

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF)
PUBLIC SERVICE COMPANY OF NEW MEXICO'S)
ABANDONMENT OF SAN JUAN)
GENERATING STATION UNITS 1 AND 4) Case No. 19-00018-UT
)
)
)**

DIRECT TESTIMONY AND EXHIBITS

OF

STEVEN M. FETTER

**ON BEHALF OF
NEW ENERGY ECONOMY**

AUGUST 6, 2019

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 goal of eliminating the agency's case backlog for the first time in 23 years. While on the
2 Michigan PSC, I also served as Chairman of the Board of the National Regulatory Research
3 Institute ("NRRI"), the research arm of the National Association of Regulatory Utility
4 Commissioners ("NARUC"). After leaving regulatory service, I was appointed to the NRRI
5 Board as a public member. I have also served as a lecturer at Michigan State University's
6 Institute of Public Utilities Annual Regulatory Studies Program ("Camp NARUC") and at
7 NARUC's New Commissioner Regulatory Orientation.

8 **Q. Please describe your role as President of Regulation UnFettered.**

9 A. I formed a utility advisory firm to use my financial, regulatory, legislative, and legal
10 expertise to aid the deliberations of regulators, legislative bodies, and the courts, and to assist
11 them in evaluating regulatory issues. My professional engagements have included investor-
12 owned and municipal electric, natural gas and water utilities, state public utility commissions and
13 consumer advocates, non-utility energy suppliers, international financial services and consulting
14 firms, and investors.

15 **Q. What was your role in your employment by Fitch?**

16 A. I was Group Head and Managing Director of the Global Power Group within Fitch. In
17 that role, I served as group manager of the combined 18-person New York and Chicago utility
18 team. I was originally hired to interpret the impact of regulatory and legislative developments on
19 utility credit ratings, a responsibility I continued to have throughout my tenure at the rating
20 agency. In April 2002, I left Fitch to start Regulation UnFettered.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 **Q. How long were you employed by Fitch?**

2 A. I was employed by Fitch from October 1993 until April 2002. In addition, Fitch retained
3 me as a consultant for a period of approximately six months shortly after I resigned.

4 **Q. How does your experience relate to your testimony in this proceeding?**

5 A. My experience as Chairman and Commissioner on the Michigan PSC and my subsequent
6 professional experience with financial analysis and ratings of the U.S. electric and natural gas
7 sectors – in jurisdictions involved in restructuring activity as well as those still following a
8 traditional regulated path – have given me solid insight into the importance of a regulator’s role
9 vis-à-vis regulated utilities, both in setting their rates as well as the appropriate terms and
10 conditions for the service they provide. In addition, for almost 20 years I have been a member of
11 the Wall Street Utility Group, an organization comprised of debt and equity analysts assigned to
12 cover and make assessments of companies within the utility sector.

13 **Q. Have you previously given testimony before regulatory and legislative bodies?**

14 A. Since 1990, I have testified before the U.S. Senate, the U.S. House of Representatives,
15 the Federal Energy Regulatory Commission, federal district and bankruptcy courts, and various
16 state and provincial legislative, judicial, and regulatory bodies in more than 100 proceedings or
17 hearings on the subjects of credit risk and cost of capital within the utility sector, electric and
18 natural gas utility restructuring, fuel and other energy cost adjustment mechanisms, regulated
19 utility mergers and acquisitions, construction work in progress and other interim rate recovery
20 structures, utility securitization bonds, and nuclear energy. I have previously testified and been
21 accepted as an expert witness before this Commission in the following proceedings:

1 **Q. What is “securitization” and how can it be used as a tool to benefit both utilities and**
2 **their customers – and even investors?**

3 A. During my tenure at Fitch, I served as a member of the rating agency’s securitization
4 team, and I frequently interacted with Joseph S. Fichera, who is CEO of Saber Partners, LLC, a
5 financial advisory firm specializing in securitization. Mr. Fichera also currently serves as an
6 NRRI Fellow. Mr. Fichera describes securitization as follows:

7 Traditional financing mechanisms, which include using a combination of traditional
8 equity and borrowing at the utility’s cost of capital, inevitably end up increasing rates.
9 Because investor-owned utilities are generally entitled to returns sufficient to attract
10 investor capital, a risk premium is included in their return on the use of shareholder
11 equity. Utilities generally have little difficulty financing capital plans. However, what
12 happens when their financing needs are unforeseeable or beyond their control or
13 experience economic disruption due to government-mandated pollution controls?

14 For more than 21 years, regulators and utilities around the country have found the answer
15 in a financial product known as “securitization.” Essentially, securitization is a special
16 form of financing that is specifically designed to lower a utility’s borrowing costs, which
17 in turn lowers the amount of money customers will have to repay.

18 Working with their legislature, utility commissions, and independent financial advisors,
19 utilities can issue high-quality securitized bonds. The bonds receive a “AAA” rating – the
20 highest possible — from Wall Street rating agencies that assess creditworthiness, making
21 them more attractive to investors eager for safe, reliable, long-term returns on their
22 investment. Essentially, it lets utilities and their customers benefit directly from the bond
23 market.

24 Think of securitization as akin to a consumer refinancing their credit card debt with a
25 home equity mortgage loan. By refinancing into a secured, higher-quality loan, the
26 consumer can obtain a lower interest rate and significantly lower their borrowing costs
27 over the life of the loan. In much the same way, a utility can replace its existing cost of
28 capital at a lower cost, improving its financial condition in a way that also means less
29 cost to ratepayers over time. Securitization lets them bypass their balance sheet and
30
31

New Mexico Public Regulation Comm’n, 2006 NMSC 32 ¶18. Citing, *Morningstar Water Users Ass’n v. N.M. Pub. Util. Comm’n*, 120 N.M. 579, 590, 904 P.2d 28, 39 (1995). (public utilities accept the duty to offer service and submit to other regulations in exchange for protection from competition).

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 borrow directly on the broad ratepayer base.²

2
3 **Q. Do you support the concept of “securitization”?**

4
5 A. Yes I do. During my time at Fitch, I made presentations in support of securitization to
6 various groups including utility commissions, legislative committees, and members of the
7 financial community. In those presentations, I discussed how securitization can provide
8 regulators and utilities flexibility in minimizing utility cost recovery of infrastructure investment.
9 In short, securitization can create a win-win scenario for a utility and its customers.

10 **Q. In addition to your professional experience as a regulator and a bond rater, what**
11 **specifically did you rely on to form your opinion in this proceeding?**

12 A. I read the Energy Transition Act and I watched the presentation before the Commission
13 about SB 489 that was presented by three nationally-respected securitization experts, including
14 Mr. Fichera, former Chairwoman Rebecca Klein of the Public Utility Commission of Texas, and
15 Dean Criddle, senior counsel at Orrick, Herrington & Sutcliffe, LLP, with a legal practice
16 concentrating on electric and natural gas utility finance. These national securitization experts
17 were brought to New Mexico by the NMPRC to analyze SB 489/ETA. Their conclusion: that
18 the ETA is “unprecedented,” as it would be the only securitization bill in the country that allows
19 the regulated entity to define and set the amount of recoverable cost for itself, without the benefit
20 of Commission oversight, which these experts decried. Those experts also objected to a number
21 of other elements of the bill that remove Commission authority to the detriment of ratepayers.

²“Managing Electricity Rates Amidst Increasing Capital Expenditures: Is Securitization the Right Tool? An Update,” Joseph S. Fichera, *NRRI Insights*, Practical perspectives on critical policy issues, January 2019, <https://saberpartners.com/op-ed/nrri-insights-practical-perspectives-on-critical-policy-issues/>

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 These experts provided a presentation and PowerPoint that concluded with a strong caution
2 against SB 489/ETA, unless the bill was amended to include consumer protections. They also
3 provided a comparison between SB 489 and the “clean” securitization bill, SB 492, which they
4 argued not only left traditional regulatory oversight in place, but also enhanced the power of the
5 Commission to ensure that securitization would provide tangible and quantifiable benefits to
6 ratepayers, including through regulatory ability to amend the financing order underlying a
7 securitization bond issuance. This is the link to the Public Regulation Committee Hearing that I
8 watched: [http://sg001-](http://sg001-harmony.sliq.net/00302/Harmony/en/PowerBrowser/PowerBrowserV2/20190215/-1/12095)
9 [harmony.sliq.net/00302/Harmony/en/PowerBrowser/PowerBrowserV2/20190215/-1/12095](http://sg001-harmony.sliq.net/00302/Harmony/en/PowerBrowser/PowerBrowserV2/20190215/-1/12095)
10 I also reviewed my previous testimony in NMPRC Case No. 16-00276-UT, and other cases and
11 resource materials cited in my testimony.

12 **Q. How would you describe your core utility regulatory philosophy?**

13 A. I have had the opportunity during my 30+ years of involvement with public utility
14 regulation to view the process from several points of view. My conclusions:

- 15 • Regulated electric utilities have a responsibility to expend capital prudently when
16 needed to ensure safe and reliable service to customers; and
- 17 • Part and parcel of this so-called “regulatory compact” is the duty of utility
18 commissions to protect ratepayers against imprudent investments while allowing utilities
19 to receive a fair return on their prudent investment.

20 **Q. Can you explain further the idea of the “regulatory compact”?**

21 A. Since there is no hard and fast universal rule or regulation delineating the “regulatory
22 compact,” the concept has been described in many different ways. In their reference book,

1 Fundamentals of Energy Regulation, the authors (Ph.D. economists) describe that under the
2 “regulatory compact:”

3 ... the regulator grants the company a protected monopoly, essentially a franchise,
4 for the sale and distribution of electricity or natural gas to customers in its defined
5 service territory. In return, the company commits to supply the full quantities
6 demanded by those customers at a price calculated to cover all operating costs
7 plus a “reasonable” return on the capital invested in the enterprise. The first half
8 of this “compact” protects the company from would-be competitors and secures
9 for the public the substantial economies of scale available in the large-scale
10 production of electricity. The second half of the “compact” counteracts the
11 injurious tendency of monopolies to raise prices above the level that would
12 prevail in a competitive market.³
13

14 During my long involvement with utility regulatory, financial and legislative issues,
15 across almost all of the U.S. regulatory commissions, I have yet to observe a regulatory
16 commission that does not adhere to some conception of the “regulatory compact.”

17 **Q. How does the concept of the “regulatory compact” fit within the language of the**
18 **ETA?**

19 A. It appears that the language of the ETA is inconsistent with the statutory requirement to
20 balance the interest of utility investors and the interest of customers. NMSA 1978 § 62-3-1 (B)
21 2008.

