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

ORIGINAL DATE 1/26/18
SPONSOR Candeleria/Neville **LAST UPDATED** **HB**

SHORT TITLE Energy Redevelopment Bond **SB** 47

ANALYST Graeser & Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20	FY21	FY22		
$0.0	$0.0	$0.0	Unclear*	Unclear*	Recurring and Non-recurring	General Fund
$0.0	$0.0	$0.0	Unclear*	Unclear*	Recurring and Non-recurring	San Juan County
$0.0	$0.0	$0.0	Unclear*	Unclear*	Recurring and Non-recurring	All other cities and counties

Parenthesis ( ) indicate revenue decreases
Note: * unclear, or at least not quantifiable. Closure of Units 1 and 4 scheduled for 1/2023, with replacement in San Juan County scheduled before 1/2028. Timelines are approximate because of required PRC approvals.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	Annual Cost FY20 – FY 25	6 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$450.0	$2,700.0	Recurring for 3 - 6 years*	General Fund

Parenthesis ( ) indicate expenditure decreases

Note: PRC indicates need for a Certified Public Accountant, a Public Utility Engineer, a staff counsel, ½ associate general counsel and a hearing examiner, whose cost would be generally funded. In addition, the proposal would require bond counsel, disclosure counsel and an independent financial advisor with expertise in securitization financing whose fees could be embedded in the amount financed. This need could extend for six years. There are three other facilities that could be eligible for this treatment.

Duplicates, Relates to, Conflicts with, Companion to: HB-80

SOURCES OF INFORMATION

LFC Files
Various summaries and explanations from Public Utility Company of New Mexico (PNM)
Analysis on behalf of merchant providers by Bruce Throne, esq.
Analysis provided by New Energy Economy
Various Newspaper articles
Letter to Senator Wirth and Representative Egolf from Mariel Nanasi, Attorney at Law, representing the New Energy Economy

Responses Received From
Public Regulation Commission (PRC)
Four Corners Economic Development

SUMMARY

Synopsis of Bill

See "Significant Features" below for a summary of the major features of this bill. A detailed summary is attached to this review, as is the detailed analysis by the Public Regulation Commission (PRC).

Senate Bill 47 authorizes an alternative mechanism for financing the retirement of coal-fired power plants. It has been designed to accommodate the retirement in 2023 of Units 1 and 4 of the San Juan Generation Station, and to anticipate the closure of the Four Corners Power Plant in 2031. The bill is also designed to mitigate some of the adverse economic effects on affected local communities by requiring the location of replacement power resources in the communities where the abandoned facilities are located, taking into consideration system reliability while assuring that such location does not eliminate the cost savings from energy redevelopment bonds. The securitization mechanism provide PNM and other affected investor-owned utilities with 100 percent recovery of stranded costs with potentially a lower cost to customers as compared to conventional financing mechanisms.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends or May 16, 2018. Section 23 of the bill indicates that the provisions of the act shall not apply to a qualifying utility that makes an initial application for a financing order more than twenty years after the effective date of this act.

FISCAL IMPLICATIONS

In addition to the proximate bond financing related to the closure of PNM's San Juan Generating Station and the related closure of the San Juan Coal Company, three other coal-fired plant retirements could be involved: PNM's Four Corners plant which is currently scheduled for closure in 2031 and Southern Public Service Company's Tolk Generating Station and Harrington Generating Station in Texas. These units involve similar concerns for ratepayers and utility investors, but only the Four Corners Generating Plant closure invokes the same consideration of economic development. For the two Texas Plants, the replacement resources requirement would not affect New Mexico's economy.

The following fiscal facts have been provided:
From PNM

- $320 million undepreciated asset value for San Juan Generating Station (as of 2023).
- $24 million in shutdown costs and employee severance.
- $6 million in securitization transaction costs.
- 25-year recovery period (although the bill would allow a series of bonds to be issued, each element in the series to be limited to a 25-year recovery period, but no limit on the total period of the series of bonds).
- PNM's pre-tax weighted average cost of capital (including significant risk differential) of 10.23 percent

- PNM's after-tax weighted average cost of capital of 7.23 percent (unknown whether this includes the effect of the recent federal reduction of corporate income tax rate and also unknown whether the accumulated deferred income tax (ADIT) provisions were changed in the recent federal tax bill).
- Securitization rate of 3.1015 percent.

Data from Four Corners Economic Development assuming that the San Juan Generating Station (SJGS) would be razed and not sold to another operator and that the SJCC would be shut down and not be able to find another buyer:

- 657 current employees at San Juan Generating Station (SJGS) and San Juan Coal Company (SJCC) earning almost $118 thousand annually including benefits.
- $31 million in purchases by SJGS and SJCC from San Juan County vendors.
- Lost Gross Receipts Taxes attributed to lost wages from laid-off workers and loss of local purchases of goods and services by PNM and SJCC.

	Farmington	County	State
From Vendor Purchases	$0	$82,710	$1,621,412
Employee Spending (50%)	$224,625	$303,904	$1,083,486

- Total of $9.6 million reduction in Property Taxes paid by SJGS and SJCC. This would require an automatic increase of 4 mills in debt service rate and 1.5 mills increase in operating rates requiring action of the San Juan County Commission and the San Juan College board.
- The State, Other State Funds and the Navajo Nation will lose severance tax revenue assuming that an alternative market for coal could not be developed.

Other Lost Taxes ($ millions)	
Severance Tax (STBF)	$3.23
Conservation Tax (Gen Fun and OSF)	$.33
Resource Excise Tax (Gen Fund)	$1.41
Gross Proceeds Tax (Navajo Nation)	$1.55
Total	$6.52

LFC Analysis:
There are four scenarios/assumptions that can be made:

A. The bill passes with the securitization features intact, Units 1 and 4 shut down by 2023, PNM shareholders receive 100 percent recovery of stranded costs and replacement resources are located in San Juan County.
B. The bill passes with the securitization features intact, but no bonds are sold, Units 1 and 4 remain in operation, PNM shareholders eventually receive 100 percent recovery of asset costs, no additional resources are located in San Juan County.
C. The bill does not pass, Units 1 and 4 remain in operation, PNM shareholders eventually receive 100 percent recovery of asset costs, and no additional resources are located in San Juan County.
D. The bill does not pass, Units 1 and 4 shut down by 2023, PNM shareholders are allowed 50 percent recovery of asset costs with the current weighted cost of capital (WACC), and no replacement or additional resources are located in San Juan County.

There are, of course, variations in timing and effect possible, but this analysis is restricted to these four. The option of shut-in with PNM ratepayers receiving 100 percent cost recovery at the standard weighted cost of capital (WACC) is not discussed.

A. This is the apparent deal that gets PNM shareholders 100 percent recovery of stranded costs, ratepayers are no worse off than with option D, lost wages and procurement is partially replaced because some replacement resources are located in San Juan County (Central Consolidated School District), Units 1 and 4 are shut down. The general fund and San Juan County are approximately whole to a loss of gross receipts tax revenue compared to scenario D and the general fund gains gross receipts tax revenue from the construction anywhere in the state of the replacement resource.
B. This scenario violates the letter and spirit of the deal sustaining a good relationship between PNM and its investors and ratepayers and the PRC. However, employees of SJGS and SJCC, San Juan County, the School District, the Navajo Nation, the state general fund would all be ahead when measured strictly by revenue impact. It is by no means certain that this scenario is unlikely.
C. This has similar consequences to all parties as scenario B.
D. Under this scenario, PNM's investors receive 50 percent cost recovery of the undepreciated SJGS asset, all the jobs, wages, property taxes and procurement in San Juan are lost, the plant is shut down pleasing the environmental community, the general fund receives gross receipts tax revenue from including the 50 percent recovery costs in the rate base, ratepayers are approximately whole compared to scenario and the general fund gains gross receipts tax revenue from the construction anywhere in the state of the replacement resource.

The economics of this proposal clearly come down to scenarios A and D, but let us focus on all three for the five-year period from 2021 through 2026.

	Summary	PNM's investors	PNM area ratepayers	SJGS & SJCC employees and vendors	General Fund	San Juan County, Central Consolidated School District
Scenario A	Bonds issued; units shut down in 2023; about 50% of economic activity replaced	100% recovery of stranded costs	Approximately whole compared to PRC disallowing 50% recovery and allowing current WACC	50% of economic activity replaced	Loses all coal severance revenue, approximately whole to other GRT impacts; probable gain from replacement construction GRT	Replace 50% of lost property tax, gets GRT from replacement construction; probably less employment
Scenario B	No bonds; no replacement; units stay operating	100% recovery of asset costs	Current asset in rate base (no change); amortized at full WACC	No loss of jobs or procurement	No loss of severance revenues; no additional GRT from construction	No change in property tax, GRT, no additional GRT from construction
Scenario C	Units stay operating	100% recovery of asset costs	Current asset in rate base (no change); amortized at full WACC	No loss of jobs or procurement	No loss of severance revenues; no additional GRT from construction	No change in property tax, GRT, no additional GRT from construction
Scenario D	Units shut down in 2023.	50% recovery of asset costs	Probably allows current WACC; approximately whole compared to Scenario A (alternative bond financing at lower rate).	Loss of at least 657 jobs, and over $75 million in economic activity	Loses all coal severance revenue, approximately whole to other GRT impacts; probable gain from replacement	Loses millions in property tax and GRT revenues

					construction GRT	
Which is best for stakeholder?	A & D close coal generating facilities; B & C allow them to remain in operation.	A best immediate; B & C ok; D worst	A & D about equally acceptable; B & C no worse than current.	Clearly A is best here.	A & D lose severance revenue, but get construction replacement GRT. B & C no loss of sev revenue, but no construction GRT	

A particular financial provision is of concern to LFC staff:

> The bonds allowed by this bill have a period not exceeding 25 years. However, page 12 of the bill contains the permission, "if the bonds are expected to be issued in more than one series, the estimated issuance date and expected term for each bond issuance; provided that the maximum term for each bond issuance shall be no longer than twenty-five years;" Thus, there is a potential for the impact of this proposal to affect PNM's ratepayers for far more than the stated twenty-five years.

SIGNIFICANT ISSUES

Attached to this review is a detailed summary of provisions of the bill. This was originally prepared by staff at PNM on a previous version of the bill. LFC staff has updated this summary and made some annotations.

Also attached to this review is a detailed analysis prepared by staff of the Public Regulation Commission. This 14-page FIR is required reading for understanding the issues, strengths and defects of the bill. Some of these will be reiterated here.

