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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Bill Tallman and Elizabeth "Liz" Stefanics and
Antoinette Sedillo Lopez

AN ACT

RELATING TO PUBLIC UTILITIES; REINSTATING REGULATORY AUTHORITY
OVER PUBLIC UTILITIES FOR PLANT ABANDONMENT COSTS TO PROTECT
RATEPAYERS; AMENDING A SECTION OF THE RENEWABLE ENERGY ACT
PERTAINING TO COST RECOVERY; AMENDING THE ENERGY TRANSITION
ACT; PROVIDING ADDITIONAL REQUIREMENTS FOR APPROVAL OF A
FINANCING ORDER; CONFORMING FINANCING ORDER APPEAL AND
REHEARING FILING DEADLINES WITH COURT RULES.

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

SECTION 1. Section 62-16-6 NMSA 1978 (being Laws 2004,
Chapter 65, Section 6, as amended) is amended to read:

"62-16-6. COST RECOVERY FOR RENEWABLE ENERGY AND
EMISSIONS REDUCTION.--

A. A public utility that procures or generates

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1 renewable energy shall recover, through the rate-making
2 process, the reasonable costs of complying with the renewable
3 portfolio standard. Costs that are consistent with commission
4 approval of procurement plans or transitional procurement plans
5 shall be deemed to be reasonable.

6 B. The commission shall not exclude from such cost
7 recovery reasonable interconnection and transmission costs and
8 costs to comply with electric industry reliability standards
9 incurred by the public utility in order to deliver renewable
10 energy to retail New Mexico customers.

11 C. If a public utility has been granted a
12 certificate of public convenience and necessity prior to
13 January 1, 2015 to construct or operate an electric generation
14 facility and the investment in that facility has been allowed
15 recovery as part of the utility's rate-base, the commission may
16 require the facility to discontinue serving customers within
17 New Mexico if the replacement has less or zero carbon dioxide
18 emissions into the atmosphere [~~provided that no order of the~~
19 ~~commission shall disallow recovery of any undepreciated~~
20 ~~investments or decommissioning costs associated with the~~
21 ~~facility]."~~

22 SECTION 2. Section 62-18-5 NMSA 1978 (being Laws 2019,
23 Chapter 65, Section 5) is amended to read:

24 "62-18-5. FINANCING ORDER--ISSUANCE--TERMS OF BONDS--
25 REPORTS TO COMMISSION OF DISBURSEMENT OF BOND PROCEEDS--REVIEW

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1 AND AUDIT OF RECORDS.--

2 A. The commission may approve an application for a
3 financing order without a formal hearing if no protest
4 establishing good cause for a formal hearing is filed within
5 thirty days of the date when notice is given of the filing of
6 the application for the financing order. If a hearing is held,
7 the commission shall issue an order granting or denying the
8 application for the financing order to a qualifying utility
9 that is abandoning a qualifying generating facility and an
10 order on an accompanying application of the qualifying utility
11 for approval to abandon the qualifying generating facility
12 within six months from the date the application for the
13 financing order is filed with the commission. For good cause
14 shown, the commission may extend the time for issuing the order
15 for an additional three months.

16 B. Failure to issue an order approving the
17 application or advising of the application's noncompliance
18 pursuant to Subsection E of this section within the time
19 prescribed by Subsection A of this section shall be deemed
20 approval of the application for a financing order and approval
21 to abandon the qualifying generating facility, if abandonment
22 approval was requested as part of the application for the
23 financing order pursuant to this subsection. The commission
24 shall issue an order acknowledging the deemed approvals within
25 seven days of the expiration of the time period described in

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1 Subsection A of this section.

2 C. If an application for a financing order is
3 accompanied by a request for approval of new resources, this
4 section provides an alternative time frame to that provided in
5 Subsection C of Section 62-9-1 NMSA 1978, and the time frame
6 specified in this section shall govern, unless the request has
7 been deferred to a separate proceeding pursuant to Subsection D
8 of Section [~~4 of the Energy Transition Act~~] 62-18-4 NMSA 1978.

9 D. The issuance of a financing order shall be the
10 only approval required for the authority granted in the
11 financing order.