22 **Q. What’s your experience with relevant prudence reviews pending before the New**
23 **Mexico Public Regulation Commission?**

24 A. Within my experience, I testified for New Energy Economy in 2017 in PNM’s last rate
25 case (Case No. 16-00276-UT), focusing on PNM’s investment in the Four Corners Power Plant

³ Lesser, Jonathan A. and Giacchino, Leonardo R., Fundamentals of Energy Regulation, pp. 43-44, Public Utilities Reports, Inc. 2007.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 (“FCPP”). The Hearing Examiners’ Certification of Stipulation, issued on October 31, 2017,
2 stated as follows:

3 The Hearing Examiners find that the appropriate remedy for PNM’s imprudence in
4 extending its participation in Four Corners and pursuing the \$90.1 million of the SCR
5 [Selective Catalytic Reduction] investment and the \$58 million of the additional life-
6 extending capital improvements is the disallowance of all costs associated with the
7 investment and improvements. This follows the precedent established in PNM’s last rate
8 case as a remedy for PNM’s imprudence on the balanced draft investment, and, as such, it
9 would likely be the appropriate remedy if this case were being tried on its merits.”⁴

10 They found that the “issue of the prudence of the extension of PNM’s participation in
11 Four Corners . . . has been extensively litigated in this case [and t]here is a substantial record on
12 which to make a finding of imprudence and the inadequacy of paragraph 9 [in the Revised
13 Stipulation] to address imprudence.”⁵ The Hearing Examiners determined that PNM’s decision
14 to continue participating in FCPP without any contemporaneous economic analysis, risk
15 evaluation, or consideration of alternatives, and PNM’s related decisions to invest in costly
16 pollution controls and capital improvements, had not been prudent.⁶ The NMPRC initially
17 adopted the Hearing Examiners’ Certification of Stipulation, upholding the finding of
18 imprudence, but *added* sanctions on PNM. In the Commission’s December 20, 2017, *Order*
19 *Partially Adopting Certification of Stipulation*, it held:

20 The Commission agrees with the Certification that the remedy provided in Paragraph 9 of
21 the Revised Stipulation is insufficient to address the scope of PNM’s imprudence.
22 However, the Commission also finds that PNM’s imprudence extended not just to the
23 decision to install SCR and make additional investments in FCPP, but to PNM’s
24 determination that continued use of FCPP as base load generation was necessary. This is

⁴ 16-00276-UT, *Certification of Stipulation*, 10/31/2017, p. 68. For a full discussion on their analysis see, pp. pp. 24-69. The Hearing Examiners refer to my past testimony, in particular, at pp. 39-45.

⁵ *Id.*, p. 69.

⁶ *Id.*

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 especially concerning in light of evidence adduced at the hearing in this matter
2 concerning FCPP's poor operating performance and impaired availability rate, as well as
3 PNM's prior representations to the Commission in Cases 13-00390-UT and 15-00261-UT
4 concerning the necessity for acquiring and retaining baseload generation capacity at Palo
5 Verde Nuclear Generating Station in cases 13-00390-UT and 15-00261-UT.

6 Accordingly, the Commission finds that the Certification's limited remedy of disallowing
7 the return on PNM's SCR and other FCPP capital expenditures is an appropriate remedy
8 for this phase of the FCPP review based on the scope of the Revised Stipulation, the
9 limited record that was developed based on the limited scope of this proceeding, and the
10 restricted time to conduct further proceedings in light of the statutory suspension period.
11 The Certification's disallowances in its modifications to the Revised Stipulation suffice
12 to protect ratepayers for the limited time that the Revised Stipulation would remain in
13 effect before the need for any additional disallowances can be addressed. While the
14 disallowance of a return on the SCR and other FCPP expenditures would continue
15 beyond the period in which the revenue reductions achieved under the Revised
16 Stipulation would remain in effect, the propriety of additional disallowances should be
17 addressed.

18 The Commission therefore finds that the ratemaking treatment of the costs of FCPP not
19 addressed here will be determined, either in a continuation of the current proceeding if
20 the Signatories do not accept the modifications approved here, or in PNM's next filed
21 rate proceeding.⁷
22

23 PNM moved for reconsideration of the NMPRC's Order, and the Commission withdrew
24 the finding of imprudence and deferred consideration of that issue until PNM's next rate case
25 filing. The Commission held that:

26 the benefits to ratepayers under the revised Stipulation were so significant that the
27 Commission was justified in deferring, for the limited duration of the period that
28 the revised stipulation will be in effect, a finding on the issue of PNM's prudence
29 in its continued participation and investment in FCPP until PNM's next rate
30 filing.⁸
31

32 According to the PRC,

⁷ 16-00276-UT, *Order Partially Adopting Certification of Stipulation*, December 20, 2017, at pp. 19-20, ¶¶66-68.

⁸ 16-00276-UT, *Revised Order Partially Adopting Certification of Stipulation*, January 10, 2018, p. 23.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 deferring such a ruling will permit consideration of the issue with the full
2 participation of all parties without any constraints that may be placed on such
3 Signatories associated with their current role as proponents of the proposed
4 settlement while also permitting a full opportunity for the Commission to consider
5 the necessity and scope of the remedy in light of PNM's alleged imprudence.⁹
6

7 The NMPRC further remarked that, in the future, "administrative notice will be taken of
8 the evidence on the issue of prudence admitted in the current proceeding."¹⁰ As an interim
9 remedy, it proposed a further reduction to PNM's revenue requirement.¹¹

10 **Q. In your view, does that history relate to the new securitization law?**

11 A. Yes, it definitely does. I find the results of those proceedings could potentially be
12 superseded by the new securitization law. The NMPRC ordered that the rights and remedies of
13 ratepayers with respect to any imprudence by PNM flowing from the FCPP case would be
14 protected in the next rate case. However, the ETA states that PNM is entitled to securitize any of
15 its undepreciated assets irrespective of a prudence review,¹² and without an opportunity for
16 ratepayers to be heard and present any claim or defense.¹³ Essentially, the NMPRC appears to be
17 barred from altering PNM's request for 100% cost recovery for undepreciated assets at FCPP,
18 even though the Commission has twice found PNM's investment at FCPP to be imprudent AND
19 ordered that a determination of the "issue of PNM's prudence in its continued participation and

⁹ *Id.*

¹⁰ *Id.*

¹¹ The Commission held that "because of the scope of the potential imprudence at issue" additional modifications were warranted, specifically, PNM was only allowed to collect "the reduced rate of return equal to PNM's embedded cost of debt" on capital expenditures. Final Order, Case No.16-00276-UT, 1/10/2018, p. 35 ¶ C. And on January 17, 2018, a further reduction of PNM's total revenue requirement of \$4.4M was agreed upon.

¹² ETA, §2S(4); §2H(2) and 2H(3); §5; §11C; §31C.

¹³ *Public Service Company of New Mexico v. New Mexico Public Regulation Commission*, WL 2137168 (May 16, 2019) ¶63.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 investment in FCPP [be deferred] until PNM’s next rate filing. Deferring such ruling will permit
2 consideration of the issue with the full participation of all parties without any constraints that
3 may be placed on such Signatories associated with their current role as proponents of the
4 proposed settlement, while also permitting a more full opportunity for the Commission to
5 consider the necessity and scope of any remedy in light of PNM’s alleged imprudence. []”¹⁴ The
6 Commission left open the possibility of further associated disallowance for PNM’s investment in
7 FCPP.¹⁵

8 While I have often testified in support of 100% recovery of utility assets “stranded” as a
9 result of utility industry restructuring policy changes, it has always been in the context of
10 prudently-incurred costs. Harkening back to my days as a legislative counsel, I read the ETA as
11 removing ratepayer protection against imprudent actions and/or expenditures by the utility.
12 Customary financial review and oversight by the NMPRC should not be eliminated, because the
13 ability of the Commission to protect the public is a crucial tenet of the so-called “regulatory
14 compact.” Such arrangement allows for monopoly status within a public utility so long as
15 administrative oversight exists to protect consumers from the monopolist entity potentially
16 exerting its market power in an unchecked manner. My opinion is entirely consistent with the
17 established law in New Mexico.¹⁶

¹⁴ 16-00276-UT, *Revised Order Partially Adopting Certification of Stipulation*, January 10, 2018, p. 23.

¹⁵ *Id.*, at pp. 23-24.

¹⁶ *Pub. Serv. Co. of New Mexico v. New Mexico Pub. Serv. Comm'n*, 1991-NMSC-083, ¶ 28, 112 N.M. 379, 387, 815 P.2d 1169, 1177. (In return for monopoly market power in its industry, the utility must submit to Commission regulation. ... the Commission must determine the appropriate distribution of the costs [] between the ratepayers and the utility. ... the public interest was best served by continued regulation.)

1 **Q. Were you able to review the Fiscal Impact Report (“FIR”) submitted as part of the**
2 **legislative democratic process for the Energy Transition Act, and if so what did you**
3 **discern?**

4 A. Yes, I did review the Fiscal Impact Report for SB 489/ETA. As Majority General
5 Counsel for the Michigan State Senate I relied on documents like the FIR all the time when
6 analyzing proposed legislation. I evaluated these documents in a bi-partisan way, as did my
7 colleagues, to assess and determine if any potential legislation was inconsistent with law or the
8 state or federal constitutions. If the FIR, or equivalent assessments, conflicted with law, we
9 would work to ameliorate the policy concerns and improve the legislation.

10 Upon review of the FIR in this instance, I found a negative description of the law,
11 consistent with my views expressed above. I have attached as Exhibit SMF-2, incorporated
12 herein, the FIR for SB 489/ETA. On page 6, importantly it addresses, as I do in my testimony,
13 the “**Limitations on PRC Authority:**” (emphasis in the original)

14 Section 11.C of this bill prevents PRC from requiring a utility to use securitization to
15 finance abandonment costs. ...

16 The bill requires the commission to issue a financing order for the energy transition
17 bonds if the application meets all requirements outlined in section 4 of the bill. According
18 to the Attorney General’s Office (NMAG) analysis of this bill, this requirement
19 ‘potentially [compromises] the commission’s constitutional responsibility of regulating
20 public utilities by precluding it from reviewing the substance and appropriateness of the
21 financing order and instead allows the utility to self-regulate.’ For example, the bill

1 requires a utility to submit a variety of items in its application for a financing order,
2 including an estimate of the energy transition costs and the energy transition charges
3 necessary to recover those costs. As long as those estimates are included in the
4 application along with all the other required materials, the bill would require PRC to
5 approve the financing order without giving PRC any discretion on whether the estimates
6 provided are reasonable.

7 The PRC staff analysis of this bill notes the following:

8 'The ETA contains no mechanism for the Commission to conduct a post-issuance
9 review of financing costs. The Commission must be granted the authority to
10 conduct a post-issuance review of financing costs to determine whether the utility
11 actions were prudent and the financing costs resulted in lowest overall costs. The
12 bill also does not preserve Commission authority to review a financing
13 application under the: 1) 'public interest' standard; and 2) to ensure that the
14 financing application results in just and reasonable rates. Finally, the Commission
15 must have the authority to include additional terms and conditions in the financing
16 order for the benefit of ratepayers.

17
18 **Q. Is this the only instance of traditional ratemaking principles running up against the**
19 **ETA requirement for 100% cost recovery from ratepayers?**

20 A. I do not believe so. As a former chairman of a state utility regulatory commission, I
21 would encourage the NMPRC to take administrative notice of other instances of possible
22 imprudence – to the extent they exist -- that might be superseded by the ETA in the absence of
23 regulatory review and consideration. For example, while I was not personally involved in *Public*
24 *Service Company of New Mexico v. New Mexico Public Regulation Commission*, WL 2137168
25 (May 16, 2019), I believe the cautions I describe above relate to the issues involved in that

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 proceeding. In that case, the New Mexico Supreme Court recently upheld the Commission’s
2 Order that PNM’s nuclear investment in Palo Verde Nuclear Generating Station (“Palo Verde”)
3 in 2015 was imprudent, and PNM’s investment in balanced draft capital expenditures at San Juan
4 Generating Station were also imprudent. The New Mexico Supreme Court affirmed the
5 Commission’s finding that PNM was “imprudent” with regards to the 178 megawatts (“MW”)
6 investment at Palo Verde because the Company had conducted no financial analysis and
7 performed no comparison between PNM’s preferred Palo Verde interests to alternative resources
8 before making further investments.¹⁷

9 To the extent that other past Commission and judicial cases implicate the potential that
10 the ETA will provide for imprudent expenditures to be recovered from customers, I urge the
11 Commission – and potentially the courts – to consider alternative paths more in line with the
12 public interest, to the extent they exist.