- Units 1 and 4 at SJGS would shut down by December 31, 2022. San Juan Coal Company (SJCC) would probably shut down when the SJGS was shut down.
- Public Service Company of New Mexico (PNM), which owns the SJGS[1], would be allowed to recover 100 percent of the stranded costs of the SJGS, although the investors would not receive any additional amounts representing profit.
- PNM would form a subsidiary that would be granted the right to issue energy redevelopment bonds with a maximum term of twenty-five years. This would be non-recourse debt financing. The bonds would be amortized with a guaranteed, nonbypassable rate added to every customer of the utility. This additional rate would be added until the bonds were completely paid off. Because of the guarantees, the bonds would probably be rated as AAA and would incur very low market interest rates.
- To partially mitigate the economic impact of shutting down the SJGS and the SJCC on the Central Consolidated School District and San Juan County a portion of the proceeds of the bonds could be used to pay for severance pay and retraining for the workers laid off because of the shut-down.
- Also to partially mitigate the economic impact of shutting down the SJGS, the qualifying utility promises and is required in the bill to install replacement resource in San Juan County. The value of this replacement resource is not established in the bill. The replacement resource may have to be installed within five years of the shutdown. Proceeds of the bond may be used to build this replacement resource.

[1] The City of Farmington currently owns a portion of the SJGS, but this ownership will cease before Units 1 and 4 are shut down.

- The provisions of the bill are effective for coal-fired plants that would shut down within twenty years of the effective date of the bill. In addition to Units 1 and 4 of SJGS and the Four Corners Power Station, Southwestern Public Service has two coal-fired plants in Texas that could possibly be retired using the securitization mechanism.
- The bill limits the authority of the PRC in a number of ways and changes the conventional timelines for PRC's review of the complex actions authorized by the bill.
- In the opinion of the PRC, the subsidiary of PNM which would own the right to the non-bypassable ERB rate is not sufficiently "ring-fenced and bankruptcy remote" for the parent PNM and the bonds would not receive AAA rating.

There are three significant policy issues that must be discussed.

1. To what extent can PNM's ratepayers and investors expect the PRC to allow the investors to recover the full amount of their investment in the coal-fired San Juan Generating Station if the plant is decommissioned prior to its originally scheduled useful life?
2. Can the legislature supplant the experience and knowledge of the PRC with new instructions related to the narrow issue of decommissioning a coal-fired plant? Is this bill required or is the authority to allow a securitized retirement already within the authority of the PRC. Are there any constitutional limits that would affect the acceptability of the provisions of this bill?
3. Does the bill do an adequate job in establishing the separation between the qualifying utility and the subsidiary organization that owns the property right to the non-bypasable economic recovery bond repayment rate?

SIGNIFICANT FEATURE (Continued)

The first policy issue can be addressed with an extract of Bruce Throne, esq.'s memorandum.

> PNM has argued in past PRC cases that, when it proposes to abandon service from an existing supply-side resource, it is legally *entitled* to recover from its customers 100 percent of its undepreciated investment in that plant plus a return on that amount at its WACC (a weighting of its allowed return on equity and the average cost of its long-term and preferred stoic debt) based on the so-called "regulatory compact" (i.e., the principle that, due to its legal obligation to provide regulated service to all customers in its service area, it is entitled to a reasonable opportunity to earn a fair return on its prudent investments in plant determined be "used and useful" for service to its customers), arguing that denying it such recovery would constitute an unconstitutional "taking" of its property. There appears to be no New Mexico statute, PRC rule or New Mexico or U.S. Supreme Court opinion, however, supporting that "regulatory compact" argument with respect to a regulated utility's recovery of investment in plants abandoned because they are no longer cost-effect for service to its customers.
>
> To the contrary, past PRC and New Mexico Supreme Court decisions have state that, in carrying out the PRC's responsibility to balance the interests of utility consumers and investors when determining utility rates that are "just and reasonable," the PRC has considerable discretion so long as it determinations are supported by "substantial evidence," are not contrary to applicable law, are not "arbitrary and capricious," and that it is the reasonableness of the "end result" of the rates determined by the PRC that matters. In this regard, the PRC has acknowledged that the return on equity ("ROE," i.e.,

profit on investments in plant) it historically has allowed electric utilities to recover, which is an element of their authorized WACC, has included a “risk premium” that compensates a utility’s investors for the risks associated with similar utility businesses.

Those investor risks include the risk of not recovering the costs of investments determined by regulators to be not “prudent” (the so-called “prudent investment” rule). They also include the risk that a utility may not be able to fully recover all of its investments in utility plant or a profit on those investment if, over time, that plant becomes economically obsolete due to the availability of more cost-effective resource alternatives, and therefor is no longer “useful” (economic) for utility service to its customers and “prudent” for a utility to rely on for such service.

PRC points out the following provisions in which some or all of the authority and expertise of the PRC is bypassed in this proposal:

Limits on Commission Oversight and Authority

SB-47 reduces or eliminates Commission authority and discretion in several areas in a manner that is atypical:

1. arguably limits the ability to decide on an appropriate amount of stranded costs for recovery through the definition of energy redevelopment costs and the concurrent filing of abandonment and financing order application (Section 2(I)(1)(c));
2. mandates use of a specific methodology to compare cost savings of the financing order with cost recovery under the WACC (Section 3(B)(9)));
3. mandates approval of the financing order if it meets a specific criteria of cost savings using the specified methodology (Section 3€(2));
4. mandates locational approval of replacement resource in San Juan county under specific criteria (Section 18(A));
5. limits the ability to amend the financing order after a final order is issued to specific instances (Section 6(B)) and provides for the irrevocability of the financing order (Section 6(A));
6. provides a statutory time limit for the approval of a financing order application and any accompanying abandonment application (Section 3(A));
7. provides that the Commission cannot include the energy redevelopment bonds as a part of the utility’s capital structure in a ratemaking procedure, which is important when determining the WACC going forward (Section 9(A));
8. states that the Commission cannot order the qualifying utility to issue energy redevelopment bonds and if a utility chooses not to use them, it still has the right to full stranded cost recovery (Section 9(B)). In other words, the utility is not under any mandate to ensure stranded cost recovery for its customers at the lowest interest rate and it may pursue cost recovery at the higher WACC if that is in its best interest;
9. mandates that the utility shall use the bond proceeds to acquire utility-owned replacement resources for inclusion in rate base (Section 10(A)); Section 198(A) also mentions utility –owned replacement resources;
10. mandates that the utility shall select sites for utility-owned replacement resource in the county where the abandoned coal-fired plant is located; and this may just replicate (4) above;
11. mandates that the Commission grant certificates of public convenience and necessity for replacement resources located in the affected New Mexico county and allow full cost recovery in rates (Section 19(B)).

> The fifth limit, No. 5 above is necessary for the highest credit rating from ratings agencies because it ensures that any financing order won't be capriciously altered after the bonds are sold, thereby impacting bondholder's expected stream of revenue payments. The other limits are not necessary for a financing order and could have negative impacts on customers.

Grammatically, the Constitution may provide pause:

> Sec. 2. [Responsibilities of public regulation commission.] (2012)
> The public regulation commission shall have responsibility for regulating public utilities, including electric, natural gas and water companies; transportation companies, including common and contract carriers; transmission and pipeline companies, including telephone, telegraph and information transmission companies; and other public service companies in such manner as the legislature shall provide. The public regulation commission shall have responsibility for regulating insurance companies and others engaged in risk assumption as provided by law until July 1, 2013.

If the court wanted to parse the language, it says PRC shall regulate public utilities . . . in such manner as the legislature shall provide. The court could decide that the first clause, "shall regulate public utilities", is the grant of power over public utilities given to PRC. The subordinate clause allows the legislature to determine how that grant of power is exercised. It does not seem to suggest that the legislature can take the power away from PRC.

Counselor Throne and Counselor Nanasi both discuss another section of the Constitution (Article IV, § 34) which prohibits certain actions of the legislature:

No act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case.

Briefly, New Energy Economy has a pending appeal in the New Mexico Supreme Court, Case No. 36,115, which directly addresses the question of imprudence and PNM's investment in Four Corners Power Plant and whether this resource should be permitted to serve PNM retail customers. New Energy Economy has also appealed several other PRC orders revolving about maintaining SJGS, FCPP and the Palo Verde Nuclear Generating Station that also serve PNM's customers. If the bill passed in its current form, it is likely that any attempt to use the provisions of the securitization bill to argue against any of the appeals would be a violation of this Constitutional provision.

The third issue involves the securitization procedures. "At the heart of the stranded cost securitization is the creation of this property right in the nonbypassable charges, stated as a separate line item on ratepayer bills that serve as the basis for payment of debt service. If SB47 truly establishes a "ring-fenced and bankruptcy remote" procedure that isolates the securitization from any untoward events, including the bankruptcy of the qualifying utility, then the bonds will be rated AAA and obtain the best possible financing rate. In the opinion of PRC staff, the bill does not create the required elements for the bonds to achieve this status. This is a highly technical issue, which argues that the PRC must be fully involved in every aspect of this proposal from preparing the detailed analysis of the bill to ensuring that all I's are dotted and T's crossed on the financing order and creation of the special purpose entity (SPE) that will own the property right to the nonbypassable rate. Here is one example drawn from the PRC FIR:

The reference to bankruptcy-remote means that the right to receive revenues from the special charge which secures the bonds cannot be an asset of the qualifying utility and cannot be seized by a creditor of the utility in the event of a bankruptcy. This is accomplished when the qualifying utility creates a SPE which is separate and bankruptcy-remote from the parent utility, and when the parent utility sells, in a true sale, the intangible property right to the SPE. The property right conveys the right to adjust, bill and collect the special charge. Pursuant to a servicing agreement, the qualifying utility bills and collects revenues from the special charge for the account of the SPE and routinely (usually daily) remits those revenues to a trustee for the account of the SPE for the purpose of making principal and interest payments for the life of the bonds. As SB47 reads now, this bankruptcy remote SPE is not fully endowed with all of the rights and responsibilities. For instance, Section 4(F)(1) reads that the qualifying utility itself will issue the energy redevelopment bonds. This is not a bankruptcy-remote structure.

PERFORMANCE IMPLICATIONS

This bill removes authority from the PRC. This diminution in authority does not result in a decrease in responsibility, since the PRC's overriding function is to balance the needs of bondholders, ratepayers and all of the other stakeholders in the affairs of the regulated utility. This bill will make this task more difficult for PRC. Whatever performance measures adopted by PRC are bypassed by the provisions of this bill.

