



Amendments to the Energy Transition Act: Making a Good Law Better

Sponsored by Senators Bill Tallman, Liz Stefanics, and Antoinette Sedillo Lopez, **amendments to the Energy Transition Act (ETA) would leave the best of the 2019 law intact while making three small revisions to protect New Mexico ratepayers:**

1. Reinstate Public Regulation Commission (PRC) Authority to regulate the “recovery rates” that utility companies can pass along to ratepayers for undepreciated investments and decommission (clean-up) costs related to closing coal, gas, and nuclear facilities.
2. Reinstate PRC authority to deny a utility company’s securitization proposal if it includes costs that are found to be imprudent or not fair, just, and reasonable.
3. Reinstate the 30-day hearing filing deadline (narrowed to 10 days in the ETA) to conform with standard court rules across criminal and civil law in NM and the U.S.

Opponents say these amendments are not needed. But the NM State Attorney General, the PRC hearing examiner, and expert regulators from across the nation all feel changes are necessary. (See comments on reverse).

The amendments will NOT change what’s good about the ETA:

1. One of the highest renewable portfolio standards in the country.
2. Securitization, which allows investor-owned utilities to recover their losses when a plant is closed early by selling bonds and adding charges to ratepayers monthly bills.
3. Transition funds for workers, workforce development, and economic transition in communities that are affected by shutdowns.

History: The ETA was passed during the 2019 Session and signed into law by the Governor. Attempts to amend the bill during the 2019 Session were unsuccessful. Sponsors and supporters of the proposed amendments believe that the law, as currently written, allows utility companies to recoup any undepreciated investments and decommissioning costs they propose. Consumer advocates, regulatory attorneys, and utility experts agree that unclear language in the ETA will allow utility companies to set their own recovery rates to be paid by consumers, with no oversight from the PRC.

What Are the Consequences of the ETA without the Amendments?

- PNM will pass on to New Mexico consumers more than \$2 billion in undepreciated investments in coal, gas, and nuclear. With PRC authority restored, these costs could be shared by ratepayers and shareholder without jeopardizing the ability to securitize the costs.
- That \$2 billion does not include hundreds of millions more in facility decommissioning costs, which would be determined by PNM and not reviewed by the PRC.

Supporting Organizations

Citizens for Fair Rates & the Environment
Food and Water Watch
Interfaith Worker Justice

New Energy Economy
NM Physicians for Social Responsibility
Rio Arriba Concerned Citizens

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From PRC Hearing Officer in the ETA Financial Impact Report, 2019, prior to the ETA’s passage:

“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.”

The hearing examiner’s concerns proved to be correct. From PRC Decision on PNM’s Request for a Financing Order, 2/21/2020, p. 97, 19-00018-UT:

Because they were constrained by the ETA, PRC Hearing Examiners recommended giving PNM 100% of its financial request, \$361M, in its financing order for San Juan Generating Station plus an unknown interest rate and the ability to upwardly adjust the financing order based on “actual costs” expended. “[T]he ETA constrain[s] the Commission’s ability to adopt the Attorney General’s limits on recovery. The Commission lacks the authority to impose the limits.”

From the Attorney General, quoted in the 2019 Financial Impact Report by Leg. Services Council:

“Section 5(E) requires the Commission to issue a financing order if the utility includes in its application certain enumerated items, potentially compromising 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.**” **The proposed amendments seek to address these issues.**

From Adam Carlesco, Climate & Energy Staff Attorney at Food & Water Watch:

“The Public Regulation Commission (PRC) is tasked with regulating industries to ensure fair and reasonable rates, and to assure reasonable and adequate services to the public; yet a portion of the Energy Transition Act (ETA) has removed this constitutional mandate..S. If these issues are not addressed now, ratepayers will be left to foot the bill to decommission fossil fuel and nuclear facilities, foisting the cost of the state’s energy transition upon the general public instead of the corporations that have profited for decades.”

From Steven M. Fetter, former Chairman of the Michigan Public Service Commission, former bond rater for Fitch, former general counsel for the Michigan Senate, and three-time PNM expert witness.

“I view the ETA as a significant departure from other “securitization” laws in a way that undermines the core of the NMPRC’s fundamental purpose and role – to regulate on behalf of the public to “reasonably protect ratepayers from wasteful expenditure.”

From John Boyd, Attorney, Citizens for Fair Rates & the Environment:

“The ETA’s fine print removes discretion from the PRC to control the amount that PNM can extract from ratepayers as ‘compensation’ when it closes any of its old plants. There are many other states with ‘securitization’ laws like the ETA. **Not a single one of those laws removes regulatory oversight of the amounts their utilities receive from ratepayers when the utility closes an old plant.**”

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