13 **Q. Are you also concerned about the ETA requirement for 100% cost recovery from**
14 **ratepayers for decommissioning and reclamation costs?**

15 A. Yes. Consistent with my long-held views about recovery of prudently-incurred
16 “stranded” costs, with regard decommissioning and reclamation costs of closing plants,
17 ratepayers should be responsible for compensating utilities for such costs 1) if they were
18 prudently incurred; and 2) if the utility has maintained a reasonable standard of care and has not
19 endangered the health and safety of the people or caused interference with the use and enjoyment
20 of the property.¹⁸ Of particular concern to me is that the ETA, at Section 31C, states that: “no

¹⁷ *Public Service Company of New Mexico v. New Mexico Public Regulation Commission*, WL 2137168 (May 16, 2019) ¶¶ 26-42.

¹⁸ *Commonwealth Edison Co. v. US*, 271 F.3d 1327, 1353-4, Court of Appeals, 2001.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 order of the commission shall disallow recovery of any undepreciated investments or
2 decommissioning costs associated with [an electric generation] facility.” The securitization law
3 then doubles down on legitimate concerns flowing from that provision by including language in
4 Section 11C that a utility does not even have “to issue energy transition bonds” in order “to
5 recover energy transition costs.” Apparently, this blanket State mandate authorizes the utility to
6 charge ratepayers whatever it decides it is entitled to, without a related Commission
7 determination that said costs are just, reasonable, fair, and in the public interest. And Section
8 11C appears to provide that such expansive cost recovery can be done even without the use of a
9 securitization transaction.¹⁹ I have never seen such a path to cost recovery that totally reduces a
10 regulatory commission’s involvement in the determination to nil.

11 Again, speaking as a former regulator, but also with views gained as a consultant for
12 utilities, commissions, and consumer advocates, I find this directive to be unprecedented and
13 unjustifiable. Indeed, it stands at odds with other “securitization” laws that seek to focus on the
14 importance of regulatory authority ensuring that both utilities and ratepayers are treated fairly
15 through the use of a financing method that provides for shared benefit across all stakeholders.

16 **Q. In what ways does the ETA limit oversight and discretion with regard to**
17 **securitization in a manner that is atypical and contrary to ratepayer protections?**

18 A. Below are the major areas of concern raised by the three national securitization experts,
19 which I, too, find to be extremely problematic. Probably the most damning is that the
20 Commission is prevented from modifying the financing order in the utility’s application. As

¹⁹ Final Order, Case No.16-00276-UT, 1/10/2018 p. 24.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 former Texas PUC Chairwoman Klein stated, such limitation is unacceptable and contrary to the
2 Commission's regulatory "raison d'etre," because the "non-bypassable" charge on all consumer
3 bills will be "set in stone" for 25 to 30 years, and it is incumbent upon the Commission to make
4 sure that securitization is better for ratepayers than traditional ratemaking principles, not worse.
5 Without ensuring such, and if independent financial and legal advisors with securitization bond
6 experience are not utilized to achieve a fair balance, the Commission will not be able to carry out
7 its duty to regulate on behalf of the public. Thus, the flawed structure under SB489/ETA:

- 8 1) Limits the ability of the Commission to decide on the amount of undepreciated
9 investment recovery at PNM's coal plants, gas plants, or nuclear investments.
- 10 2) Does not provide the Commission with an independent financial advisor to advise
11 the Commission with regard to the detailed, complex, and specialized market information
12 so as to be able to discern whether securitization is *in fact* an economic benefit to
13 ratepayers.
- 14 3) Prohibits Commission review of the financing order – there is no final audit
15 procedure. Again, this limitation is unprecedented.
- 16 4) Prohibits the Commission from including additional terms and conditions in the
17 financing order for the benefit of ratepayers. This does not comport with best practices.
- 18 5) Prohibits the Commission from ordering a utility to apply for a securitization
19 financing order (once a utility has applied to the NMPRC for abandonment of a qualified
20 utility facility).
- 21

22 **Q. Can you compare the ETA to other securitization legislation?**

23 A. Yes. Best practices include heightened Commission involvement and participation. I
24 cannot recall any securitization law in the U.S. that has allowed a regulated utility to determine
25 the costs it wishes to recover through securitization, with no ability of the regulator to ensure that
26 such costs are appropriately recoverable prior to being locked in through a financing order and
27 bond issuance. Such a process would allow New Mexico public utilities to hold unprecedented
28 power. In essence – intended or not – the ETA serves as a deregulation law.

29

1 **CONCLUSION**

2
3 **Q. Do you have concluding thoughts?**

4 A. Yes I do. When assessing the reasonableness of the ETA and whether it reasonably
5 balances the interests of PNM and its customers in a fair manner consistent with the public
6 interest, both short-term and the longer-term impacts of the ETA's provisions must be analyzed.
7 Blanket approval of "any" undepreciated assets along with decommissioning and reclamation
8 costs, without an objective standard of reasonableness, is contrary to the regulatory frameworks
9 across the entire U.S. The core concept underlying the regulatory compact is recognition that,
10 before an investor-owned utility is allowed to raise rates, the utility must show that its
11 investments have been prudently made. As discussed above, the Commission and/or the courts
12 found that PNM's decision-making with regard to its investments in FCPP, Palo Verde, and San
13 Juan (with respect to balanced draft) was flawed. Accordingly, before securitization proceeds, I
14 believe it is incumbent that the Commission be allowed to carry out appropriate review and
15 oversight to ensure that any costs going into a financing order, followed by an irrevocable bond
16 issuance, represent prudent expenditures. The same reasoning applies to utility decisions with
17 regard to decommissioning and reclamation costs. Only through such a process will the
18 Commission be able to determine the appropriate level of cost recovery or disallowance.
19 Predetermined cost recovery calculated and demanded by the utility, in the absence of due
20 process, breaks faith with the public interest and renders consumers financially vulnerable
21 without recourse.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 Dating back to my first day as a regulator and ever since, I have believed that every
2 utility is entitled to recover all of its prudently-incurred costs. However, in the absence of
3 relevant evidence on the issue of prudence, a process which the ETA unfortunately envisions,
4 regulators will not be able to make an informed judgment vis-à-vis a utility's proposed cost
5 recovery as structured within a financing order. In sum, customers should not bear any of the
6 above-described costs until such time that PNM is able to provide substantial evidence in this or
7 another structured proceeding that its costs were expended in prudent fashion. Such standard
8 cannot be met by a law that guarantees 100% recovery of costs with no regulatory review at all.

9 **Q. Does this conclude your testimony?**

10 A. Yes, at this time.

11

1
2
3
4
5 **STEVEN M. FETTER**
6 1240 West Sims Way
7 Port Townsend, WA 98368
8 732-693-2349
9 RegUnF@gmail.com
10 www.RegUnF.com
11

12 **Education** University of Michigan Law School, J.D. 1979
13 Bar Memberships: U.S. Supreme Court, New York, Michigan
14 University of Michigan, A.B. Media (Communications) 1974
15

16
17 April 2002 – Present

18 **President - Regulation UnFettered- Port Townsend, Washington**
19

20 Founder of advisory firm providing regulatory, legislative, financial, legal and strategic
21 planning advisory services for the energy, water and telecommunications sectors, including
22 public utility commissions and consumer advocates; federal and state testimony; credit
23 rating advisory services; negotiation, arbitration and mediation services; skills training in
24 ethics, negotiation, and management efficiency.
25

26 Service on Boards of Directors of: Central Hudson (Fortis Inc. subsidiary) (Chairman,
27 Governance and Human Resources Committee); and Previously CH Energy Group (Lead
28 Independent Director; Chairman, Audit Committee, Compensation Committee, and
29 Governance and Nominating Committee); National Regulatory Research Institute
30 (Chairman); Keystone Energy Board; and Regulatory Information Technology Consortium;
31 Member, Wall Street Utility Group; Participant, Keystone Center Dialogues on RTOs and
32 on Financial Trading and Energy Markets.
33

34 October 1993 – April 2002

35 **Group Head and Managing Director; Senior Director -- Global Power Group, Fitch**
36 **IBCA Duff & Phelps -- New York / Chicago**
37

38 Manager of 18-employee (\$15 million revenue) group responsible for credit research and
39 rating of fixed income securities of U.S. and foreign electric and natural gas companies and
40 project finance; Member, Fitch Utility Securitization Team.
41

42 Led an effort to restructure the global power group that in three years' time resulted in 75%
43 new personnel and over 100% increase in revenues, transforming a group operating at a

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1 substantial deficit into a team-oriented profit center through a combination of revenue
2 growth and expense reduction.

3
4 Achieved national recognition as a speaker and commentator evaluating the effects of
5 regulatory developments on the financial condition of the utility sector and individual
6 companies; Cited by Institutional Investor (9/97) as one of top utility analysts at rating
7 agencies; Frequently quoted in national newspapers and trade publications including The
8 New York Times, The Wall Street Journal, International Herald Tribune, Los Angeles
9 Times, Atlanta Journal-Constitution, Forbes and Energy Daily; Featured speaker at
10 conferences sponsored by Edison Electric Institute, Nuclear Energy Institute, American Gas
11 Assn., Natural Gas Supply Assn., National Assn. of Regulatory Utility Commissioners
12 (NARUC), Canadian Electricity Assn.; Frequent invitations to testify before U.S. Senate (on
13 C-Span) and House of Representatives, and state legislatures and utility commissions.
14 Participant, Keystone Center Dialogue on Regional Transmission Organizations; Member,
15 International Advisory Council, Eisenhower Fellowships; Author, "A Rating Agency's
16 Perspective on Regulatory Reform," book chapter published by Public Utilities Reports,
17 Summer 1995; Advisory Committee, Public Utilities Fortnightly.

18
19 March 1994 – April 2002

20 **Consultant -- NYNEX -- New York, Ameritech -- Chicago, Weatherwise USA --**
21 **Pittsburgh**

22
23 Provided testimony before the Federal Communications Commission and state public utility
24 commissions; Formulated and taught specialized ethics and negotiation skills training
25 program for employees in positions of a sensitive nature due to responsibilities involving
26 interface with government officials, marketing, sales or purchasing; Developed amendments
27 to NYNEX Code of Business Conduct.

28
29 October 1987 - October 1993

30 **Chairman; Commissioner -- Michigan Public Service Commission -- Lansing**

31
32 Administrator of \$15-million agency responsible for regulating Michigan's public utilities,
33 telecommunications services, and intrastate trucking, and establishing an effective state
34 energy policy; Appointed by Democratic Governor James Blanchard; Promoted to
35 Chairman by Republican Governor John Engler (1991) and reappointed (1993).
36 Initiated case-handling guideline that eliminated agency backlog for first time in 23 years
37 while reorganizing to downsize agency from 240 employees to 205 and eliminate top tier of
38 management; MPSC received national recognition for fashioning incentive plans in all
39 regulated industries based on performance, service quality, and infrastructure improvement.

Case No. 19-00018-UT
Direct Testimony of Steven M. Fetter
On behalf of New Energy Economy
August 6, 2019

1
2 Closely involved in formulation and passage of regulatory reform law (Michigan
3 Telecommunications Act of 1991) that has served as a model for other states; Rejuvenated
4 dormant twelve-year effort and successfully lobbied the Michigan Legislature to exempt the
5 Commission from the Open Meetings Act, a controversial step that shifted power from the
6 career staff to the three commissioners.

7
8 Elected Chairman of the Board of the National Regulatory Research Institute (at Ohio State
9 University); Adjunct Professor of Legislation, American University's Washington College
10 of Law and Thomas M. Cooley Law School; Member of NARUC Executive, Gas, and
11 International Relations Committees, Steering Committee of U.S. Environmental Protection
12 Agency/State of Michigan Relative Risk Analysis Project, and Federal Energy Regulatory
13 Commission Task Force on Natural Gas Deliverability; Eisenhower Exchange Fellow to
14 Japan and NARUC Fellow to the Kennedy School of Government; Ethics Lecturer for
15 NARUC.