ADMINISTRATIVE IMPLICATIONS

The provisions of this bill will increase PRC's administrative duties and incur specialized costs. PRC indicates need for a Certified Public Accountant, a Public Utility Engineer, a staff counsel, ½ associate general counsel and a hearing examiner, whose cost would be generally funded. In addition, the proposal would require bond counsel, disclosure counsel and an independent financial advisor with expertise in securitization financing whose fees could be embedded in the amount financed. This need could extend for six years. There are three other facilities that could be eligible for this treatment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The PRC FIR points out a number of situations in which SB-47 is in conflict with existing statute. These are largely related to the shortened time frames established in SB47. In some cases, these time frames are very much shortened to the extent that PRC would be unable to schedule a public hearing, even on controversial points.

TECHNICAL ISSUES

PRC's FIR lists several technical issues and conflicts with current statute.

OTHER SUBSTANTIVE ISSUES

PRC notes that the Section 2(I)(1)(a) states that "reclamation of mines that provide coal to qualifying generating facilities" is included in energy redevelopment costs to be financed by these bonds. LFC staff notes that mine reclamation is a promise made to the state and its residents whenever a mine is decommissioned for whatever reason. Allowing the bonds supported by energy ratepayers to subsidize mine reclamation is a major reversal of long-standing policy and tradition.

ALTERNATIVES/SUGGESTED AMENDMENTS

Page 12, lines12 – 15 allows bonds to be issued in a series, with the period of each one in the series limited to twenty-five years. LFC staff recommend either requiring there only be one bond for the entire amount or that all bonds in a series have a period limited to twenty-five years from the date of the first issuance.

Because of the extremely technical nature of this proposal, taking the PRC out of its role in balancing the needs of the ratepayers and PNM's investors may be unwise. The portions of the bill that allow the establishment of a ring-fenced and bankruptcy remote special subsidiary (SPE) and allows the selling of the energy redevelopment bonds can be separated from the more controversial provisions of the bill, such as the shortened time-frames for PRC actions, the mandated PRC approvals without hearing, and, perhaps, the caveated promise to reinvest an unstated amount in replacement resources in the Central Consolidated School District located in rural San Juan County.

The PRC itself suggests that other states have enacted legislation authorizing stranded cost securitization financing on a coal-fired plant-specific basis. PRC's FIR provides specific reference to this approach.

PRC also suggests that a portion of the bond proceeds could be used to provide transition revenues to the Central Consolidated School District, San Juan County and, perhaps, Farmington for lost property tax revenues.

The New Energy Economy, in a full page ad placed in the January 24-30 Santa Fe Reporter requests three provisions that should be included in an alternative bill: 1) split the San Juan abandonment costs [ed. 'between ratepayers and investors']; 2) no monopoly on replacement power; and 3) full vet regulatory issues.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The abandonment of Units 1 and 4 at San Juan Generation Station will probably occur because of PRC pressure and pressure from the EPA and the environmental community. The PRC will probably disallow 50 percent of the stranded costs and may discount the established WACC to a point that rate-paying customers will pay about the same as if the bill did pass. However, PNM would be under no obligation to replace resources in San Juan County. The 657 jobs at SJGS and SJCC would be lost, along with the property tax and gross receipts tax revenues currently received by San Juan County. The state will lose the coal severance tax and gross receipts tax revenues and the Navajo Nation will lose its Gross Proceeds Tax revenues under any scenario. PNM's bond rating will fall and its stock price will also fall. There will be substantial losses to many of the stakeholders when the SJGS is retired, but the provisions of this bill may serve to ameliorate the most egregious impacts.

LG/DI/al/sb

Detailed Description

ENERGY REDEVELOPMENT BONDS BILL

Senate Bill 47 would authorize an alternative mechanism for financing the retirement of coal-fired power plants at a lower cost to customers, as compared to conventional financing mechanisms. It has been designed to accommodate the retirement in 2023 of Units 1 and 4 of the San Juan Generation Station, and to anticipate the closure of the Four Corners Power Plant in 2031. The bill is designed to mitigate adverse economic effects on affected local communities by requiring the location of replacement power resources in the communities where the abandoned facilities are located, taking into consideration system reliability while assuring that such location does not eliminate the cost savings from energy redevelopment bonds.

This summary has been prepared by Matthew Jaramillo, Esq. of PNM Resources relative to a precursor bill with most of the same features as the final, introduced version. LFC staff have edited this description to conform to the introduced bill and have annotated some of the described features.

The major features of the bill to accomplish the stated purposes are:

- Authorizes the issuance of energy redevelopment bonds with a maximum term of twenty-five years to allow a utility to raise non-recourse debt financing through a trust or other vehicle. (LFC note: bonds can be issued in a series with each bond in the series having a term of twenty-five years. From issuance of the first bond to the retirement of the final bond, however, the duration could exceed twenty-five years.)
- The amount of the bonds is based on recovery of costs incurred or associated with abandonment of coal plants used to serve the utility's customers in New Mexico, including decommissioning costs, mine reclamation costs, and costs incurred related to the coal plant but not yet fully recovered such as undepreciated investment remaining at the time of abandonment. (LFC note: apparently, the PRC has the power and authority to reduce these closure costs imposed on ratepayers. In an example calculation comparing conventional financing to these ratepayer-backed bonds, Public Regulation Commission (PRC) would have reduced investor recovery of costs to 50% of total. The language of this feature may indicate that the sponsor expects 100% of the costs to be reimbursed to the utility, without reduction of the amount by PRC.)
- Creates an application process through the PRC for approval of a "financing order" which would authorize the PRC to approve the issuance of energy redevelopment bonds in the amount requested by the utility and allow the utility to impose a non-bypassable charge as a line item on all of the utility's customer's bills to assure full payment of the principal and interest, premiums and other financing costs associated with the bonds.
- Creates energy redevelopment property as collateral for the securitization, i.e., the right to receive the revenues from the non-bypassable charge to assure repayment of the bonds, providing a process for perfection of a security interest in the energy redevelopment property and priority over any other lien.
- Requires an adjustment mechanism, i.e., a true-up process to assure that the non-bypassable charge recovers revenue in an amount necessary to service the bonds until the bonds are fully paid. The adjustment mechanism is to be filed at least semi-annually, or more often if ordered by the PRC, until two years before maturity, at which time it must be filed at least quarterly. The adjustment may only be challenged for mathematical accuracy, with a streamlined process for approval of adjustments. (LFC note: PRC indicates some difficulties with implementing this expedited process.)
- The financing order is irrevocable to assure that the mechanisms put in place to obtain a high debt rating remain.
- Provides a state pledge that the statute will not be repealed or amended in a manner that would impair the energy redevelopment property, the non-bypassable charge or the bonds. (LFC note: this non-

impairment provision is, in fact, constitutional and usual with state or local level taxable or non-taxable bonds.)

- Provides mechanisms whereby debt service will not be impaired or otherwise adversely affected by the bankruptcy of the utility or the financing entity.

II. Summary of Specific Provisions

A. Financing Order and Application

- To obtain a financing order under this act, a qualifying utility must obtain approval to abandon a coal generation facility that has not been approved for abandonment prior to January 1, 2018.
- The application for a financing order may be filed as part of an application for abandonment. If an abandonment proceeding is pending at the time of the application for a financing order, the PRC is required to consolidate the proceedings.
- The application may include a request for certificates of public convenience and necessity (CCNs) for some or all power necessary to replace the power supplied by the abandoned facility.
- The qualifying utility may defer an application for CCNs to a separate proceeding, so long as it identifies potential adequate replacement resources that would be available at the time the replacement power is needed to serve customers.
- Additionally, the application for a financing order must also include:
  - evidence that the applicant is a qualifying facility, as defined in the bill;
  - a description of the generating facility that the applicant proposes to abandon;
  - an estimate of costs of energy redevelopment, including any undepreciated investment in the facility at the time of the proposed abandonment. (LFC note: the precursor draft bill anticipated that eligible bond costs could include the investment in replacement capacity. This inclusion has been removed from the introduced version);
  - the amount of energy redevelopment costs the utility proposes to finance with bonds;
  - an estimate of financing costs associated with each series of bonds proposed to be issued;
  - an estimate of the charges necessary to recover abandonment costs and finance the bonds;
  - a proposed methodology for allocating the charge among customer classes;
  - a description of the proposed adjustment mechanism to correct for any over-collection or under-collection of charges;
  - an estimate of the cost savings to customers of issuance of the bonds as compared to financing the costs of energy redevelopment through conventional financing;
  - an estimate of the date on which bonds secured by the customer charge are expected to be issued, and the expected term of the bonds, which shall be no greater than 25 years. (LFC note; the introduced version of the bill allows for bonds to be issued in a series, with each bond in the series having a term of no longer than 25 years, but the cumulative duration could be significantly longer than 25 years. The actual text follows:

an estimate of the date on which the energy redevelopment bonds are expected to be issued and the expected term over which the financing costs associated with the issuance are expected to be recovered or, if the bonds are expected to be issued in more than one series, the estimated issuance date and expected term for each bond issuance; provided that the maximum term for each bond issuance shall be no longer than twenty-five years;

  - identification of plans to sell, assign, transfer or convey (other than as a security) interest in the energy redevelopment property, including identification of assignees;
  - identification of any necessary ancillary agreements;
  - a description of a proposed ratemaking process to reconcile any difference between the projected pretax costs in the amount of energy redevelopment costs financed by the bonds and the final pretax energy redevelopment costs incurred by the qualifying utility;
  - any other information reasonably required by the Commission to determine if approval to abandon or if requests for CCNs should be granted.
- Notice of an application for a financing order shall be given to the parties of record in the qualifying utility's most recent general rate case and published in newspapers in the qualifying utility's service area in the state and county in which the qualifying facility proposed to be abandoned is located.
- An application for a financing order may be approved without a hearing, if no protest establishing good cause for a formal hearing is filed within 30 days of notice of the filing of an application.
- The PRC must issue its order granting or denying the application within six months of filing.
- For good cause shown, the PRC may extend the six month time for issuing by an additional three months. (LFC note: PRC indicates that this is an unreasonable provision considering that protests are almost certain to be filed.)
- Failure to issue the order within this time shall be deemed approval as filed by operation of law.
- In order to approve the application, the financing order must contain findings and requirements consistent with the application for the financing order. The financing order may be amended after the date of issuance of the bonds only at the request of the utility to allow for refinancing, retiring or refunding the energy redevelopment bonds or to adjust the amount of energy redevelopment costs to be financed by energy redevelopment bonds which have not yet been issued to reflect updated estimated costs or actual costs, but no amendment is allowed that would in any way impair the energy redevelopment charge or the energy redevelopment property.
- If an abandonment proceeding is consolidated with the application for a financing order, the time periods required for ruling on the application for financing are applicable to the consolidated case. (LFC note; PRC will object to this provision.)