12 E. The commission [~~shall~~] may issue a financing
13 order approving the application if the commission finds that:

14 (1) the qualifying utility's application for
15 the financing order complies with the requirements of Section
16 [~~4 of the Energy Transition Act~~] 62-18-4 NMSA 1978. If the
17 commission finds that a qualifying utility's application does
18 not comply with Section [~~4 of the Energy Transition Act~~]
19 62-18-4 NMSA 1978, the commission [~~shall~~] may advise the
20 qualifying utility of any changes necessary to comply with that
21 section and provide the applicant an opportunity to amend the
22 application to make such changes; [~~Upon those changes being~~
23 ~~made, the commission shall issue a financing order approving~~
24 ~~the application~~] and

25 (2) recovery of energy transition costs by the

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1 qualifying utility through the issuance of energy transition
2 bonds provides tangible and quantifiable benefits to ratepayers
3 greater than would be achieved absent the issuance of energy
4 transition bonds; the assets and investments at issue were
5 prudently incurred; the amount of energy transition costs
6 requested fairly balances the interests of investors and
7 consumers; approval of the application will result in rates
8 that are fair, just and reasonable; and approval of the
9 application is in the public interest. If the commission
10 determines, after hearing, that it is necessary to modify or
11 adjust the energy transition costs requested in order to meet
12 the requirements of this paragraph and uphold consumer
13 protections, the commission shall make those changes to the
14 requested amount before the financing order is issued.

15 F. A financing order shall include the following
16 provisions:

17 (1) approval for the qualifying utility or
18 assignee to issue energy transition bonds as requested in the
19 application, to use energy transition bonds to finance the
20 maximum amount of the energy transition costs as requested in
21 the application, as may be adjusted pursuant to Paragraph (6)
22 of Subsection B of Section [~~4 of the Energy Transition Act~~]
23 62-18-4 NMSA 1978, and to use the proceeds provided in
24 Subsection A of Section [~~10 of the Energy Transition Act~~]
25 62-18-10 NMSA 1978;

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1 (2) approval for the qualifying utility to
2 recover the energy transition costs, as may be adjusted
3 pursuant to Paragraph (6) of Subsection B of Section [~~4 of the~~
4 ~~Energy Transition Act~~] 62-18-4 NMSA 1978, requested in the
5 application through energy transition charges;

6 (3) approval of the energy transition charges
7 necessary to recover the authorized energy transition costs, to
8 be imposed through a non-bypassable energy transition charge as
9 a separate line item on the qualifying utility's customer
10 bills, assessed consistent with energy and demand cost
11 allocations within each customer class, subject to update
12 pursuant to the notice filing contemplated by Paragraph (6) of
13 Subsection B of Section [~~4 of the Energy Transition Act~~]
14 62-18-4 NMSA 1978 and subject to the application of the
15 adjustment mechanism as provided in Section [~~6 of the Energy~~
16 ~~Transition Act~~] 62-18-6 NMSA 1978, until the energy transition
17 bonds issued pursuant to the financing order and the financing
18 costs related to those bonds are paid in full;

19 (4) approval of the adjustment mechanism in
20 compliance with Section [~~6 of the Energy Transition Act~~]
21 62-18-6 NMSA 1978;

22 (5) a description of the energy transition
23 property that is created by the financing order that may be
24 used to pay, and secure the payment of, the energy transition
25 bonds and financing costs authorized to be issued in the

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1 financing order;

2 (6) approval to enter into necessary or
3 appropriate ancillary agreements;

4 (7) approval of any plans for selling,
5 assigning, transferring or conveying, other than as a security,
6 an interest in energy transition property; and

7 (8) approval of the proposed ratemaking
8 process and method included in the application pursuant to
9 Paragraphs (10) and (11) of Subsection B of Section [~~4 of the~~
10 ~~Energy Transition Act~~] 62-18-4 NMSA 1978.

11 G. A financing order shall provide that the
12 creation of energy transition property shall be simultaneous
13 with the sale of the energy transition property to an assignee
14 as provided in the application and the pledge of the energy
15 transition property to secure energy transition bonds.