16
17 August 1985 - October 1987

18 **Acting Associate Deputy Under Secretary of Labor; Executive Assistant to the Deputy**
19 **Under Secretary -- U.S. Department of Labor -- Washington DC**

20
21 Member of three-person management team directing the activities of 60-employee agency
22 responsible for promoting use of labor-management cooperation programs. Supervised a
23 legal team in a study of the effects of U.S. labor laws on labor-management cooperation that
24 has received national recognition and been frequently cited in law reviews (U.S. Labor Law
25 and the Future of Labor-Management Cooperation, w/S. Schlossberg, 1986).

26
27 January 1983 - August 1985

28 **Senate Majority General Counsel; Chief Republican Counsel -- Michigan Senate --**
29 **Lansing**

30
31 Legal Advisor to the Majority Republican Caucus and Secretary of the Senate; Created and
32 directed 7-employee Office of Majority General Counsel; Counsel, Senate Rules and Ethics
33 Committees; Appointed to the Michigan Criminal Justice Commission, Ann Arbor Human
34 Rights Commission and Washtenaw County Consumer Mediation Committee.

35
36 March 1982 - January 1983

37 **Assistant Legal Counsel -- Michigan Governor William Milliken -- Lansing**
38

1 Legal and Labor Advisor (member of collective bargaining team); Director, Extradition and
2 Clemency; Appointed to Michigan Supreme Court Sentencing Guidelines Committee,
3 Prison Overcrowding Project, Coordination of Law Enforcement Services Task Force.
4

5 October 1979 - March 1982

6 **Appellate Litigation Attorney -- National Labor Relations Board -- Washington DC**
7

8
9 **Other Significant Speeches and Publications**

10 Filing for Bankruptcy Isn't the Right Solution for Puerto Rico (Forbes Online, November
11 2015)
12

13
14 The "A" Rating (Edison Electric Institute Perspectives, May/June 2009)
15

16 Perspective: Don't Fence Me Out (Public Utilities Fortnightly, October 2004)
17

18 Climate Change and the Electric Power Sector: What Role for the Global Financial
19 Community (during Fourth Session of UN Framework Convention on Climate Change
20 Conference of Parties, Buenos Aires, Argentina, November 3, 1998)(unpublished)
21

22 Regulation UnFettered: The Fray By the Bay, Revisited (National Regulatory Research
23 Institute Quarterly Bulletin, December 1997)
24

25 The Feds Can Lead...By Getting Out of the Way (Public Utilities Fortnightly, June 1, 1996)
26 Ethical Considerations Within Utility Regulation, w/M. Cummins (National Regulatory
27 Research Institute Quarterly Bulletin, December 1993)
28

29 Legal Challenges to Employee Participation Programs (American Bar Association, Atlanta,
30 Georgia, August 1991) (unpublished)
31

32 Proprietary Information, Confidentiality, and Regulation's Continuing Information Needs: A
33 State Commissioner's Perspective (Washington Legal Foundation, July 1990)
34
35
36
37

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 3/05/19

SPONSOR SCORC LAST UPDATED _____ HB _____

SHORT TITLE Energy Transition Act SB CS/489/aSCORC

ANALYST Iglesias

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21	FY22	FY23		
\$0.0	\$0.0	\$0.0	See fiscal implications		Recurring and Nonrecurring	General Fund
\$0.0	\$0.0	\$0.0	See fiscal implications		Recurring and Nonrecurring	San Juan County and City of Farmington
\$0.0	\$0.0	\$0.0	See fiscal implications		Recurring and Nonrecurring	Central Consolidated School District, Farmington Municipal Schools, Aztec School District, Bloomfield Schools, and San Juan College
\$0.0	\$0.0	\$0.0	Up to \$6,187.5*	Possible Interest Income*	Nonrecurring	NEW Energy Transition Economic Development Assistance Fund
\$0.0	\$0.0	\$0.0	Up to \$12,562.5*	Possible Interest Income*	Nonrecurring	NEW Energy Transition Displaced Worker Assistance Fund
\$0.0	\$0.0	\$0.0	Up to \$1,875.0*	Possible Interest Income*	Nonrecurring	NEW Energy Transition Indian Affairs Fund

Parenthesis () indicate revenue decreases
 Note: Closure of SJGS Units 1 and 4 scheduled for June 30, 2022.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$50.0	\$ 895.9	\$ 895.9	\$ 1,791.8	Recurring	PRC Operating

Parenthesis () indicate expenditure decreases
 Relates to and conflicts in part with, HB15, HB283, HB498, HB604, SB275, and SB492.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission
Attorney General's Office
Department of Environment
Department of Workforce Solutions
House Speaker's Office
Energy, Minerals and Natural Resources Department

Responses Not Received From
Economic Development Department
Indian Affairs Department

SUMMARY

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee (SCORC) amendment to the SCORC substitute for Senate Bill 489 makes the following changes:

- 1) Rewords Section 15 of the bill to allow the energy transition charge to be subject to local government's franchise fees but exempt from supervision fees pursuant to the Public Utility Act. See attached section-by-section summary.
- 2) Strikes a provision from Section 29(B) of the bill requiring PRC to "ensure that compliance shall not conflict with the federal Public Utility Regulatory Policies act of 1978, as amended", requiring instead that PRC "not jeopardize the operation of a sewage treatment facility that captures and combusts methane gas in the facility's operations."
- 3) Changes the provision in Section 29(C) of the bill to apply to political subdivisions of the state or educational institutions with 20 thousand students or more. The original bill applied to such entities with 24 thousand students or more.
- 4) Changes a provision in Section 29(D) to allow PRC, "upon a motion or application by any other person", to open a docket to develop and provide incentives to public utilities to produce or acquire renewable energy that exceeds the bill's RPS standards.

Synopsis of Original Bill

Senate Corporations and Transportation Committee substitute for Senate Bill 489 creates the Energy Transition Act (ETA). See the fiscal implications and significant issues sections below for a summary of the major features of this bill. A detailed summary by bill section is attached.

The bill establishes new renewable and zero carbon emission portfolio standards for both utilities and rural electric cooperatives and authorizes an alternative mechanism for financing the retirement of coal-fired power plants. The mechanism (referred to as "energy transition bonds" in the bill, commonly known as "securitization") provides investor-owned utilities with 100 percent recovery of stranded costs at potentially lower cost to customers as compared to conventional financing mechanisms. It has been designed to accommodate the retirement in 2022 of units 1 and 4 of the San Juan Generation Station (SJGS) and to anticipate the closure of the Four Corners Power Plant in 2031. The bill also amends the duties and powers of the Environmental

Improvement Board (EIB), requiring the EIB to promulgate a rule limiting carbon dioxide emissions from coal fired generating plants to an emissions standard of 1,100 lbs-CO₂/MWh on or after January 1, 2023.

The ETA is also designed to mitigate some of the adverse economic effects on local communities. It allows for abandonment costs of a coal-fired plant to include mine reclamation costs and severance and job training costs for displaced workers. It requires the location of replacement power resources in the school district where the abandoned facilities are located, taking into consideration system reliability. The bill creates three new funds – managed by the Indian Affairs Department (IAD), Economic Development Department (EDD) and the Department of Workforce Solutions (DWS) and – to be used to assist communities affected by abandoned coal plants and displaced workers. If a utility issues energy transition bonds, the bill requires some of the bond proceeds to be transferred to these funds. The ETA also establishes the Apprenticeship Assistance Act to be administered by the Workforce Solutions Department requiring the employment of apprentices during the construction of electric facilities in increasing percentages over time.

There is no effective date of this bill. It is assumed that the effective date is 90 days after this session ends. 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 12 years after the effective date of this act.

FISCAL IMPLICATIONS

The fiscal impacts of this bill are largely unquantifiable. The Public Service Company of New Mexico's (PNM) integrated resource plan for 2017-2036 calls for the closure of the SJGS by at the end of its current service agreement on June 30, 2022. Currently, SJGS is the sole customer of the San Juan mine.¹ Westmoreland had publicly indicated it expects to shut the mine when the SJGS closes. These closures would have significant impacts on the state general fund as well as the local communities and school districts through losses of jobs, personal income taxes, property taxes, gross receipts taxes (GRT), and severance taxes. This bill requires a replacement resource for an abandoned coal plant be located in the same school district as the abandoned facility. However, without information on the potential replacement resource, it is unknown the degree to which the replacement would offset various tax losses.

Local Impact of SJGS and SJCC Closures. The closure of the power plant and coal mine would have a significant impact on the local communities and school districts. According to a 2019 study, closure of the San Juan mine and the SJGS would result a loss of about 450 jobs and create property tax losses for San Juan County (\$3.2 million); Central Consolidated School District (\$3.5 million); and San Juan Community College (\$1.9 million).² The study indicates SJGS and the San Juan mine account for about 4.1 percent of San Juan County's property tax revenues, about 49 percent for the Central Consolidated School District, and about 11 percent for San Juan Community College.

¹ Westmoreland Coal Company purchased the San Juan mine from the San Juan Coal Company in 2016. Westmoreland filed for bankruptcy in October 2018.

² O'Donnell, K. January 2019. *Tax and Jobs Analysis of San Juan Generating Station Closure*. Retrieval from: <https://www.nmvoices.org/wp-content/uploads/2019/01/San-Juan-Tax-Study-report.pdf>

Additional data below from Four Corners Economic Development estimates other tax revenue losses, assuming the SJGS would be permanently retired and not sold to another operator and that the San Juan coal mine would be shut down and not be able to find another buyer:

- Current employees at SJGS and the San Juan mine earn on average about \$85 thousand annually plus benefits.
- SJGS and the San Juan mine spend about \$31 million in purchases from San Juan County vendors.
- The state and local governments would lose GRT attributed to lost wages from laid-off workers and loss of local purchases of goods and services by PNM and the coal mine.

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

- 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

New Funds for Indian Affairs, Economic Development, and Displaced Worker Assistance.

The bill requires the calculated abandonment costs to include up to \$20 million for severance and job training for employees losing their jobs as a result of the abandonment. If the qualifying utility issues energy transition bonds, the bill requires the utility to transfer 0.5 percent of the energy transition bond to the new Energy Transition Indian Affairs Fund, 1.65 percent to the new Energy Transition Economic Development Assistance fund, and 3.35 percent to the new Energy Transition Displaced Worker Assistance Fund. The fiscal impact estimates for these funds are calculated based on the bill's \$375 million cap on energy transition costs and assume energy transition bonds are issued in FY22. Closure of SJGS Units 1 and 4 scheduled for January 2023. Timelines are approximate because of required Public Regulation Commission (PRC) approvals, and the bill does not require the utility to use this funding mechanism. Therefore, the timing of the transfer to these may be sooner or later, or may not occur, depending on when or if the bonds are issued. Assuming bond proceeds are deposited into these funds, they may grow through interest earnings since the bill specifies the funds as non-reverting and credits earned income to those funds. The funds are presumed to be managed by the State Treasurer.

Costs to Rate Payers. This bill would allow PNM shareholders to receive 100 percent recovery of stranded costs for abandonment of SJGS, but no profit percentage. The estimated rate impact is \$27 million per year. This assumes \$320 million in stranded costs, AAA rated bonds, and a 3.5 percent bond rate. This option is less costly to customers than continued operation of the coal plant or full recovery of stranded costs through conventional financing mechanisms, which both have an estimated rate impact of \$45 million per year. However, it is slightly more costly than a scenario in which PNM receives only 50 percent of stranded costs (similar treatment to the closure of SJGS units 2 and 3), which has an estimated rate impact of \$22.5 million per year.