<u>B.</u> <u>Adjustment Mechanism</u>

- If the PRC issues a financing order, it must periodically approve use of an adjustment mechanism to correct for over-collection or under-collection of the energy redevelopment charges to provide timely payment of scheduled principal and interest on the bonds , and the payment and recovery of other financing costs approved in the financing order.
- The qualifying utility must file at least semiannually, or more frequently as provided in the financing order: 1) calculation estimating whether the charge is sufficient, or if either an over-collection or undercollection is projected; and 2) a calculation showing the adjustment to the charge to correct for any over-collection or under-collection.
- The qualifying utility must file these calculations at least quarterly during the 2 year period preceding the final maturity date of the energy redevelopment bonds.
- The adjustment mechanism must be available until the bonds and all financing costs have been fully paid and recovered.
- Notice shall be provided to parties of record in the case in which the financing order was issued on the same day as the qualifying utility files these calculations with the PRC.

- The adjustment mechanism shall be deemed approved by the PRC unless: 1) a party of record to the case in which the financing order was approved files a challenge to the mathematical accuracy of the adjustment within 30 days of the filing of the adjustment by the utility, providing the challenge identifies the mathematical accuracy with specificity; and 2) the PRC determines good cause exists, provided the suspension shall not exceed 60 days from the date of filing.
- If the PRC determines a hearing is necessary, the PRC shall hold the hearing within 40 days of the utility's filing of the adjustment calculation.
- If the PRC determines the calculation is inaccurate, it shall issue an order rejecting the calculation and determining the accurate calculation. The utility will then have 5 days to adjust the charge in accordance with the PRC's order.
- If the PRC does not issue an order rejecting the utility's calculation within 60 days of the utility's filing, the adjustment to the energy redevelopment charge will be deemed approved.
- No adjustment or proceeding held pursuant to this section will affect the irrevocability of the financing order.

C. Irrevocability of Financing Order

- A financing order is irrevocable and the PRC shall not reduce, impair, postpone or terminate the energy redevelopment charge approved in the financing order, the energy redevelopment property or the energy redevelopment revenues.
- A financing order may be amended at the utility's request on or after the issuance of the bonds for the purpose of: 1) refinancing, retiring or refunding all or a portion of the outstanding bonds; 2) adjusting the amount of energy redevelopment costs to be financed with bonds that have not yet been issued to reflect updated costs that differ from costs estimated at the time that the financing order was issued; and

  3) is subject to the limitations above not to reduce, impair, postpone or terminate the energy redevelopment charge, property or revenues.
- No change in credit rating of the utility from the time the financing order was issued shall impair the irrevocability of the financing order.

D. Judicial Review

- A financing order is final and an aggrieved party may apply to the PRC for rehearing in accordance with § 62-10-16 NMSA 1978, provided that such application is done within 10 calendar days of the order. An application for rehearing will be deemed denied if the PRC does not act on it within 7 calendar days of the filing of the application.
- After denial of an application for rehearing by the PRC, an aggrieved party may file a notice of appeal with the NM Supreme Court pursuant to § 62-11-1 NMSA 1978, provided that such notice is filed no later than 10 calendar days after denial of an application for rehearing. Or if rehearing is not applied for, no later than 10 calendar days after the issuance of the financing order.

E. Conditions That Keep Financing Orders in Effect and Energy Redevelopment Charges Imposed

- A financing order shall remain in effect until the related bonds are paid in full and all financing costs related to the bonds have been paid in full.

- A financing order shall remain in effect and unabated despite bankruptcy, reorganization or insolvency of the utility or any non-utility affiliate or the commencement of any judicial or non-judicial proceeding for bankruptcy or appointment of a receiver.
- If the bonds issued pursuant to a financing order are outstanding and related energy redevelopment costs and financing costs have not been paid in full, the energy redevelopment charges shall be part of all customer bills and be collected by the utility or its successors or assignees, in full through a non-

  bypassable charge that is a separate line item on bills, separate and apart from the utility's base rates. The charge shall be paid by all customers receiving transmission or distribution service from the utility or its successors or assignees, even if the customer elects to purchase electricity from an alternative electricity supplier as permitted by State law, including distributed generation owned or controlled by the customer or another non-utility.

F. <u>Limitation on Jurisdiction of the NMPRC</u>

- If the PRC issues a financing order, the PRC may not consider any bonds issued pursuant to the financing order to be debt of the utility, the charges paid under the financing order to be revenue to the utility, nor the energy redevelopment costs or financing costs to be costs of the utility. Any action taken by a utility that is consistent with the financing order shall be deemed just and reasonable.
- The PRC may not order or otherwise require, directly or indirectly, any utility to use bonds to finance any costs associated with abandonment of a coal-fired electric generating facility.
- The PRC may not refuse to allow recovery of any costs associated with abandonment, including full recovery of undepreciated investment remaining at the time of abandonment, whether or not energy redevelopment bonds are used. (LFC note: this provision severely limits the ability of the NMPRC to weigh the competing interests of the local governments and citizens, PNM ratepayers, and PNM management and investors. In particular, PRC could not impose a fractional reduction in PNM investor's recovery of undepreciated value.).

G. <u>Duties of the Qualifying Utility</u> If a financing order is issued:

- The utility must use proceeds from energy redevelopment bonds to pay energy redevelopment costs and financing costs~~, and to acquire utility-owned replacement resource and investments in other public utility property for inclusion in rate base.~~ (LFC note: in the introduced bill, proceeds may not be used to provide replacement resources.
- The utility must provide its customers with a concise explanation of the non-bypassable energy redevelopment charge approved in the financing order, including any modifications and adjustment mechanism, in bill inserts, on its website, or through other appropriate means.
- Revenues generated pursuant to this bill are applied solely to repay the bonds and other financing costs.
- Failure of a utility to apply proceeds in a reasonable, prudent and appropriate manner shall not invalidate, impair or affect any financing order.
- The PRC may impose regulatory sanctions against a utility for failure to comply with the terms and conditions of a financing order or other requirements of this act. (LFC note: proceeds of the bond may not be used to pay these regulatory sanctions.)

H. <u>Energy Redevelopment Property</u>

- Energy redevelopment property created pursuant to a financing order, i.e. the revenue stream from nonbypassable energy redevelopment charges, shall be an existing, present property right, regardless of whether the utility continues to provide electric energy, or perform its servicing functions, or regardless of the level of future energy consumption.

- Energy redevelopment property shall continue to exist until the bonds and related financing costs have been paid in full.
- All or any portion of the energy redevelopment property may be transferred, sold, conveyed or assigned to a non-utility affiliate that is wholly owned, directly or indirectly, by the qualifying utility, created for the limited purpose of acquiring, owning or administering the energy redevelopment property or issuing bonds under the financing order, or a combination of these purposes. All or any portion of the energy redevelopment property may be pledged to secure payment of bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement, or other financing costs.
- Formation of a non-utility affiliate as described above and any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of energy redevelopment property by a utility to a non-utility affiliate, as authorized in a financing order, shall not require any further approval by the PRC and shall not be subject to regulation as a Class II transaction.
- If a utility defaults on any required payment of revenues, a court – upon application by an interested party and without limiting any other remedies available to the party – shall order sequestration and payment of the revenues for the benefit of bondholders, any assignee and any financing parties. The order shall remain in full force and effect notwithstanding bankruptcy, reorganization, or other insolvency or receivership proceedings regarding the utility or non-utility affiliate.
- Interest in the energy redevelopment property by an assignee, bondholder or financing party, are not subject to set-off, counterclaim, surcharge or defense by the utility or any person in connection with bankruptcy, reorganization or other insolvency or receivership proceeding.
- Any successor to a utility shall be bound by the requirements of this act and shall satisfy all obligations of, and have the same rights under a financing order as, the utility.

I. Security Interests

- The creation, perfection and enforcement of any security interest in the energy redevelopment property to secure repayment of the principal and interest on the bonds, amounts payable under ancillary agreement and other financing costs are governed by this act, and not the provisions of the Uniform Commercial Code or the Public Utility Act.
- The description or indication of the energy redevelopment property in a transfer or security agreement and a financing statement must refer to this act and the financing order creating the energy redevelopment property. This applies to all transfers of, and all grants of liens on or security interests in, the energy redevelopment property, regardless of whether the related transfer or security agreement was entered into, or the related financing statement was filed, before or after the effective date of this act.
- A security interest in the energy redevelopment property is created, valid, and binding at the later of the time: (1) the financing order is issued, (2) a security agreement is executed and delivered; and (3) value is received for the bonds issued pursuant to this act.
- The security interest attaches without physical delivery of collateral or other act and the lien of security interest shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest, regardless of whether such parties have notice of the lien, upon filing of a financing statement with the Secretary of State ("SOS").
- A security interest in the energy redevelopment property is a continuously perfected security interest and has priority over any other lien.
- The priority of a security interest in the energy redevelopment property is not affected by the comingling of revenues with other funds. Any pledged or secured party shall have a perfected security interest in the amount of revenues that are deposited in any cash or deposit account of the utility in which revenues

have been co-mingled with other funds and any other security interest that may apply to those funds shall be terminated when they are transferred to a segregated account for assignee or a financing party.

- Subsequent amendment of a financing order or application of the adjustment mechanism shall not affect the validity, perfection or priority of a security interest in or transfer of the energy redevelopment property.