16 H. A financing order shall authorize the qualifying
17 utility to issue one or more series of energy transition bonds
18 for a scheduled final maturity of no more than twenty-five
19 years for each series; provided that a rated final maturity may
20 exceed twenty-five years. With such authorization, the
21 qualifying utility shall not subsequently be required to secure
22 a separate financing order prior to each issuance.

23 I. The commission may require, as a condition of
24 the financing order and in every circumstance subject to the
25 limitations set forth in Subsection A of Section [~~7 of the~~

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1 ~~Energy Transition Act]~~ 62-18-7 NMSA 1978, that, during any
2 period in which energy transition bonds issued pursuant to the
3 financing order are outstanding, an assignee that is a non-
4 utility affiliate and issues energy transition bonds shall
5 provide in the affiliate's articles of incorporation,
6 partnership agreement or operating agreement, as applicable,
7 that in order for a person to file a voluntary bankruptcy
8 petition on behalf of that assignee, the prior unanimous
9 consent of the directors, partners, managers or members, as
10 applicable, shall be required. Any such provision shall
11 constitute a legal, valid and binding agreement of such
12 shareholders, partners or members of the assignee and is
13 enforceable against such shareholders, partners or members.

14 J. A financing order may require the qualifying
15 utility to file with the commission a periodic report showing
16 the receipt and disbursement of proceeds of energy transition
17 bonds and any other documents necessary for the qualifying
18 utility to implement the financing order. Upon issuance of the
19 energy transition bonds, the qualifying utility shall file an
20 advice notice with the commission, subject to review by the
21 commission for errors and corrections, that identifies the
22 actual energy transition charges to be included on customers'
23 bills, effective fifteen days from the date the advice notice
24 is filed.

25 K. A financing order may authorize the commission

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1 to review and audit the books and records of the qualifying
2 utility and of an assignee that is a non-utility affiliate and
3 issues energy transition bonds, relating to energy transition
4 property and the receipt and disbursement of proceeds of energy
5 transition bonds.

6 L. After review and approval by the department of
7 finance and administration with regard to reasonableness of
8 contracts for services, a financing order may authorize the
9 commission to impose a fee on the qualifying utility to pay
10 commission expenses for contract bond counsel accredited by a
11 nationally recognized association of bond lawyers to provide
12 advice and assistance to commission staff in reviewing an
13 application for a financing order and the structure and
14 marketing of the proposed energy transition bonds.

15 M. The provisions of this section shall not be
16 construed to limit the authority of the commission to:

17 (1) investigate the practices of or to audit
18 the books and records of a qualifying utility; ~~[or]~~

19 (2) issue such further orders as may be
20 necessary to effectuate the provisions of the Energy Transition
21 Act; or

22 (3) exercise the commission's plenary
23 jurisdiction over rates or limit a qualifying utility's
24 recovery of reasonable costs."

25 SECTION 3. Section 62-18-8 NMSA 1978 (being Laws 2019,

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1 Chapter 65, Section 8) is amended to read:

2 "62-18-8. AGGRIEVED PARTIES--REQUEST FOR REHEARING--
3 JUDICIAL REVIEW.--

4 A. A financing order shall be issued as a separate
5 order from any other order issued by the commission on a
6 requested approval in the application proceeding and is a final
7 order of the commission. A party aggrieved by the issuance of
8 a financing order may apply to the commission for a rehearing
9 in accordance with Section 62-10-16 NMSA 1978; provided that
10 such application shall be due no later than [~~ten~~] thirty
11 calendar days after issuance of the financing order. An
12 application for rehearing shall be deemed denied if not acted
13 upon by the commission within [~~ten~~] twenty calendar days after
14 the filing of the application.

15 B. An aggrieved party may file a notice of appeal
16 with the supreme court in accordance with Section 62-11-1 NMSA
17 1978; provided that such notice shall be due no later than
18 [~~ten~~] thirty calendar days after denial of an application for
19 rehearing or, if rehearing is not applied for, no later than
20 [~~ten~~] thirty calendar days after issuance of the financing
21 order. The supreme court shall proceed to hear and determine
22 the appeal as expeditiously as practicable."