SIGNIFICANT ISSUES

Renewable Portfolio Standards. Current law requires renewable energy to supply 20 percent of New Mexico’s electricity by 2020. The ETA would increase the renewable energy requirement for all utilities and rural electric cooperatives to 40 percent by 2025 and 50 percent by 2030. For utilities, the bill increases the renewable portfolio standards (RPS) to 80 percent by 2040 and requires 100 percent zero carbon resources by 2045 after considering safety, reliability, and costs to customers. For rural electric cooperatives, the bill requires 100 percent zero carbon resources by 2050, composed of at least 80 percent renewable energy after considering safety, reliability, and costs to customers.

According to the Energy, Minerals and Natural Resources Department (EMNRD), the ETA would place New Mexico as a leader in development of renewable energy and zero carbon policies. RPS policies across the United States are shown in Attachment C from the Database of State Incentives for Renewables & Efficiency.

Although the ETA does not specify what the coal plant, after abandonment, may be used for, it places an air emissions limit of 1,100lbs of carbon dioxide per megawatt hour of electricity generated by 2023. This stringent emission limit effectively ensures that the plant could not operate as a coal fired generation facility after 2023.

In administering the RPS requirements in Section 28 of the ETA, the Commission is required to consult with: 1) the energy, minerals and natural resources department to undertake programs that ensure the standards are achieved; 2) environment department to ensure there is no increase in greenhouse gas emissions from entities not subject to Commission oversight and regulation; and 3) issue a report to legislature each July 1 every four years.

Energy Transition Bond Financing. This bill creates a bond financing mechanism commonly known as “securitization” by which a utility may recover abandonment costs of the coal plant and related financing costs by issuing AAA-rated bonds. This bill is expected to impact the PNM’s SJGS units 1 and 4 and PNM’s interest in the Four Corners Power Plant, which would meet the definition of a qualifying generating facility as per Section 2.S of the bill.

To obtain a financing order for securitization, the qualifying utility must first file for abandonment pursuant to Section 62-9-5 of the Public Utility Act (“PUA”). Section 4.E of this bill permits the qualifying utility to file an application for a financing order and PRC may consolidate the abandonment proceeding with the financing order with approval of the applicant. Contents of the application for a financing order are outlined in Section 4.B of this bill.

The energy transition bonds issued pursuant to the mechanism in the bill are expected to be AAA-rated because, among other reasons, the repayments are secured by a non-bypassable charge on customer bills, financing orders are irrevocable by law, and the state states a pledge in the ETA to take no action that would impair repayment of the bonds (bill sections 7, 9 and 19). Therefore, the bonds will carry a low interest rate, resulting in savings to ratepayers, for any amount of abandonment costs that the utility is authorized to recover.

Notably, Section 5(B) of this bill issues an automatic approval of a financing order if the PRC fails to act within the time prescribed by Section 5(A).

Limitations on PRC Authority. Section 11.C of this bill prevents PRC from requiring a utility to use securitization to finance abandonment costs. The PRC staff analysis of this bill states that because this mechanism is expected to carry a low interest rate resulting in savings to ratepayers, “the Commission’s authority to issue a securitization financing order must be preserved.”

The bill requires the commission to issue a financing order for the energy transition bonds if the application meets all requirements outlined in section 4 of the bill. According to the Attorney General’s Office (N MAG) analysis of this bill, this requirement “potentially [compromises] the commission’s constitutional responsibility of regulating public utilities by precluding it from reviewing the substance and appropriateness of the financing order and instead allows the utility to self-regulate.” For example, the bill requires a utility to submit a variety of items in its application for a financing order, including an estimate of the energy transition costs and the energy transition charges necessary to recover those costs. As long as those estimates are included in the application along with all the other required materials, the bill would require PRC to approve the financing order without giving PRC any discretion on whether the estimates provided are reasonable.

The PRC staff analysis of this bill notes the following:

“The ETA contains no mechanism for the Commission to conduct a post-issuance review of financing costs. The Commission must be granted the authority to conduct a post-issuance review of financing costs to determine whether the utility actions were prudent and the financing costs resulted in lowest overall costs. The bill also does not preserve Commission authority to review a financing application under the: 1) “public interest” standard; and 2) to ensure that the financing application results in just and reasonable rates. Finally, the Commission must have the authority to include additional terms and conditions in the financing order for the benefit of ratepayers.

The ETA contains no mechanism for the Commission to conduct a post-issuance review of financing costs. The Commission must be granted the authority to conduct a post-issuance review of financing costs to determine whether the utility actions were prudent and the financing costs resulted in lowest overall costs. The bill also does not preserve Commission authority to review a financing application under the: 1) “public interest” standard; and 2) to ensure that the financing application results in just and reasonable rates. Finally, the Commission must have the authority to include additional terms and conditions in the financing order for the benefit of ratepayers.

Funding for Bond Counsel. The bill allows the financing order to include a fee to cover the costs of PRC to contract with a nationally accredited contract bond counsel to assist PRC staff in reviewing an application for a financing order and the structure and marketing of the proposed energy transition bonds.

Assistance for Displaced Workers. DWS notes that workers displaced by an abandoned utility are eligible for unemployment insurance benefits, job search assistance, and job training through programs available through DWS. Any additional funding through the Energy Transition Displaced Worker Assistance Fund would increase availability of subsidies used to cover costs associated with career exploration, job readiness, job training for displaced workers in affected communities.

The term “displaced worker” is defined as a New Mexico resident who, within the previous twelve months, was terminated from employment, or whose contract was terminated, due to the anticipated abandonment of a qualifying generating facility or the abandonment of a facility that generates energy with an impact on forty workers. It is unclear whether workers employed by fuel and ancillary suppliers, or service establishments, would also be included in the definition as displaced by the anticipated impact of the qualifying generating facility and would also be eligible for benefits under the Energy Transition Displaced Worker Assistance Fund.

This bill also establishes an apprenticeship program for the construction of new electric generation facility following a competitive solicitation issued after July 1, 2020. Subject to the availability of workers, projects that begin construction in 2020 to 2023 must employ apprentices equal to 10 percent of the workforce for this project. This increases to 17.5 percent for 2024 to 2025 and to 25 percent in 2026 and thereafter. The apprenticeship programs are to have a diversity of participants.

Applicability to Coal-Fired Plants. The provisions of this bill are effective for coal-fired plants that would shut down within twelve years of the effective date of the bill. This would apply to units 1 and 4 of SJGS and the Four Corners Power Station.

ADMINISTRATIVE IMPLICATIONS

According to PRC staff, the ETA would result in increased filings and reports to be prepared and/or reviewed by Utility Division Staff, in addition to hearings and other proceedings, requiring additional time and resources. To comply with the additional tasks generated by the bill, the Commission estimates it would need to hire nine (9) additional FTE’s (full time equivalents per year), whose cost would be generally funded. This includes one utility economist, three Certified Public Accountants, two Utility Engineers, one staff attorney in the legal division, one associate general counsel and one hearing examiner. The cost of hiring nine (9) additional FTE’s including salary, benefits, information technology, and general services department fixed costs \$895,894 per fiscal year on a recurring basis.

DWS would be responsible for administering the newly created Energy Transition Displaced Worker Assistance Fund and implementing plans to appropriately disburse the money. DWS states there would not be any additional administrative funding required as these are programs DWS already offers.

In sections 27 and 28, this bill amends the definition of “biomass resources” that qualify as renewable energy resources and requires EMNRD to certify “facilities” where biomass is obtained from. EMNRD must certify that facilities meet certain sustainable and zero carbon standards. EMNRD would need to develop rules or guidelines to implement this certification program.

Section 29 of this bill provides that the PRC, in consultation with EMNRD, will undertake programs to achieve the new renewable portfolio standards in the bill.

The New Mexico Environment Department’s (NMED) Air Quality Bureau would be required to undergo rulemaking before the EIB to implement the proposed standards of performance. As far as it impacts NMED, the bill would require a rulemaking before the Environmental Improvement Board (EIB). The expected costs of going to hearing is approximately \$50 thousand for six

months. This estimate does not include an estimate of the cost of legal services or hearing related costs such as notice and recording of a hearing.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 283 and Senate Bill 275 also amend the Renewable Portfolio Standards. House Bill 15 amends the renewable portfolio standard for rural electric cooperatives.

House Bill 498 addresses requirements for abandonment of a coal-fired generating facility and also establishes the Energy Transition Economic Development Fund and the Energy Transition Displaced Worker Assistance Fund, making a one-time general fund appropriation of \$7 million and \$3 million to those funds, respectively.

House Bill 604 and Senate Bill 492 also provide for securitization bond financing with some duplication and conflict with this bill.

TECHNICAL ISSUES

Section 5(B) may compromise PRC's constitutional responsibility of regulating public utilities by precluding it from reviewing the substance and appropriateness of the financing order.

The definition of "energy transition costs" in Section 2 includes up to \$20 million for severance and job training for workers affected by the abandonment of a coal-fired plant. The bill creates two funds specific to regional economic development and displaced worker assistance. However, the bill does not identify how any severance pay could be given to displaced workers, and it is unclear whether and how offering severance through this mechanism may violate the state's anti-donation clause.

DI/sb/gb

ATTACHMENT A

Section-by-Section Summary

This bill creates the Energy Transition Act and concerns a public utility's financing of costs for the abandonment of a coal-fired power plant, among other things. Abandonment entails the decommissioning of an electricity generation plant pursuant to Section 62-9-5.

Section 2 – Definitions.

The definition of “energy transition costs” includes:

- 1) financing costs;
- 2) abandonment costs capped at \$375M for San Juan Generating Station or 150 percent of the undepreciated investment in Four Corners, which per facility must include a) up to \$30M in decommissioning and mine reclamation costs, b) up to \$20M in costs for job training & severance, c) undepreciated investment in the plant, and d) other undepreciated investments in the plant incurred to comply with statute, court decision or rule;
- 3) any other costs required to comply with changes in law after January 1, 2019; and
- 4) payments required in the section on the economic development assistance fund.

“Energy transition charge” is defined as a non-bypassable customer charge to recover energy transition costs.

“Qualifying generating facility” is defined as a coal fired plant in New Mexico that, if operated by a qualifying utility prior to this bill's effective date, is to be abandoned prior to Jan. 1, 2023, or, if not operated by a qualifying utility prior to this bill's effective date, is to be abandoned prior to Jan. 1, 2032.

The definition for “financing costs” includes a fee on the qualifying utility for contract bond counsel to provide advice to the PRC on the financing order and bonds.

Section 3 – Location of Resource Development After Abandonment. Requires that, within one year of abandonment approval, the public utility shall apply for Public Regulation Commission (the “Commission”) approval of replacement energy generation that is competitively procured and ranked by cost, economic development opportunity, and ability to provide jobs to those who lost jobs due to abandonment.

- PRC must prefer replacement resources with the least environmental impact.
- Replacement resources may include energy storage and must be located in the school district where the abandoned facility is located.
- Utility shall notify prospective bidders that it promotes and encourages New Mexico labor.
- PRC must approve necessary replacement resources, or propose alternative replacement resources.
- The PRC cannot disallow recovery of reasonable costs to comply with siting of replacement resources.

Section 4 – Financing Order Application. Allows a qualifying utility to apply to the Commission for a financing order to recover all of its energy transition costs.