J. Sale of Energy Redevelopment Property

- Any sale, assignment or transfer of energy redevelopment property shall be an absolute transfer and true sale of, not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the energy redevelopment property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A sale of the energy redevelopment property can be created when: the financing order creating the energy redevelopment property becomes effective, the documents evidencing transfer of the energy redevelopment property have been executed and delivered to the assignee, and when value is received.
- Upon filing a financing statement with the SOS, a transfer of an interest in the energy redevelopment property shall be perfected against all third persons, including any judicial lien or other lien creditors, or any claims of the seller or creditors of seller, other than creditors holding a prior security interest, ownership interest or assignment previously perfected pursuant to this section or section 13 of the act.
- An absolute transfer and true sale shall not be affected or impaired by the occurrence of: 1) co-mingling of revenue with other amounts, (2) retention by seller of a partial or residual interest, including an equity interest, in the energy redevelopment property, whether direct or indirect, or whether subordinate or otherwise, or the right to recover costs associated with taxes or license fees imposed on collection of revenues; (3) any recourse that the purchaser may have against the seller; (4) any indemnification rights, obligations or repurchase rights made or provided by the seller; (5) obligation of seller to collect revenues on behalf of an assignee; (6) treatment of the sale, assignment or transfer for tax, financial reporting or other purposes; (7) any subsequent order of the PRC amending a financing order, or (8) any use of the adjustment mechanism.

K. Exemption from Fee Assessments – Imposition, collection and receipt of revenues from the customer charge created by this act are not subject to ~~gross receipts or sales tax or~~ assessment of franchise fees by any local body or to assessment of inspection and supervision fees.

L. Bonds Not Public Debt – Any bonds issued pursuant to a financing order shall not constitute a debt or pledge of the full faith and credit or taxing power of this state or other political subdivision of the state. Bondholders have no right to have taxes levied by the legislature or any public taxing authority for payment of principal or interest on the bonds. The issuance of energy redevelopment bonds does not in any way obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of principal and interest on the bonds.

M. Bonds as Legal Investments – Energy redevelopment bonds shall be legal investments for all governmental units, state permanent funds, finance authorities, financial institutions, insurance companies, fiduciaries and other persons requiring statutory authority regarding legal investments.

N. State Pledge Not to Impair – The state pledges to and agrees that it will not take or permit any action that impairs the value of the energy redevelopment property or, except for application of the adjustment mechanism, reduce, alter or impair charges that are imposed, collected and remitted for the benefit of bondholders, assignees and financing parties, until any principal, interest and redemption premium of the bonds and all financing costs are paid in full. This pledge may be used in the bonds, ancillary agreements and documentation related to issuance and marketing of the bonds.

O. Resource Redevelopment After Abandonment – To mitigate potential adverse economic impacts on the communities affected by the abandonment of qualifying generating facilities, the qualifying utility shall for five years after abandonment select sites for utility-owned replacement resources located in or near the affected community, so long as the replacement resources so located maintain adequate system reliability. The PRC shall grant such CCNs and allow full cost recovery of these replacement resources in rates. This location preference shall not be applicable if the costs of so locating replacement power resources exceeds the costs of locating replacement resources elsewhere in an amount that exceeds the cost savings attributable to the use of energy redevelopment bonds.

P. Choice of Law – The law governing validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to transfer of an interest or right or creation of a security interest in the energy redevelopment property, charge or financing order shall be laws of the state of New Mexico.

Q. Validity on Actions if Act Held Invalid – Effective on the date any bonds are issued pursuant to this Act, if any provision of this Act is held invalid, that occurrence will not affect the validity of any action allowed pursuant to the Act that is taken by the PRC, a qualifying utility, an assignee, a collection agent, a financing party, a bondholder or a party to an ancillary agreement. To prevent the impairment of energy redevelopment bonds issued or authorized by a financing order, any such action shall remain in full force and effect with respect to all bonds issued or authorized in a financing order issued pursuant to the Act before the date that provision was held to be invalid.

R. New Section of the Gross Receipts and Compensating Tax Act – Receipts from an energy redevelopment charge pursuant to this Act shall be exempt from Gross Receipts Tax.

S. Temporary Provision – Pending Application – If an application for abandonment of a qualifying generating facility is pending before the PRC on the effective date of this Act, the utility may file a separate action for a financing order and the PRC shall join or consolidate the application for the financing order with the abandonment application, and the time periods prescribed by this Act shall apply to the consolidated case.

T. Applicability – Application for an initial financing order must be made within twenty years of the effective date of this act; except that any utility for which the PRC has issued a financing order will not be precluded from applying to the PRC for a subsequent order amending the financing order, or for approval of the issuance of bonds to refund all or a portion of an outstanding series of bonds.

LFC Requester:	Laird Graeser

AGENCY BILL ANALYSIS
2018 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original ___ **Amendment** ____
Correction X **Substitute** ____

Date Prepared: 1/23/18
Bill No: SB47

Sponso Jacob R. Candelaria & Steven P. Neville
Short Title: Energy Redevelopment Bond Act

Agency Code: PRC – 430
Person Writing Heidi M. Pitts, Ph.D. & Cydney Beadles
Phone: 827-
Email: Heidi.Pitts@state.nm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
n/a	n/a		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
n/a	n/a	n/a		

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	Annual Cost FY2019 – 2025	6 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$450.0*	$2,700.0*	Nonrecurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

* **future impact:** out-year costs of $450,000.00 per year for up to six (6) years starting potentially in FY2019 when PNM agreed to make a filing on whether San Juan coal-fired plant should continue to serve PNM retail customers after 2022. PNM's agreement was part of the stipulation accepted by the Commission on December 16, 2015 in NMPRC Case No. 13-00390-UT authorizing the abandonment of San Juan units 2 and 3. Assumptions and inputs used to derive this estimate this operating budget impact discussed in detail below in the Fiscal Implications section.

Duplicates: HB 80 "Energy Redevelopment Bond Act"
Relates to: (1) SB9/HB73 "Economic Impact of Utility Abandonment"
(2) SB12/HB72 "Public Utility Title Conveyance"

SECTION III: NARRATIVE

BILL SUMMARY

Senate Bill 47 ("SB47") or the Energy Redevelopment Bond Act ("the Act") creates a bond financing mechanism, sometimes referred to as securitization financing, by which an investor-owned electric utility (e.g., Public Service Company of New Mexico ("PNM") or Southwestern Public Service Company ("SPS")) would recover stranded[2] and certain other costs ["energy redevelopment costs" per Section 2(H)] that are associated with the retirement of a coal-fired plant. Securitization is a highly specialized type of bond financing. When used to compensate utilities for stranded costs, it may be referred to as stranded cost securitization. Utilities are permitted under Section 10 of the Act to use the bond proceeds to recover their stranded costs, to pay certain other costs and to acquire replacement generation resources. If the abandoned plant is located in New Mexico, the Act also requires utilities under Section 18 to seek to select sites for replacement resources in the county where the abandoned coal-fired plant is located.

SB47 provides a process by which utilities who seek to abandon a coal-fired electric generating station after December 31, 2017 could recover stranded costs while procuring cost savings for their customers through the issuance of low-interest "energy redevelopment bonds" [ERBs, as defined in Section 2(G)]. SB47 provides for the issuance of financing orders by the New Mexico Public Regulation Commission (the "Commission" or "NMPRC" or "PRC") authorizing the issuance of ERBs. If the bond issuance is structured properly, the utility creates an SPE [special purpose entity] which may be a utility affiliate. This SPE should issue ERBs and pay the bondholders. The SPE should hold title to a newly-created property right which represents the right to impose nonbypassable charges on utility customers and to receive the collected revenues. At the heart of stranded cost securitization is the creation of this property right in the nonbypassable charges, stated as a separate line item on ratepayer bills, that serve as the basis for payment of debt service. If the SPE is truly ring-fenced and bankruptcy remote from the parent utility, the energy redevelopment bond issuance should get the highest credit rating of AAA from a ratings agency such as Moody's. This credit rating is separate from the credit rating of the parent utility, which is typically lower than AAA. The AAA credit rating creates an opportunity for the lowest interest rate[3], which can provide savings to customers on a net present value basis although a cost comparison analysis is necessary.

The qualifying utility and the SPE sign an administration agreement pursuant to which the qualifying utility provides administrative services in support of the SPE. The qualifying utility and the SPE also sign a servicing agreement pursuant to which the qualifying utility bills the special consumption-based, per kWh line item charge on the monthly bill of customers, collects from customers the revenues from that charge, and transfers revenues from that charge to the SPE who makes the principal and interest payments to the bondholders.

[2] Stranded costs is the common term for undepreciated investment, and the terms are used interchangeably in this document.
[3] Not all AAA-rated debt with the same term to maturity bears the same interest rate.

This bill describes how cost savings are to be calculated, which energy redevelopment costs may be recovered in the bond issuance, how the bond proceeds are to be used, the application for and approval of a financing order, what provisions a financing order shall contain, how the SPE and energy redevelopment property are set up, allows for contemporaneous filing of abandonment, financing order, and CCN [certificate of public convenience and necessity] applications, and puts limits on Commission jurisdiction over the financing order.

Additionally, SB47 includes requirements for replacement resources after an abandonment. First, the qualifying utility shall use the energy redevelopment bond proceeds to acquire utility-owned replacement resources and investments in other public utility property for inclusion in rate base. Section 10(A). Second, the replacement resources shall be utility-owned, and if the abandoned plant is located in New Mexico, the utility shall "select site" in the New Mexico county in which the abandoned coal-fired plant is located if: (i) adequate system reliability would be maintained; and (ii) the cost of the replacement power is less than the cost of replacement power located elsewhere, mandating use of a cost savings calculation that favors the county with the abandoned coal-fired plant. SB47 allows for full cost recovery in rates of these replacement resources. The Commission must grant CCNs for replacement resources at those sites. Section 18(B).

This bill is for facilities that are granted abandonment authority after December 31, 2017. Its lifetime is 20 years from the Act's effective date after which any qualifying utility cannot submit an initial application for a financing order.

Since SB47, by its wording, does not limit stranded cost securitization financing to coal-fired plants located in New Mexico, but only to coal-fired electric generating facilities owned or leased by New Mexico qualifying utilities, this bill could be used in potential abandonment cases for: (i) Public Service Company of New Mexico's ("PNM") San Juan Generating Station (Units 1 and 4) and the Four Corners Power Plant (both in San Juan county in New Mexico); and (ii) Southwestern Public Service Company's ("SPS") Tolk Generating Station (located near Muleshoe, TX) and Harrington Generating Station (located northeast of Amarillo, TX). El Paso Electric does not own or lease any coal-fired electric generating plants.

FISCAL IMPLICATIONS

Commission review and analysis of applications for financing orders filed pursuant to this Act, and related applications to abandon a coal-fired plant or to certificate a replacement plant, would require the equivalent of at least 1 Certified Public Accountant (range 80), 1 Public Utility Engineer (range 85), 1 Staff counsel [range 80); ½ associate general counsel [range 80] and 1 Hearing Examiner (range 90) at a Mid Point-derived estimate of $450,000.00 annually for the period of time it takes to conclude the proceedings which is reasonably expected to be approximately two (2) years for each coal-fired plant retirement-related case.

