is filed with the commission. Failure to issue its  
11 order within nine months is deemed to be approval and final  
12 disposition of the application; provided, however, that the  
13 commission may extend the time for granting approval for an  
14 additional six months for good cause shown.

15 ~~[D.]~~ E. As used in this section, "mutual domestic  
16 water consumer association" means an association created and  
17 organized pursuant to the provisions of:

18 (1) Laws 1947, Chapter 206; Laws 1949, Chapter  
19 79; or Laws 1951, Chapter 52; or

20 (2) the Sanitary Projects Act."

21 **SECTION 2.** Section 62-9-5 NMSA 1978 (being Laws 1941,  
22 Chapter 84, Section 48, as amended) is amended to read:

23 "62-9-5. ABANDONMENT OF SERVICE--LOCATION OF REPLACEMENT  
24 FACILITY.--

25 A. No utility shall abandon all or any portion of

1 its facilities subject to the jurisdiction of the commission,  
2 or any service rendered by means of such facilities, without  
3 first obtaining the permission and approval of the commission.  
4 The commission shall grant such permission and approval, after  
5 notice and hearing, upon finding that the continuation of  
6 service is unwarranted or that the present and future public  
7 convenience and necessity do not otherwise require the  
8 continuation of the service or use of the facility; provided,  
9 however, that ordinary discontinuance of service or use of  
10 facilities for nonpayment of charges, nonuser or other reasons  
11 in the usual course of business shall not be considered as  
12 abandonment. In considering the present and future public  
13 convenience and necessity, the commission shall specifically  
14 consider:

15 (1) the impact of the proposed abandonment of  
16 service on all consumers served in this state, directly or  
17 indirectly, by the facilities sought to be abandoned; and

18 (2) the economic impact on a New Mexico  
19 community from the proposed abandonment of the facilities.

20 B. If a facility being abandoned is a facility  
21 described in Paragraph (1) of Subsection G of Section 62-3-3  
22 NMSA 1978 and is valued at greater than one hundred million  
23 dollars (\$100,000,000), the utility abandoning the facility  
24 shall be required to construct a replacement facility in the  
25 school district in which the facility being abandoned is

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1 located and to meet the needs of all of the customers served by  
2 the facility being abandoned; provided that the estimated cost  
3 to build the replacement facility shall be no more than ten  
4 percent greater than the estimated cost to build a replacement  
5 facility in a different location in the state and locating the  
6 replacement facility in that school district shall not  
7 adversely affect adequate system reliability.

8 C. Applications for abandonment shall include an  
9 evidence-based economic impact analysis of the proposed  
10 abandonment, an implementation plan to address the economic  
11 impact on affected communities and, in regard to locating a  
12 replacement facility pursuant to Subsection B of this section,  
13 a request for the issuance of a certificate of public  
14 convenience and necessity pursuant to Section 62-9-1 NMSA 1978  
15 for the replacement facility."

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