- Application for financing order may be filed as part of an application for abandonment.
- Contains all requirements to be included in an application for a financing order, including energy transition costs, and an estimate of energy transition charges, as well as a memorandum from a securities firm, whose experience is attested to by the Board of Finance, stating that the proposed bond issuance satisfies criteria for a AAA rating.
- Application may include requests for approvals of new resources necessary.
- Utility or commission may defer needed approvals for new resources.
- If an application for abandonment is pending before the commission on the effective date of the ETA, the utility may file a separate application for a financing order, and the commission may join/consolidate the two with the consent of the applicant. On such joinder, the times in the ETA shall control.
- Allows the qualifying utility to recover energy transition costs pursuant to other provisions of the Public Utility Act if the utility does not recover those costs pursuant to the ETA.

Section 5 – Financing Order Issuance. Allows for a formal hearing on the application if a protest is filed within 30 days of the filing. The Commission shall issue an order granting or denying the application within six months from the date of application. The Commission may extend the time for up to three months, for good cause. Failure to issue an order approving the application or advising of noncompliance with the application requirements within the timeline is deemed approval. The Commission shall issue a financing order if the application complies with the requirements of this bill, and if not, it shall identify the issues and allow the utility to amend the application. The financing order allows the utility to issue bonds and recover costs, it describes the property used to pay and secure payment of bonds, and approval of the ratemaking process to true-up the difference between energy transition costs financed by bonds and the actual costs incurred.

Other notable items include:

- PRC is required to issue a financing order approving application if commission finds the application complies with requirements in the application (Section 4) – *See significant issues and technical issues sections above.*
- These timeframes apply for approval of new resources, unless deferred to separate proceeding.
- Issuance of a financing order is identified as the only approval required for authority granted in the financing order.
- Financing order shall authorize the utility to issue one or more series of bonds for a scheduled maturity of a maximum of 25 years (though a rated final maturity may be longer than 25 years)
- PRC may require that a utility affiliate that issues bonds obtain unanimous consent prior to filing for bankruptcy.
- Financing order may require utility to file period report with commission showing receipt and disbursement of proceeds of bonds.
- Upon issuance of bonds, utility shall file an advice notice with commission that identifies actual charges to be included on customers' bills, effective 15 days from date advice notice is filed.

- Financing order may authorize PRC to review and audit books & records of utility and affiliate.
- The bill states this section shall not limit PRC’s authority to 1) investigate practices of or to audit books and records of utility, or 2) issue further orders as may be necessary to effectuate the ETA.
- Allows a financing order to authorize the commission to impose a fee on the qualifying utility to pay for PRC to acquire contract bond counsel to help with review of the application for a financing order and the structure of the bonds.

Section 6 – Adjustment Mechanism. Establishes an adjustment mechanism and allows a utility to charge all of its customers in a manner consistent with the production cost allocation methodology established in its most recent general rate case. The Commission shall periodically approve adjustments in the charge for true-ups to ensure the non-bypassable does not result in an under-collection or over-collection of revenues sufficient to pay the bonds and financing costs. The charging/adjustment mechanism shall be in effect until the bonds and all costs have been fully paid. The utility shall file the calculation to the adjustment semiannually with the Commission. The adjustment to the charge shall be deemed approved without hearing 30 days after filing, unless a mathematical or transcription error in its calculation is found within 20 days – in such case a limited hearing on the error will take place and the charge will be suspended for not more than 60 days after initial filing of the adjustment. The Commission may determine and correct the mathematical or transcription error, but if it does not act within 60 days of filing, then the new adjustment is deemed approved.

Section 7 – Irrevocability of Financing Order. Makes financing order irrevocable, and prevents the Commission from reducing, impairing, postponing, or terminating the charges, the property, or the recovery of revenues approved in the order. It allows the utility to request amendments to the financing order. The Commission shall grant or deny the proposed amendment within 30 days of the request. No change in credit rating of utility shall impair the irrevocability of a financing order.

Section 8 – Aggrieved Parties – Request for Rehearing – Judicial Review. Allows for aggrieved parties to motion for a rehearing within ten days after issuance of the financing order. The motion shall be deemed denied if not acted upon by the Commission within ten days after filing of the motion. Aggrieved parties may appeal to the Supreme Court within ten days after denial of a rehearing motion or ten days after issuance of the financing order.

Section 9 – Conditions That Keep Financing Orders In Effect and Energy Transition Charges Imposed. Allows the financing order to be in effect until the bonds and costs associated have been paid in full, and notwithstanding the bankruptcy, reorganization, or insolvency of the utility. The utility’s successors, assignees and collection agent shall collect the energy transition revenue through a non-bypassable charge until outstanding bonds and costs are paid in full. The charge shall be paid by all customers receiving service from the utility.

Section 10 – Qualifying Utility Duties. Requires a qualifying utility to use proceeds of energy transition bonds only for purposes related to providing utility services to customers and to pay financing costs. Energy transition revenues shall be applied solely to the repayment of bonds and financing costs. For a utility that receives a financing order, its energy generation and energy procurements longer than two years that are dedicated to its retail customers shall not emit on average more than 400 lbs. of CO₂ per MWh by Jan. 1, 2023, and not more than 200 lbs of CO₂

per MWh by Jan. 1, 2032. Compliance with this emission standard to be measured and verified every 3 years beginning on January 1, 2023.

Section 11 – Commission Treatment of Energy Transition Bonds. Mandates that if the Commission issues a financing order, it shall not treat bonds as debt of the utility, charges as revenue of the utility, or costs to be financed as costs of the utility. Nothing in this bill shall prevent the Commission from investigating compliance with the financing order, imposing sanctions for failure to comply with the order, or including the replacement resources in the utility’s cost of service. The commission shall not require the utility to issue bonds to finance abandonment.

Section 12 – Energy Transition Property – Energy Transition Revenues. Makes property created in a financing order a present property right. The property shall exist until all related financing costs are paid in full. Property created in a financing order may be transferred, sold, conveyed, or assigned to a non-utility affiliate that is wholly owned by the utility and created for the limited purpose of administering energy transition property or bonds. A non-utility affiliate creation does not require Commission approval and shall not be subject to the rules of the Commission for Class I and Class II transactions, except for records/books examination. Energy transition property, revenues, and interests are not subject to set-off, counterclaim, surcharge, or defense in connection with bankruptcy, reorganization, or other insolvency.

Section 13 – Security Interests – Priority Over Other Liens. Mandates that a security interest is created in energy transition property when the financing order is issued, a security agreement is executed and delivered, or value is received for the energy transition bonds. The security interest attaches without any physical delivery, it is continuously perfected, and has priority over any other lien that may subsequently attach. Priority is not affected by the commingling of revenues with other funds. No order amending the financing order shall affect the validity, perfection, or priority of the security interest.

Section 14 – Sale of Energy Transition Property – Absolute Transfer and True Sale Requirements. Affirms that any sale, assignment, or transfer of energy transition property to a financing entity that is wholly owned by the utility shall be an absolute transfer and true sale of seller’s right, title, and interest.

Section 15 – ~~Exemption From Fee Assessments.~~ Makes energy transition charges exempt from assessment of franchise fees imposed by a municipality, county, or other political subdivision of the state.

SCORC Amendment. This section now reads, “The energy transition charge stated as a separate line entry on a customer bill sent by a qualifying utility may be subject to an assessment of a franchise fee imposed by a municipality, county or other political subdivision of the state and inspection, pursuant to a utility franchise agreement. The imposition, collection and receipt of an energy transition charge is exempt from supervision fees assessed pursuant to the Public Utility Act.”

Section 16 – Indian Affairs Fund, Economic Development Assistance Fund, and Displaced Worker Assistance Fund.

- Creates the “energy transition Indian affairs fund” in the state treasury to be used by the Indian Affairs Department (IAD) to address the conditions and issues of tribes and native

peoples in the affected community. IAD shall develop an Indian affairs assistance plan to assist tribal and native people in the affected community, in consultation with Indian nations, tribes and pueblos in the affected community pursuant to the State-Tribal Collaboration Act.

- Creates the “energy transition economic development assistance fund” in the state treasury to be used by the state Economic Development Department (EDD) to assist in diversifying and promoting the affected community’s economy by fostering economic development opportunities unrelated to fossil fuel development or use. EDD shall develop an economic diversification and development plan to assist the affected community in consultation with the affected community’s community advisory committee and with Indian nations, tribes and pueblos in the affected area.
- Creates the “energy transition displaced worker assistance fund” in the state treasury to be used by the Workforce Solutions Department (DWS) to assist displaced workers in an affected community. DWS shall develop a displaced worker development plan to assist displaced workers in the affected community in consultation with the affected community’s community advisory committee and with Indian nations, tribes and pueblos in the affected area. The fund can be used: to assist employers of displaced workers to qualify for tax relief established under state or federal law, for DWS to provide assistance to displaced workers using any program established by the Department, for payment associated with enrolling in certified apprenticeship programs in NM, and to a municipality, county, Indian Nation, pueblo, tribe of land grant community in NM for job training and apprenticeship programs for displaced workers or for programs designed to promote economic development.
- Each Department shall engage in a public planning process that shall include at least three public meetings.
- Within 30 days of receipt of bond proceeds, 0.5 percent of the amount financed by the bonds shall be transferred to IAD for the Indian affairs fund, 1.65 percent to EDD for the economic development assistance fund, and 3.35 percent to DWS for the displaced worker assistance fund.
- Requires a community advisory committee to be created in each affected community and to provide timely recommendations to EDD and DWS on the use of the assistance funds created by this bill.

Section 17 – Energy Transition Bonds Not Public Debt. Energy transition bonds issued pursuant to the ETA shall not constitute a debt or pledge of the full faith and credit or taxing power of the state or any political subdivision of the state.

Section 18 – Energy Transition Bonds as Legal Investments. States that bonds shall be legal investments.

Section 19 – State Pledge Not to Impair. Creates a state pledge that it shall not take or permit any action that impairs the value of energy transition property or charges until the entire principal and interest are paid in full.

Section 20 – Choice of Law. A choice of law provision for New Mexico law to govern the validity, enforceability, attachment, perfection, priority, and exercise of remedies with respect to security interests in energy transition property and charges, and the financing order.

Section 21 – Conflicts. States that this bill will pre-empt any other law that conflicts.

Section 22 – Validity on Actions if Act Held Invalid. Protects the validity of any action taken pursuant to this bill from any subsequent invalidation, repeal, or replacement of this bill.

Section 23 – Applicability. Creates a sunset provision that it shall not apply to applications made more than 12 years after its effective date. It does not preclude amendments beyond the 12 year period to timely initial applications filed prior to the 12 year expiration.

Section 24 – Requiring Hiring of Apprentices for the Construction of Facilities that Generate Electricity. Requires that energy developers employ a certain percentage of apprentices from an apprenticeship program for the construction of New Mexico facilities that generate electricity for New Mexico retail customers: 10 percent for projects between 2020-2024; 17.5 percent for projects between 2024-2026; and 25 percent for projects after 2026. Apprenticeship programs shall encourage diversity among participants.

Section 25 – Energy Storage in Approval of CNNs. Amends Section 62-9-1 regarding PRC approval for new plants and facilities. The amendment recognizes energy storage facilities as a type of facility that can require approval, and establishes guidelines for that approval. Those guidelines include cost effectiveness, reduced fossil fuel usage, enhanced reliability, energy source diversity and grid security and pollution reduction. The criteria recognize that the utility should be able to operate, maintain and control a storage system to ensure reliable service to their customers.

Section 26 – Renewable Portfolio Standards. Amends Section 62-15-34 regarding New Mexico’s renewable energy standard applicable to rural electric cooperatives by establishing new targets and requirements. The amendments remove the requirement that renewable resources be diversified, and requires that renewable energy comprise 40 percent of each coop’s load by 2025 and 50 percent by 2030. These requirements are the same as for investor-owned utilities (IOUs). A target of 100 percent zero emission energy by 2050, comprised of at least 80 percent renewable energy, is also established (5 years later than the IOUs). Achieving the zero-emission target is contingent on technical feasibility, reliability and affordability.