Since four (4) coal-fired plant retirements [PNM's Four Corners and San Juan Generating Station ("SJGS") ownership interests in New Mexico and SPS's Tolk Generating Station and Harrington Generating Station in Texas] may qualify for this special type of financing [securitization financing], the PRC would need up to approximately $450,000.00 each year for up to six (6) years to fund sponsored term positions, or a total cost of $2,700,000.

Section 5 of the bill also provides that if the Commission issues a financing order, the Commission shall periodically approve the use of the adjustment mechanism approved in the financing order to correct for any over-collection or under-collection of the energy redevelopment charges and to provide for timely payment of scheduled principal of and interest on the energy redevelopment bonds and the payment and recovery of other financing costs in accordance with the financing order. These filings will also require Commission review and analysis and may result in additional proceedings if a party of record in the case in which the financing order was issued files a challenge to mathematical accuracy of the adjustment and if the Commission determines that a hearing on the challenge is necessary.

This does not include the cost of an independent financial advisor with expertise in securitization financing, but the costs of this expert could be rolled into the amount to be financed pursuant to a liberal reading of Section 2(L)(6) of the Act. The PRC would need to engage outside consultants and counsel experienced in securitized, investor-owned electric utility ratepayer-backed bond financing to assist with the financing order process to ensure, among other things, satisfaction of the criteria necessary to achieve a the highest bond rating (AAA) by a NRSRO[4] registered with the U.S. SEC. These consultants would assist the PRC with matters relating to the issuance of the financing order such as: (1) determining whether the proposed structuring, marketing and pricing of the "energy redevelopment bonds" will result in lower overall costs or avoid or significantly mitigate rate impacts to customers as compared to traditional utility ratemaking principles of financing and recovering undepreciated investment; (2) findings of fact addressing cost-effectiveness and associated impacts upon retail customers and retail customer classes; and (3) the details of the estimated amount of financing costs to be recovered through the "energy redevelopment charge" and the period over which such costs may be recovered. While many if not all of these matters will be addressed by the utility's application, it is imperative that the Commission have the assistance of expertise in the specialized field of stranded cost securitization financing that it needs to independently verify and evaluate this information and to provide appropriate ratepayer protections. The costs for these consultants should be covered by the bond financing and not paid from state funds. If bonds ultimately are not issued with respect to a qualifying utility's application, the costs for these consultants should be paid by the qualifying utility and should be recovered in the qualifying utility's future rates. (It should be noted here that state commissions have varying levels of oversight over the bond issuance and sale process to ensure that similar bonds, when marketed, get the best value for customers.)

SIGNIFICANT ISSUES

Issue 1: Securitization financing, under optimal conditions, should provide cost savings to ratepayers. But the Act, as drafted, may not sufficiently establish separation of the financing entity.

Under securitization financing, in SB47 referred to as energy redevelopment bonds, stranded costs are recovered through the issuance of the bonds designed to earn the highest credit rating possible (AAA from Standard & Poor's; Aaa from Moody's) and therefore creates an opportunity for the lowest interest rate. Principal and interest payments are made through the collection of a special consumption-based (per kWh) charge on current and future customers' monthly bills for the life of the bonds.

The benefits to the utility of securitization financing include certainty -- the utility receives the surety of recovering its stranded costs up-front when the bonds are issued. Recovering all 100% of its remaining undepreciated investment in rate base up- front, when a coal-fired plant is abandoned as opposed to receiving the stranded costs over the course of twenty to thirty years as a regulatory asset, would have tremendous value to the utility. The utility can use that money to pay down its debt and improve its balance sheet, and earn a return on other investments in other utility-owned generation or other resources to record in rate base where it will have an opportunity to earn its WACC[5] on costs in rate base. But perhaps more importantly, it provides regulatory certainty to the utility by assuring the utility that a future PRC will not fail to allow the utility a full recovery of its investment in the plant including its full WACC.

Properly implemented, this financing also benefits the ratepayer because once the appropriate level of stranded cost recovery has been decided, then these energy redevelopment bonds should provide a lower cost of capital than the utility's WACC resulting in cost savings to ratepayers. However, the way the Act is currently written, it appears that the qualifying utility may be guaranteed full recovery of stranded costs without Commission review of actions taken (or not taken) by the qualifying utility leading up to, or in connection with, abandonment of the coal-fired plant, and without a hearing in which all affected parties can weigh in. If this occurs, then the benefits of securitization to the ratepayers might be lessened or erased, although the benefits to the utility would remain.

---

[4] Nationally recognized statistical rating organizations such as, Fitch Ratings, Inc., Moody's Investors Service, Inc. and S & P Global Ratings.

[5] Weighted average cost of capital in PNM's last litigated rate case was calculated as 7.71% using the capital structure given on pg. 51 of NMPRC Case No. 15-00261-UT, In the Matter of the Application of Public Service Company of New Mexico for Revisions of its Retail Electric Rates Pursuant to Advice Notice No. 513, Corrected Recommended Decision. This is the amount of "profit" or return that is built into PNM's rates. In the recent rate case, PNM proposed to use the same capital structure with an updated cost of embedded debt of 4.93%. NMPRC Case No. 16-00276-UT, In the Matter of the Application of Public Service Company of New Mexico for Revision of its Retail Electric Rates Pursuant to Advice Notice No 533, Direct Testimony of Elisabeth A. Eden, Table EAE-1, pg. 14. The parties stipulated to a return on equity of 9.575%, the same ROE as was approved in the 15-00261-UT rate case. Case No. 16-00276, (Revised Order Partially Adopting Certificate of Stipulation (issued January 10, 2018), p. 3, par. 10. This results in a WACC of 7.23%.

With regard to the mechanics of the energy redevelopment bonds, in order to achieve a AAA credit rating, the bonds and their revenue stream must be ring-fenced and bankruptcy remote from the parent utility to assure bondholders of receiving their payments over the life of the bonds. As currently written, SB47 does not clearly provide for this.

The reference to bankruptcy-remote means that the right to receive revenues from the special charge which secures the bonds cannot be an asset of the qualifying utility and cannot be seized by a creditor of the utility in the event of a bankruptcy. This is accomplished when the qualifying utility creates an SPE which is separate and bankruptcy-remote from the parent utility, and when the parent utility sells, in a true sale, the intangible property right to the SPE. The property right conveys the right to adjust, bill and collect the special charge. Pursuant to a servicing agreement, the qualifying utility bills and collects revenues from the special charge for the account of the SPE and routinely (usually daily) remits those revenues to a trustee for the account of the SPE for the purpose of making principal and interest payments for the life of the bonds. As SB47 reads now, this bankruptcy remote SPE is not fully endowed with all of these rights and responsibilities. For instance, Section 4(F)(1) reads that the qualifying utility itself will issue the energy redevelopment bonds. This is not a bankruptcy-remote structure.

In order for stranded cost securitization to meet the Act's stated goal of reducing the total amount that customers pay for the qualifying utility's stranded costs and get the highest credit rating, thereby creating an opportunity for maximizing savings to customers, the SPE must issue the bonds on behalf of the qualifying utility with the SPE set up as a bankruptcy-remote/ring fenced subsidiary of the qualifying utility. Yet SB47 states in several places that the qualifying utility will issue the energy redevelopment bonds directly (Sections 2(G) and 2(L) and 4(F)(1)). Furthermore, Sections 4(F)(1) through (3) all discuss duties that should properly be assigned to the SPE whereas SB47 currently states that the qualifying utility will do these jobs. The bill could to be revised to make it crystal clear that the Bonds may be issued by a bankruptcy-remote SPE subsidiary of the utility. If the Bonds are issued directly by the qualifying utility rather than by a bankruptcy-remote SPE, (i) the bonds will not be rated AAA, and (ii) the rating agencies will not treat the bonds as though they were off-balance sheet to the utility when evaluating the credit quality of the utility's other securities.

Issue 2: Securitization financing, under optimal conditions, should maximize cost savings to ratepayers. But the Act, as drafted, ensures full recovery of stranded costs without a Commission hearing and participation by affected parties.

We understand that SB47 is intended to provide full stranded costs recovery if the plant is shutdown before the end of its depreciated life. Undepreciated, or stranded, investment costs occur when a utility removes an existing generating plant or another facility from its rate base before all investment dollars have been recovered.[6] Very broadly, we can categorize two instances where utilities face stranded costs: (i) the regulatory climate changes, for instance from a regulated to a de-regulated electricity market; and (ii) a plant must be abandoned before the end of its useful life because it is no longer economic to operate.

Based on a preliminary review of SB47, several sections indicate that the amount of the "energy redevelopment costs" to be financed through securitization is guaranteed to be 100% of the undepreciated investment without any separate Commission authorization or oversight. Section 2(I)(1)(a) defines "energy redevelopment costs" to include "the undepreciated investment of property to be abandoned" without qualification or limitation, suggesting 100%. Section 2(I)(1)(c) also includes "costs that have not been determined to be unrecoverable from customers by the time of filing the application for a financing order." Given that an abandonment application and a financing application may be filed concurrently as per Section 3(A), there would not be any costs deemed to be

[6] "Typically coal plants that are facing a shutdown analysis today are older plants, and the original investment has been fully recovered or nearly so through depreciation expense included in electric rates. But every year that a plant operates, investments are made in renewals and replacements of components of a plant, and these investments are added to the 'plant in service' balance upon which depreciation expense is calculated. These investments may also extend the plant's original service life. There is typically a significant plant balance for any operating plant—and often exceeding the original plant investment that was long ago fully depreciated." Incorporating Environmental Costs in Electric Rates, Lazar and Farnsworth (2011), p.31. http://www.raponline.org/wp-content/uploads/2016/05/rap-lazarfarnsworth-incorporatingenvironmentalcostsinelectricrates-2011-10.pdf.

unrecoverable without a final order in the abandonment case, of which there would not yet be one if the two are filed together. Again, this potentially guarantees full recovery of stranded costs even if the qualifying utility's actions (or failure to take actions) leading up to the plant abandonment were unreasonable, imprudent, or negligent. Although Section 4(E)(2) requires that the Commission include all "energy redevelopment costs" in its estimate of cost savings to customers and then that the Commission must issue a financing order under Section 4(E) if, among other things, issuance of the "energy redevelopment bonds" results in cost savings, it is not explicitly stated whether SB47 should be interpreted as requiring that the Commission authorize the entire amount, 100% of stranded costs to be recovered and securitized. Finally, Section 9(B) appears to lock in a right to full recovery of undepreciated investment even if the utility opts against following through with a bond issuance that has been authorized by the Commission pursuant to a financing order -- the language refers to "prudent and reasonable costs associated with the abandonment" as "including full cost recovery of undepreciated investment."

