

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE
LAST UPDATED 01/28/15 **HB** _____

SPONSOR Ingles

SHORT TITLE Utility Transmission First Right to Construct **SB** 247

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | | NFI | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 116

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)
 Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 247 provides for a Public Utility or Electric Generation and Transmission Cooperative to have the first right of refusal for a construction of a transmission line eligible for regional cost allocation by a regional transmission organization or “RTO.” This allows the utility to have the opportunity to own the transmission line connecting two or more public utilities or cooperatives or interconnecting the transmission system with another utility.

The public utility or the generation and transmission cooperative would be required to give notice to the PRC in writing within sixty days of informing the RTO that it will exercise its right to construct, own and maintain the approved transmission facility. The approved regional transmission facility would not be built until all required governmental approvals have been obtained.

SB 247 states that if two or more incumbent utilities are involved in the interconnection(s), then the two or more utilities will determine which utility will build, own, and maintain which segments. However, if no determination is made, each public utility or cooperative will build, own and maintain its respective interconnection facilities and its equal share of that segment.

SB 247 defines “electric transmission facility” and “transmission facility” as an electric

transmission line and associated facilities designed for a nominal voltage of 69 kilovolts or more that will interconnect with public utility or generation and transmission cooperative transmission facilities. Section B also defines “generation and transmission cooperative” as defined in the existing Subsection E of Section 62-6-4 NMSA 1978 and “public utility” as defined in the existing Subsection G of Section 62-3-3 NMSA 1978. Section B also defines “regional transmission planning authority” as a regional transmission organization approved by the Federal Regulatory Commission (FERC).

FISCAL IMPLICATIONS

SB 247 no appropriation and has no significant fiscal impact.

SIGNIFICANT ISSUES

The FERC in 2011 enacted Order 1000, whereby planning for transmission projects must now be accomplished at the regional and interregional level.

The FERC order removes the right of first refusal (ROFR) from regional tariffs where historically incumbent transmission providers have been given preference on transmission projects in their existing territories. SB 247 would reinstate the ROFR at the state level, thus limiting the competition on certain projects or perhaps leading to more joint ventures between large transmission owners and established incumbents in their territories.

AGO analysis states:

SB 247 gives companies that participate in a Regional Transmission Organization (RTO) the first right to construct transmission facilities that are deemed necessary by the RTO. FERC Order 1000 specifically removes the federal first right of construction but remains silent on a State’s ability to create such a right.

On August 15, 2014 the U.S. Court of Appeals for the District of Columbia Circuit affirmed FERC Order 1000, see decision here:

<http://www.cadc.uscourts.gov/internet/opinions.nsf/9642B5B52A1B402785257D350052548A/%24file/12-1232-1507702.pdf>

The court upheld FERC’s decision to remove the federal ROFR rules stating:

In practice, incumbents were likely to exercise their rights of first refusal once the benefits of a new project were demonstrated. In this way, rights of first refusal discouraged non-incumbents from proposing transmission facilities.

However, PRC analysis states:

Without this bill, the FERC order would allow any other transmission project proposed by a non-incumbent utility to be built without that utility’s participation and could result in costs to be imposed upon the utility without prior review by any state agency.

There are no cost restrictions or cost containment provisions in this bill. By providing a utility

the ROFR, the construction of transmission facilities might cost more than if the facilities were to be built and operated by another entity able to do so more cheaply, provided the entity met minimum standards. The utility might then be able to pass any increased costs onto the ratepayers. However, the utility would still be required to get approval of cost recovery from the PRC and would risk approval of full cost recovery if the PRC were aware that there were other, lower cost options available.

On the other hand, PRC analysis states that “it supports the regulatory compact providing regulated utilities the right to own their own transmission and protects them from the potential of predatory activities when an independent operator/owner might then have the opportunity to make electric sales to large customers.”

PRC analysis also states that “The NMPRC regulates Public Utilities and Electric Generation and Transmission Cooperatives; it does not regulate other parties that may choose to own transmission in New Mexico.”

PERFORMANCE IMPLICATIONS

For the PRC, performance implications are limited, as long as the said transmission assets are maintained and operational at all times. The issue may be that in the event of an outage or reduced maintenance causing service or service quality issues the NMPRC will have limited authority over the transmission line owners if they are not a public utility or an electric generation and transmission cooperative.

OTHER SUBSTANTIVE ISSUES

Currently, this bill would affect only Xcel Energy-owned Southern Public Services and the Lea County Electric Cooperative, both of which are members of the Southwest Power Pool RTO. Thus it would be pertinent only to utilities in southeastern New Mexico. However, other utilities in the state may in the future decide to join RTOs and take advantage of the ROFR guarantees provided by this bill.

A similar bill was passed in 2013 in Oklahoma (HB1932) and signed into law by the governor. The Oklahoma bill specifically cites RTO Southwest Power Pool’s approval for any proposed local electric transmission facility.

CAC/bb