The bill amends the current law’s general renewable energy exemption based on cost, to a more specific \$60/MWh at the generator average cost limit. Reporting requirements to the PRC are also expanded.

The bill requires a rural electric cooperative to meet the RPS requirements and provides for verification of energy from renewable and zero carbon resources.

Section 27 – Renewable Energy in the Rural Electric Cooperative Act. Revises and adds definitions related to renewable energy for rural electric cooperatives.

- 1) Clarifies that renewable energy may be matched with energy storage and still qualify as renewable.
- 2) The definitions expand the availability of hydropower as a renewable resource to include pre-2007 facilities up to a cap equal to the coops entitlement in 2007.
- 3) The definition for renewable “biomass” is clarified to include timber up to 8 inch diameter, provided that the resources are sustainable, have zero life-cycle emissions, and address restoration, sustainability and soil nutrient principles.

- 4) A definition for a “zero-carbon resource” and standard is added to explain that “zero carbon” means no carbon dioxide emitted into the atmosphere from any generation or methane emitted into the atmosphere is equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere.

Section 28 – Amends Definitions in the Renewable Energy Act. Revises or adds the following:

- 1) A definition for “energy storage” is added.
- 2) The “reasonable cost threshold,” i.e. the cost above which renewable need not be procured, is redefined to be an average of \$60/MWh at the point of interconnection.
- 3) The definition for renewable “biomass” is clarified to include timber up to 8 inch diameter, provided that the resources are sustainable, have zero life-cycle emissions, and address restoration, sustainability and soil nutrient principles.
- 4) A definition for a “zero-carbon resource” and “standard” is added to explain that the “zero carbon standard” means no carbon dioxide emitted into the atmosphere from any generation or methane emitted into the atmosphere is equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere.

Section 29 – Renewable Portfolio Standard. Requires that renewable energy certificates must be retired for compliance, and that the associated energy must be assigned to New Mexico customers. This avoids the problem in the past of certificates from neighboring jurisdictions that have a weak RPS compromising New Mexico’s goals. The section expands the renewable energy standard to require 40 percent renewable energy by 2025, 50 percent by 2030 and 80 percent by 2040. There is also a requirement that utilities emit zero carbon dioxide into the atmosphere on and after 2045 (100 percent emission free). Zero emission resources on a utility system need not be displaced to achieve the 80 percent renewable energy standard prior to 2048, which is when the current Palo Verde licenses expire.

The section also instructs the commission to assure that, in administering the 2040 and 2045 renewable and carbon dioxide standards, reliability and affordability are maintained. The zero carbon standard is not to simply transfer emissions to other states. The section also provides consultation and reporting requirements for the commission to advance and evaluate the zero carbon standard as it progresses over time.

The specific cap on procurements for large customers is replaced with the overall \$60/MWh cap applicable to all customers. The exemption for renewable energy costs for government entities that develop their own renewables has been replaced with an exemption for easier-to-quantify fuel and purchased power costs – provided those customers self-develop renewable energy at a percentage equal or greater than the applicable utility renewable standard at the time.

The commission’s directive to provide incentives to utilities to exceed the law’s renewable requirements is expanded to include achieving the zero carbon requirement, and reducing coal-fired generation. Finally, the existing law’s reasonable cost threshold language is deleted in favor of the new, simpler definition in the ETA. The reporting requirements for utilities are modified to reflect the requirements of the ETA, and the procurement plans submitted to the commission must demonstrate that resources are to be competitively procured.

Section 30 – Renewable Energy Certificates (REC). Disallows the trading, selling, or transferring of renewable energy credits from rate-based public utility plant. This section

requires any contract for renewable energy after 2019 shall include conveyance of RECs and the entirety of the RECs shall be retired by the purchasing utility. This section disallows utilities from claiming that it is providing renewable energy from generation resources for which it has traded, sold, or transferred the RECs.

The section requires that all of the RECs from utility rate-based renewables, or purchased renewable energy, must be retired by the utility unless it is part of a voluntary program for customers to procure additional renewables. It also provides that utilities may only claim to have renewable energy if they have the associated REC, and must report on how their public claims square with their renewable energy certificate disposition.

Section 31 – Cost Recovery for Renewable Energy. PRC may not exclude reasonable costs of recovery and costs to comply with electric industry reliability standards that are incurred to deliver renewable energy to New Mexico. Removes the provision allowing the Commission to open a docket to encourage public utilities to acquire renewable energy supplies that exceed the RPS, likely because similar provisions were included in earlier sections. If a public utility has been granted a certificate of public convenience and necessity prior to July 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed as part of the utility's rate base, PRC may require a facility to discontinue serving customers in the state if the replacement has less or zero carbon dioxide emissions into the atmosphere, provided that no order issued by PRC disallows recovery of undepreciated investments or decommissioning costs.

Section 32 – Commission Powers and Duties – Voluntary Programs. Removes the RPS exemption for all-requirements contracts. It requires that all RECs associated with voluntary renewable energy purchase programs be retired on behalf of the customer and not used for the utility's RPS compliance.

This provides clarity for the rate treatment afforded to customers that voluntarily acquire renewable energy on their own behalf, beyond that provided by the utility. Those customers must retire the RECs associated with their usage, and those RECs are not to count towards the utility's RPS compliance. The KWh associated with that voluntary renewable energy, however, does not count towards the total retail sales for which the utility is to procure a percentage of renewables. The voluntary customer is excused from paying for the utility's RPS compliance renewable energy.

Section 33 – Amends Rural Electric Cooperative Voluntary Programs. Remove language made obsolete by this bill's proposed amendments.

Section 34 – Amends Existing Rules of the Commission. Requires PRC to promulgate rules to implement the Renewable Energy Act, instead of only the RPS.

Section 35 – Federal Requirements. Permits a utility to use renewable energy procured or generated to comply with a federal law, rule or regulation to be used to satisfy the procurement requirements of the Renewable Energy Act (REA), as opposed to only renewable energy procured or generated to meet federal RPS requirements used to meet the REA.

Section 36 – Duties and Powers of the Environmental Improvement Board (EIB). Requires the Environmental Improvement Board to promulgate rules for standards of performance that

limit carbon dioxide to no more than 1,100 lbs per MWh on and after Jan. 1, 2023 for electric generating facilities with an original installed capacity exceeding 300 megawatts and that uses coal as a fuel source.

ATTACHMENT B

Property Tax Revenues from the San Juan Generating Station and San Juan Mine

TABLE 1
2018 Mil Levies and Property Tax Revenue from SJGS and SJCM

	Mils*	Revenue
State Debt Service	1.36	\$509,473
County Operational	8	\$2,996,901
County Water Reserve Fund	0.5	\$187,306
Total County	8.5	\$3,184,207
Central Consolidated Schools (CCSD) Operational	0.5	\$187,306
CCSD Debt Service	6.816	\$2,553,360
CCSD Capital Improvement	2	\$749,225
Total School District	9.316	\$3,489,891
San Juan Community College	4.5	\$1,685,757
San Juan Community College Debt	0.6	\$224,768
Total San Juan Community College	5.1	\$1,910,524
GRAND TOTAL	24.276	\$9,094,096

*Dollars per thousand taxable value.

Source: 2018 San Juan County Property Tax Certificate and San Juan County Assessor

TABLE 2
Property Tax Revenue from San Juan Generating Station and Mine as a Percent of Annual Property Tax and Total Revenue by Jurisdiction

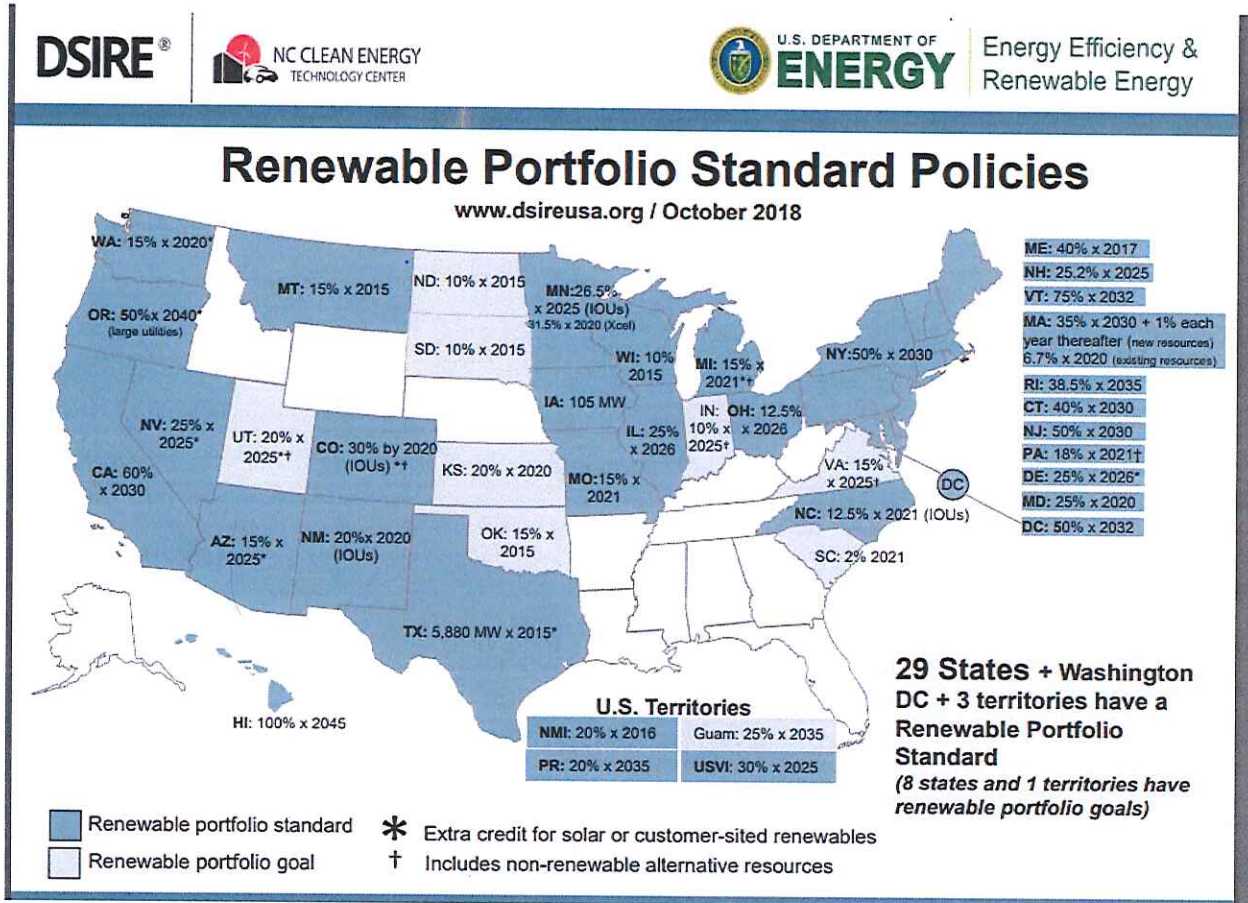
Jurisdiction	PT Revenue from SJGS & SJCM	Total PT Revenue	SJGS & SJM % of Total PT Revenue	Total Revenue (all sources)	SJGS & SJM % Total Revenue
San Juan County	\$3,184,207	\$78,265,875	4.1%	\$100,059,388	3.2%
Central Consolidated School District	\$3,489,891	\$7,193,326	49%	\$85,838,167	4.1%
San Juan Community College	\$1,910,524	\$16,672,146	11%	\$72,405,837	2.6%

Sources: 2018 San Juan County Property Tax Certificate and 2017 Comprehensive Annual Financial Reports for SFY 2017 filed with the New Mexico State Auditor by San Juan County, San Juan Community College, and the Central Consolidated School District, all retrieved from https://www.saonm.org/audit_reports/search

Source: O'Donnell, K. January 2019. Tax and Jobs Analysis of San Juan Generating Station Closure. Retrieval from: <https://www.nmvoices.org/wp-content/uploads/2019/01/San-Juan-Tax-Study-report.pdf>

ATTACHMENT C

Renewable Portfolio Standard policies across the United States



Source: Provided by EMNRD from the Database of State Incentives for Renewables & Efficiency

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE COMPANY OF NEW MEXICO'S ABANDONMENT OF SAN JUAN GENERATING STATION UNITS 1 AND 4)))))	Case No. 19-00018-UT
---------------------------------------------------------------------------------------------------------------------------	-----------------------	----------------------

AFFIDAVIT OF STEVEN M. FETTER


STATE OF WASHINGTON)	
) ss	
COUNTY OF KING)	

1. My name is Steven M. Fetter.

2. I am testifying on behalf of New Energy Economy, before the New Mexico Public Regulation Commission. I am President of Regulation UnFettered.