However, public utilities are not necessarily or automatically entitled to full recovery of undepreciated investment. When a utility retires an asset that hasn't fully depreciated, the Commission currently has the authority to determine whether and how much of the depreciated investment should be shared between Company shareholders and ratepayers to ensure equity and fairness. The New Mexico Legislature has declared the policy of the State to be that:

> the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities to the end that reasonable and proper services shall be available at fair, just and reasonable rates and to the end that capital and investment may be encouraged and attracted so as to provide for the construction, development and extension, without unnecessary duplication and economic waste, of proper plants and facilities and demand-side resources for the rendition of service to the general public and to industry.

§62-3-3(B) of NMSA 1978 §§ 62-3-1 et seq., Public Utility Act ("PUA"). Utility regulation and ratemaking is a continual and shifting balance between shareholders and ratepayers. The "public interest" is "a striking of the proper balance between the interests of all ratepayers and all investors."[7] If recovery of all investment was guaranteed, shareholders would not be incurring any risk, and therefore there would be no reason to set rates with a profit component that includes any risk premium, as rates are so set. This profit component to shareholders is the Return on Equity which is weighted by the equity component of a utility's capital structure when calculating the WACC.

The issue of stranded cost recovery is subject to competing views and theories. Therefore, in the context of the proposed abandonment of a coal-fired plant, it is likely to be contested and should be subjected to full examination and scrutiny. Utilities want to be fully reimbursed for the remaining investment in the plant even if it is no longer "used and useful" in serving customers, on the other hand, intervening ratepayer groups, from commercial to residential are expected to advocate for no more than 50% recovery.[8] In NMPRC Case No. 13-00390-UT (what has become known as the "BART" case)[9] authorizing the shutdown of SJGS Units 2 and 3, PNM agreed to a stipulated amount of 50% stranded cost recovery for its shareholders but, according to the terms of the stipulation and also according to Commission rule, approval of a stipulation does not constitute

[7] NMPRC Case No. 2087, In the Matter of the Prudence of Costs Incurred by the Public Service Company of New Mexico in Construction of Palo Verde Nuclear Generating Station, Final Order, p. 85, affirmed on appeal, Attorney General v. NM Pub. Serv. Comm'n, 111 N.M. 636, 808 P.2d 606 (1991).

[8] "If a plant is permanently closed, accounting rules require that the investment be removed from the "Plant in Service" classification. At that point, the regulator must decide whether the utility or its consumers will bear the burden of the unamortized expense. In some states this is dictated by law, and in others it is left to the Commission to make an equitable determination of cost responsibility." Id. at pp. 31 - 32.

[9] Referring to the dispute over U.S. EPA mandates of the "best available retrofit technology" pollution control equipment for SJGS. In the stipulation approved by the Commission in 13-00390, PNM agreed to forego recovery of stranded costs relating to the additional 132 MW additional capacity it acquired to facilitate the transition from 4 to 2 units. It is unclear what impact, if any, this legislation would have on that commitment or on an additional acquisition by PNM or its affiliate of another 65 MW in the plant.

Commission approval of or precedent regarding any principle or issue in the proceeding. 1.2.2.20(D) NMAC. Securitization may not be in the public interest if ratepayers pay more for the utility's undepreciated investment than they would otherwise under traditional regulation and ratemaking in New Mexico.

Issue 3: Securitization financing, under optimal conditions, should provide cost savings to ratepayers. But the Act, as drafted, lacks certain fundamental ratepayer protections.
To start with, Section 4(E)(2) says that the Commission shall approve the financing order, with no discretion, if the bonds are expected to provide net present value cost savings. It could be argued that this requirement is satisfied if there are expected to be a cost savings of one dollar -- de minimis. For another example of a provision that would protect ratepayers, thereby balancing the interests of shareholders and ratepayers, West Virginia and Texas explicitly defined a lowest cost objective whereby the structuring, marketing, and pricing of these types of bonds shall result in the lowest possible energy redevelopment charge for ratepayers.[10] SB47 does not have such a provision.

Section 4(A) states that the Commission may approve a financing without a hearing if no valid protest is filed. However what constitutes a protest is undefined. It is unclear whether the Commission can determine to set the matter for hearing without a protest from any party other than the Commission itself or Commission staff.

Other recommended provisions for ratepayer protections include having a clause that makes it clear that the Commission can approve the financing order subject to stated conditions, without requiring the Commission to make an all-or-nothing decision. Ordinarily, Commission decisions are ultimately guided and tested by a public interest standard of review, and the Commission ordinarily may attach terms and conditions to its approval to ensure that standard is met.

Ratepayers need to be at the table in terms of having experts representing their interests in connection with not only settling on financing costs that will be included in the cost of the bonds, but potentially also the structuring, marketing and pricing of the bonds[11]. The goal is to achieve the lowest interest under the then-current market conditions in order to maximize benefits to customers -- a AAA bond rating alone does not guarantee the lowest cost. The Commission may need to hire both additional Staff and legal/financial experts who have worked on these types of securitization measures in other states to ensure ratepayer protections are guaranteed. The costs of the qualifying utility's experts may be impliedly included in the definition of financing costs (Section 2(L)(3)),[12] but it should be expressly provided that costs associated with Commission consulting experts with previous experience representing ratepayers shall be included in the definition of financing costs or elsewhere in the Act.

Issue 4: Securitization financing, under optimal conditions, should provide cost savings to ratepayers. But without a transparent, independently evaluated RFP process, the utility-ownership and location preferences mandated in the Act are likely to be controversial and may lead to protracted litigation.
In Commission experience, an independently evaluated competitive procurement process is less likely to be

---

[10] Texas PURA §39.301: "The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest transition bond charges consistent with market conditions and the terms of the financing order." See also Part II.E.2 (page 41) of the April 7, 2006 Financing Order of the West Virginia PSC.

[11] There are three distinct phases of IOU securitization for which a pro-active commission uses specialized expertise: (1) review of the IOU's application, preparation of interrogatories, review of discovery, responses to interrogatories and the provision of expert witness direct and rebuttal testimony on behalf of commission staff; (2) drafting the irrevocable financing order upon which the bonds will be evaluated by credit rating agencies and investors to achieve a top credit rating and are marketed to institutional investors; and (3) implementation of the bond offering and representing the Commission in all phases of the structuring, marketing and pricing of the bonds to achieve the lowest cost to ratepayers under the then current market conditions including due diligence on all qualifying financing costs.

[12]SB47 states that the financing order from the Commission shall allow for the recovery of energy redevelopment costs and financing costs. Financing costs are the principal and interest payments due on the bonds as well as other costs that occur with bond issuance such as underwriting fees, rating agency fees, and consulting / administrative / legal fees and expenses (Section 2(L)). The language, as written, could be construed to cover consulting fees and expenses on behalf of the utility or on behalf of the Commission.

challenged, even if an internal business unit of the utility bids and wins. Section 10(A) states that the proceeds from issuing the bonds initially shall be used to acquire utility-owned replacement resources. Section 18(A) provides a five-year time frame from the abandonment of the coal-fired plant for the qualifying utility to select sites in the county affected by the abandonment and also states that the replacement resources shall be utility-owned. This mandate may not support least cost planning principles or result in selection of the lowest cost resource among feasible alternatives -- ultimately costs paid by ratepayers.[13] Independent power producers would be thwarted from competing for the utility's business and ultimately entering into a purchased power agreement with the utility. On the face of it, this may be contradictory to the goal of the issuance of the energy redevelopment bonds themselves, which are supposed to provide cost savings to customers over the life of the bonds. The benefit of the net cost savings to ratepayers from issuing bonds may be partly or completely negated if the qualifying utility does not subsequently obtain the least cost replacement resources. Best practices would have the utility engage in a transparent, anti-discriminatory RFP process for replacement resources of which utility-owned resources are one option, not the only option.

PERFORMANCE IMPLICATIONS

SB47 could result in increased filings to be reviewed by Utility Division Staff of the NMPRC and could potentially result in 3 securitization financing proceedings with the NMPRC, requiring additional agency time and resources as specified in Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

Limits on Commission Oversight and Authority

SB47 reduces or eliminates Commission authority and discretion in several areas in a manner that is atypical:

1. arguably limits the ability to decide on an appropriate amount of stranded costs for recovery through the definition of energy redevelopment costs and the concurrent filing of abandonment and financing order applications (Section 2(I)(1)(C));
2. mandates use of a specific methodology to compare cost savings of the financing order with cost recovery under the WACC (Section 3(B)(9));
3. mandates approval of the financing order if it meets a specific criteria of cost savings using the specified methodology (Section 3(E)(2));
4. mandates location of replacement resources in the New Mexico county where the abandoned coal-fired plant is located under specific criteria (Section 18(A));
5. limits the ability to amend the financing order after a final order is issued to specific instances (Section 6(B)) and provides for the irrevocability of the financing order (Section 6(A));
6. provides a statutory time limit for the approval of a financing order application and any accompanying abandonment application (Section 3(A));
7. provides that the Commission cannot include the energy redevelopment bonds as a part of the utility's capital structure in a ratemaking procedure, which affects calculation of the WACC going forward (Section 9(A));
8. states that the Commission cannot order the qualifying utility to issue energy redevelopment bonds, and if a utility chooses not to use them, it still has the right to full stranded cost recovery (Section 9(B)). In other words, the utility is not under any mandate to ensure stranded cost recovery for its customers at the lowest interest rate and it may pursue cost

[13] "A fundamental principle guiding the Commission's regulation of public utilities is to see to it that utilities provide reasonable and proper services at fair, just and reasonable rates. It is therefore axiomatic that the public has every right to expect that costs the Commission authorizes a utility to incur and pass on to ratepayers are necessary in providing utility service, benefit ratepayers, and are prudently incurred. Moreover, such expenses may even be required to be incurred by the utility at the lowest reasonable cost. One commonly accepted and widespread tool to corroborate adherence to least cost planning principles is to have the utility engage in competitive procurement processes. Indeed, "competitive procurement is the standard by which acquisitions are made in the public interest by local, state and the national governments." Case No. 10-00037, In the Matter of the Renewables Stipulation and Public Service Company of New Mexico's Revised 2010 Renewable Energy Portfolio Procurement Plan, Recommended Decision (issued August 3, 2010), p. 169.

recovery at the higher WACC if that is in its best interest.;

9. mandates that the utility shall use the bond proceeds to acquire replacement resources for inclusion in rate base that are utility owned (Section 10(A)); Section 18(A) also mandates utility-ownership of replacement resources;

10. mandates that the utility shall select sites for utility-owned replacement resources in the New Mexico county where the abandoned coal-fired plant is located (Section 18(A)); and

11. mandates that the Commission grant certificates of public convenience and necessity for replacement resources located in the New Mexico county where the abandoned coal-fired plant is located and allow full cost recovery in rates (Section 18(B)).

