

Re: Explanation of ETA Bill Amendments & Legal Citations
From: Mariel Nanasi & John Boyd
Date: December 3, 2020.

There are two purposes to the bill amendment: 1) to safeguard against potential excessive rates that may result from the abandonment of all PNM's coal, nuclear and gas plants, other than San Juan Generating Station ("SJGS"); and 2) to reinstate PRC oversight over plant abandonment in order to accomplish the first goal.

If the bill is not amended ratepayers will automatically be saddled with a 10% increase for average residential ratepayers as a non-bypassable charge on their electric bills for the next 25 years for undepreciated investments only, this does not include costs for decommissioning costs, which are unknown at this time. This does NOT include abandonment or decommissioning and reclamation costs for San Juan Generating Station.

A brief explanation of all the changes in the ETA Amendment Bill:

Page 2 – NO 100% RECOVERY:

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

EXPLANATION: Why is this deletion so important? Because the Commission should decide how much the utilities should get, ***not the utility itself***, for all costs associated with abandonment. This is particularly important because PNM invested in Four Corners Power Plant (FCPP) and was found to have done so "imprudently." The law: if utilities invest prudently, ratepayers pay, and the converse is true: if utilities do not invest prudently "ratepayers should be held harmless for the imprudent acts of utility management."

If PRC is in charge, especially with FCPP, PNM might be eligible for zero costs going forward for its imprudent acquisition; the ETA gives PNM 100% of costs, defined by PNM. The PRC would decide between 0 and 100.¹

¹ PNM filed an Answer on November 23, 2020 that stated: p. 16: "PNM has indicated that it plans to seek abandonment of its remaining interests in FCPP in the first part of 2021. This application will be filed pursuant to the Energy Transition Act with an accompanying request for approval of a financing order. Any issues concerning PNM's recovery of the abandonment costs for FCPP, including ***any*** undepreciated investment, decommissioning, and reclamation costs, will be determined pursuant to the Energy Transition Act."

Page 4-5 - REINSTATES PRC AUTHORITY OVER PLANT ABANDONMENT COSTS:

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

Acquisitions must be Prudently incurred; Ratepayers to Be held harmless for Imprudent Acquisitions:

Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n, 2019-NMSC-012, 444 P.3d 460, ¶21: “the Commission has considered whether expenditures were prudently incurred and whether the asset is used-and-useful in providing service when determining the ratemaking treatment of expenditures on utility plants. The prudent investment theory provides that ratepayers are not to be charged for negligent, wasteful or improvident expenditures, or for the cost of management decisions which are not made in good faith. To be considered ‘used and useful’ a property must either be used, or its use must be forthcoming and reasonably certain; and it must be useful in the sense that its use is reasonable and beneficial to the public.” ... ¶39: “Under the prudent investment theory, “ratepayers are not to be charged for negligent, wasteful or improvident expenditures, or for the cost of management decisions which are not made in good faith.” ... ¶40: “ The Oregon PUC concluded that “[b]ecause the purpose of a prudence review is to hold ratepayers harmless from any amount imprudently invested, a disallowance should equal the amount of the unreasonable investment.” ... ¶42: “the proper remedy for a utility's imprudence “should equal the amount of the unreasonable investment” in order to “hold ratepayers harmless from any amount imprudently invested[.]” (citations omitted.) Opinion attached.

and cites in the corresponding footnote: “PNM notes recent amendment to the Renewable Energy Act provides that if the Commission requires that a facility “discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere,” ***the Commission must allow recovery of any remaining undepreciated investments and other costs. See NMSA 1978, § 62-16-6 (2019).***” (Emphasis supplied.)

Rates must be fair, just and reasonable AND the Commission must balance “the interest of consumers and the interest of investors”

Pub. Serv. Co. of New Mexico v. New Mexico Pub. Regulation Comm'n, 2019-NMSC-012, 444 P.3d 460, ¶¶8-11: B. Legal Principles Governing Rate Cases: “The Commission has the obligation to ensure that “[e]very rate made, demanded or received by any public utility [is] just and reasonable.” NMSA 1978, § 62-8-1 (1941).” “By statute, the Commission must balance ‘the interest of consumers and the interest of investors ... to the end that reasonable and proper services shall be available at fair, just and reasonable rates’. NMSA 1978, § 62-3-1(B) (2008) ... Application must be in the public interest:

62-3-1. NMSA Declaration of policy. “...B. It is the declared policy of the state 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 without unnecessary duplication and economic waste.

PAGE 10 — REINSTATES LEGALLY CONFORMING TIME DEADLINES:

Request for Rehearing and Notice of Appeal in the ETA had a 10-day time deadline. This is inconsistent with time deadlines for both criminal and civil law. This is changed to thirty days to conform with NM law. The Commission must respond within 20 days to a motion for rehearing for all other non-abandonment motions for rehearing, the ETA hyper-narrowed this time period to ten days, the amendment reinstates the traditional twenty-day time deadline.