3. I believe the contents of my testimony to be true and correct to the best of my knowledge.

Further Affiant sayeth naught.

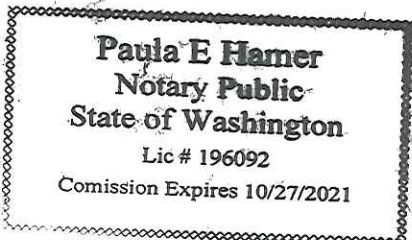



 Steven M. Fetter

8/2/19

 DATE

Subscribed and sworn to before me by Steven M. Fetter on this 2nd day of August, 2019.





 Notary Public

My Commission Expires: 10-27-2021

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF PUBLIC SERVICE)
COMPANY OF NEW MEXICO'S)
ABANDONMENT OF SAN JUAN)
GENERATION STATION UNITS 1 AND 4)

Case No. 19-00018-UT

CERTIFICATE OF SERVICE

I CERTIFY that on this date I sent to the parties and individuals listed below, via email only, a true and correct copy of the

DIRECT TESTIMONY AND EXHIBITS OF STEVEN M. FETTER.

<u>Ryan Jerman</u>	<u>Ryan.Jerman@pnmresources.com;</u>	John W. Boyd	<u>jwb@fbdlaw.com;</u>
<u>Stacey Goodwin</u>	<u>Stacey.Goodwin@pnmresources.com;</u>	Josh Ewing	<u>je@fbdlaw.com;</u>
<u>Ryan Anderson</u>	<u>Ryan.Anderson@pnm.com;</u>	Tom Singer	<u>Singer@westernlaw.org;</u>
<u>Mark Fenton</u>	<u>Mark.Fenton@pnm.com;</u>	Joseph A. Herz	<u>jaherz@sawvel.com;</u>
<u>Carey Salaz</u>	<u>Carey.salaz@pnm.com;</u>	Caitlin Liotiris	<u>ccollins@energystrat.com;</u>
<u>Richard Alvidrez</u>	<u>Ralvidrez@mstlaw.com;</u>	Kathleen Fraser	<u>kfraser@energystrat.com;</u>
<u>Joan Drake</u>	<u>jdrake@modrall.com;</u>	Germaine R. Chappell	<u>Gchappelle.law@gmail.com;</u>
<u>Lisa Tormoen Hickey</u>	<u>lisahickey@newlawgroup.com;</u>	Richard Mertz	<u>rmertz7@outlook.com;</u>
<u>Jason Marks</u>	<u>lawoffice@jasonmarks.com;</u>	Nicholas Phillips	<u>nlpillips@consultbai.com;</u>
<u>Matthew Gerhart</u>	<u>matt.gerhart@sierraclub.org;</u>	Jim Dauphinais	<u>jdauphinais@consultbai.com;</u>
<u>Katherine Lagen</u>	<u>Katherine.lagen@sierraclub.org;</u>	Brian Andrews	<u>bandrews@consultbai.com;</u>
<u>Peter Auh</u>	<u>pauh@abcwua.org;</u>	Andrea Crane	<u>ctcolumbia@aol.com;</u>
<u>Nann M. Winter</u>	<u>nwinter@stelznerlaw.com;</u>	Peter J. Gould	<u>pgouldlaw@gmail.com;</u>
<u>Keith Herrmann</u>	<u>kherrmann@stelznerlaw.com;</u>	Kelly Gould	<u>kellydarshan@gmail.com;</u>
<u>Dahl Harris</u>	<u>dahlharris@hotmail.com;</u>	Charles F. Noble	<u>Noble.ccae@gmail.com;</u>
<u>Steven S. Michel</u>	<u>smichel@westernresources.org;</u>	Thomas Manning	<u>cfrecleanenergy@yahoo.com;</u>
<u>Glenda Murphy</u>	<u>gmurphy@westernresources.org;</u>	Gail Evans	<u>gail@newenergyeconomy.org;</u>
<u>Pat O'Connell</u>	<u>pat.oconnell@westernresources.org;</u>	Chris Hunter	<u>Chris@cornerstoneresults.com;</u>
<u>Mariel Nanasi</u>	<u>Mariel@seedsbeneaththesnow.com;</u>	Megan A. O'Reilly	<u>Oreilly.ccae@gmail.com;</u>
<u>David Van Winkle</u>	<u>Davidvanwinkle2@gmail.com;</u>	Josh Finn	<u>Joshua.finn@navajopower.com;</u>
<u>Bruce C. Throne</u>	<u>bthroneatty@newmexico.com;</u>	Raymond L. Gifford	<u>rgifford@wbklaw.com;</u>
<u>Rob Witwer</u>	<u>witwerr@southwestgen.com;</u>	A. Peters	<u>apeters@wbklaw.com;</u>
<u>Shane Youtz</u>	<u>shane@youtzvaldez.com;</u>	Donald E. Gruenemeyer	<u>degruen@sawvel.com;</u>
<u>Stephen Curtice</u>	<u>stephen@youtzvaldez.com;</u>	Marcos D. Martinez	<u>mdmartinez@santafenm.gov;</u>
<u>Barry W. Dixon</u>	<u>bwdixon953@msn.com;</u>	Rachel Brown	<u>rbrown@santafecountynm.gov;</u>
<u>Kyle J. Tisdell</u>	<u>tisdell@westernlaw.org;</u>	Senator Steve Neville	<u>steven.neville@nmlegis.gov;</u>
<u>Erik Schlenker-Goodrich</u>	<u>eriksg@westernlaw.org;</u>	Rep. James Strickler	<u>jamesstrickler@msn.com;</u>
<u>Thomas Singer</u>	<u>Singer@westernlaw.org;</u>	Rep. Clahchischillia	<u>Sharon.Clahchischill@nmlegis.gov;</u>
<u>Mike Eisenfeld</u>	<u>mike@sanjuancitizens.org;</u>	Senator Carlos Cisneros	<u>Carlos.cisneros@nmlegis.gov;</u>
<u>Sonia Grant</u>	<u>sonia@sanjuancitizens.org;</u>	Senator William Sharer	<u>bill@williamsharer.com;</u>
<u>Carol Davis</u>	<u>caroldjavis.2004@gmail.com;</u>	Rep. Rod Montoya	<u>roddmontoya@gmail.com;</u>
<u>Robyn Jackson</u>	<u>chooshgai.bitsi@gmail.com;</u>	Rep. Paul Bandy	<u>paul@paulbandy.org;</u>
		Rep. Patricia A. Lundstrom	<u>Patricia.lundstrom@nmlegis.gov;</u>
<u>Gideon Elliot</u>	<u>gelliot@nmag.gov;</u>	Michael I. Garcia	<u>mikgarcia@berncogov.org;</u>
<u>Robert F. Lundin</u>	<u>rlundin@nmag.gov;</u>	Tyler Comings	<u>tyler.comings@aeclinic.org;</u>
<u>Cholla Khoury</u>	<u>ckhoury@nmag.gov;</u>	Chelsea Hotaling	<u>Chelsea@sommerenergy.com;</u>
<u>Elaine Helman</u>	<u>Eheltman@nmag.gov;</u>	John M. Brittingham	<u>John.Brittingham@troutman.com;</u>
<u>Jane Yee</u>	<u>jyee@cabq.gov;</u>	Melissa Buttler	<u>Melissa.Butler@troutman.com;</u>
<u>Tony A. Gurule</u>	<u>TGurule@cabq.gov;</u>	Josh Combs	<u>Josh.Combs@troutman.com;</u>
<u>Saif Ismail</u>	<u>sismail@cabq.gov;</u>	Bob Edwards	<u>Bob.Edwards@troutman.com;</u>
<u>Louis W. Rose</u>	<u>rose@montand.com;</u>	Eric Koontz	<u>Eric.koontz@troutman.com;</u>
<u>Sharon T. Shaheen</u>	<u>sshahen@montand.com;</u>	Kiran Mehta	<u>Kiran.Mehta@troutman.com;</u>

Randy S. Bartell
Steven Gross
Martin R. Hopper
Lorraine Talley
Vicky Ortiz
Jeffrey Albright
Amanda Edwards
Don Hancock
Ramona Blaber
Camila Feibelman
Evan Gillespie
James R. Dittmer
Daniel R. Dolan
Robb Hirsch
Charles Kolberg
Noah Long
Stephanie Dzur
Mariam Wheir

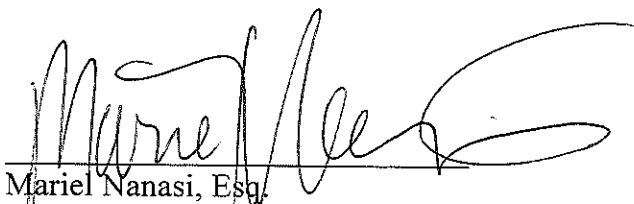
rbartell@montand.com;
gross@portersimon.com;
mhopper@msrpower.org;
ltalley@montand.com;
Vortiz@montand.com;
JA@Jalblaw.com;
AE@Jalblaw.com;
sricdon@earthlink.net;
Ramona.blaber@sierraclub.org;
Camila.feibelman@sierraclub.org;
Evan.Gillespie@sierraclub.org;
jdittmer@utilitech.net;
drd@lobo.net;
rhirsch@edlconsulting.us;
ckolberg@abcwua.org;
nlong@nrdc.org;
Stephanie@Dzur-law.com;
mwheir@gmail.com;

David Getts
Ana Sommer
Adam Baker
Antonio Paez
Jay Kumar
Pete Lewis
Douglas Gegax
Jennifer Breakell
Michael Dirmeier
David Rhodes
Milo Chavez
Jack Sidler
Michael C. Smith
John Reynolds
Bradford Borman
Elisha Leyba-Tercero

dgetts@southwesternpower.com;
anna@sommerenergy.com;
abaker@bakerlawoffice.net;
apaez@daimc.com;
jkumar@etcinc.biz;
plewis@daimc.com;
dgegax@nmsu.edu;
jbreakell@fmtn.org;
mdirmeie@gmail.com;
rhodesd@southwestgen.com;
Milo.Chavez@state.nm.us;
Jack.sidler@state.nm.us;
Michaelc.smith@state.nm.us;
John.reynolds@state.nm.us;
Bradford.Borman@state.nm.us;
Elisha.leyba-tercero@state.nm.us;

DATED this August 6, 2019

New Energy Economy



Mariel Nanasi, Esq.
343 East Alameda St.
Santa Fe, NM 87501-2229
(505) 469-4060
mariel@seedsbeneaththesnow.com