The fifth limit, No. 5 above, is necessary for the highest credit rating from ratings agencies because it ensures that any financing order won't be capriciously altered after the bonds are sold, thereby impacting bondholders' expected stream of revenue payments. The other limits are not necessary for a financing order and could have negative impacts on customers.

Ensures full recovery of stranded costs without a Commission hearing and participation by affected parties:
See discussion under Significant Issues section, above.

Limits on Commission oversight of replacement resources:
These limits appear designed to allow for the second goal of the Energy Redevelopment Bond Act, which is to encourage economic development of San Juan County, New Mexico once a coal-fired plant is abandoned by PNM.

Limits on how the Commission is allowed to calculate comparisons of cost savings:
Cost savings: Section 4(E)(2) mandates that the commission shall issue a financing order if it is found that the bond issuance shall result in "cost savings on a net present value basis." Furthermore, this section also mandates that when calculating the cost savings between the proposed financing order and an "alternative" utility financing option, that the alternative include cost recovery of all energy redevelopment costs at the utility's WACC, rather than an actual alternative scenario that includes what a Commission might otherwise allow. This is a generic or false standard because the Commission is mandated to use a specific equation to compare the net present value of costs under an apples to oranges comparison that will almost surely result in at least $1 of cost savings. If there is a mandate for approval of a financing order, the cost savings threshold should be higher, perhaps at least 15% or 20% cost savings to ratepayers. It would be more appropriate to use a cost comparison that would use the actual scenario under which cost recovery would occur both with and without the financing order, the latter of which does not necessarily involve a WACC return on unrecovered costs and would not include the extra financing/issuance costs (i.e. rating agency fees, stock exchange listing fees, and so on) resulting in a smaller amount of cost recovery.

Calculating cost comparisons: Section 3(B)(9) states that the only comparison of the net savings to customers is to be the net present value of the energy redevelopment bonds with the bonds' interest rate as compared to the same dollar amount with the utility's weighted average cost of capital. Furthermore, Section 4(E) mandates that if this methodology results in NPV cost savings, then the Commission shall approve the financing order. This methodology is always going to show a net savings to customers since the interest rates on AAA bonds, the most secure financing available, are always lower than a utility's WACC, which includes an equity premium for investors to compensate them for the risk that a plant might close early (among other things). Including a specific formula for how to consider cost savings, it removes the Commission's authority to holistically consider cost savings in the context of comparing the NPV of the bond revenue stream to the stranded costs recovered through rate base which would not include certain costs due to issuance and financial advisors or through a regulatory asset that might only have a debt return.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB47 is in conflict with several existing statutes. In one instance SB47 says that statutory rules for financial recordkeeping will be followed. Statutes mentioned in SB47 include:
SB47, Section 4(A) provides a six month deadline, with a three month extension for good cause, for Commission action when an abandonment application when it is filed with the financing order application. Currently, the

Commission's abandonment statute, NMSA 1978 §§ 62-9-5, does not provide a statutory timeline.

SB47 Section 4(A) states that the financing order application may be submitted at the same time as the coal-fired generating station abandonment application and there is a 30-day window within which interested parties must register a valid protest. This reduces the time allowed under NMSA 1978 §§ 62-9-1(C) of the PUA which gives interested parties 60 days within which to file a protest when an application for a CCN is filed. SB47, Section 4(C) states that its alternative time frame governs.

SB47, Section 7(A) states that it reduces the right of an aggrieved party to request rehearing of a final order to ten (10) calendar days from the thirty (30) days that is currently provided in NMSA 1978 §§ 62-10-16 of the PUA, and Section 7(B) requires the Supreme Court of the State of New Mexico to hear and determine appeals of a financing order "as expeditiously as practicable and give the action precedence over all other civil cases." No such language purporting to bind the New Mexico Supreme Court currently exists in the provisions of the PUA relating to appeals of Commission final orders, specifically NMSA 1978 §§ 62-11-1 et seq.

SB47, Section 10(A) and Section 18(B) allows for full and automatic cost recovery of replacement resources when the PUA, specifically NMSA 1978 §§ 62-9-1(B), provides only that, with a CCN application, utilities have a right to request a determination of ratemaking principles and treatment when the plant is placed into service.

SB47, Section 11(E) removes any financing order from the rules regarding Class II and other affiliate transactions as defined NMSA 1978 § 62-3-3(L).

SB47, Section 12 provides that NMSA 1978 §§ 55-9-101 et seq., Uniform Commercial Code-Secured Transactions, will be used as a recordkeeping system for the financial statements for the energy redevelopment property filed with the Secretary of State (Section 12(D)) and generally, Section 12 provides that it supersedes any conflicting provisions contained in NMSA 1978 §§ 62-13-1 et seq. ("Public Utility Act Miscellaneous Provisions") Provisions governing the security interest in the energy redevelopment property are common in electric utility securitization statutes.

SB47, Section 20 states that the Act takes precedence over any other law should a conflict arise.

TECHNICAL ISSUES

There are technical issues with the language of SB47 if it is truly going to achieve its first goal of issuing energy redevelopment bonds under a securitization structure designed to achieve the highest bond credit rating and therefore the lowest interest rate possible. "Financing entity" should be defined as "either the qualifying utility or the assignee that issues energy redevelopment bonds" and added to Section 2, the definitions section, and many instances of "qualifying utility", including but not limited to Section 2(G), (H), (K), Section 4(F), 4(K), and Sections 5, 8, 9, 17 and 21, should be replaced with or, depending on the context, amended to include "financing entity." See Significant Issues.

Section 18(B) seems to contain an internal contradiction as written because it requires the Commission to issue CCNs for replacement resources at "those sites" unless the Commission determines that a particular resource should not be approved then an alternative resource meeting the conditions of Subsection A should be approved and Subsection A merely requires the utility to select sites in the county where the abandoned facility is located. It is unclear what the reference in Section 18(B) to "those sites" is referring to.

Finally, Section 7(B) requires the Supreme Court to hear appeals from financing orders "as expeditiously as practicable" and "give the action precedence over all other civil cases." This mandate to the Supreme Court may not be proper.

OTHER SUBSTANTIVE ISSUES

Mine reclamation fees: Section 2(I)(1)(a) states that "reclamation of mines that provide coal to qualifying generating facilities" is included in energy redevelopment costs to be financed by these bonds.

Timing of filing applications: SB47 permits the simultaneous filing of applications for the abandonment, the financing order, and a CCN for any replacement resources. The definition of “energy redevelopment costs” as given in Section 2(I)(1)(c) states that this may include "costs that have not been determined to be unrecoverable from customers by the time of filing the application for a financing order." If the application for abandonment and a financing order are filed together and consolidated into one case, then none of the undepreciated investment will have been determined to be unrecoverable. It might be that this sets up the qualifying utility to argue that it is statutorily guaranteed to recover 100% of its stranded costs even if interveners may argue that some of the costs were imprudently incurred. So the concurrent filing of these applications could be, but is not necessarily, a negative factor. But it is without precedent for a utility to be statutorily guaranteed of recovering all of its stranded costs without giving interested parties an opportunity to weigh in.

ALTERNATIVES

(1) The New Mexico Legislature could enact legislation authorizing stranded cost securitization financing on a coal-fired plant-specific basis. (See, e.g., F.S.A. § 366.95 http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=366.95&URL=0300-0399/0366/Sections/0366.95.html enacted to recover certain costs through securitization financing associated with the premature retirement of the Crystal River 3 nuclear plant.) For example, legislation in New Mexico could potentially be enacted after a non-appealable PRC decision on abandonment and stranded cost recovery, possibly including a replacement resource plan.

(2) The New Mexico Legislature could allocate a portion of the bond proceeds to provide transition assistance, including temporary compensation for lost property tax revenue and retraining and financial assistance for directly displaced workers, to those communities affected by early retirement of the coal-fired plant. See, e.g., Colorado Energy Impact Assistance Act, HB17-1339, https://leg.colorado.gov/bills/hb17-1339 that passed the Colorado House but not the Senate there, in 2017.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

SB47 is written to allow qualifying utilities to recover stranded costs from ratepayers while providing potential cost savings to ratepayers through the issuance of low interest bonds. One expected result is that this bill will encourage qualifying utilities to abandon uneconomic coal-fired plants sooner rather than later. If this bill is not enacted, a qualifying utility may still apply for abandonment of a coal-fired generating station and all interested parties can litigate the appropriate level of stranded cost recovery from ratepayers. Cost recovery would occur as a part of rate base. So without this bill there may be higher costs to customers if the Commission awards 100% stranded cost recovery to the utility.

To the extent securitization results in recovery of more stranded cost and sooner than the utility would otherwise get through traditional utility regulation and ratemaking, the utility would be incentivized to close its coal-fired plant sooner rather than later.

Abandonment of a coal-fired electric generating station that is located in a rural area is an issue of concern due to the negative economic impact on local workers and communities. This bill provides incentives that appear aimed at mitigating this economic pain through locating replacement resources in the same county. Without this bill, there would be no mandated preference for utility-owned replacement resources or public utility investments that would be placed in rate base. Without this bill, the utility will base its decision on existing market forces, industry trends and corporate objectives. It is unknown whether the timing of its decision will be influenced by this legislation in one direction or the other.

AMENDMENTS

In order for stranded cost securitization to meet the Act’s stated goal of reducing the total amount that customers pay for the utility’s stranded costs and get the highest credit rating, thereby maximizing savings to customers, the SPE must issue the bonds on behalf of the qualifying utility with the SPE set up as a bankruptcy-remote/ring fenced subsidiary of the qualifying utility.