

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 (legis.state.nm.us). 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

SPONSOR Leavell DATE TYPED 2/23/05 HB _____

SHORT TITLE Air Emission Investment Cost Recovery SB 58

ANALYST Rosen

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
Public Regulation Commission (PRC)
Department of Environment (DE)

SUMMARY

Synopsis of Bill

Senate Bill 58 amends Section 62-8-7 NMSA 1978, the part of the Public Utility Act (PUA) which outlines how PRC regulates “Change in Rates” for utilities under PRC jurisdiction. Specifically, the bill amends the PUA to allow ratemaking through rate increases outside a general rate proceeding filed by the utility. The bill allows a public utility the use of a rate-rider mechanism to recover costs of the utility’s voluntary installation of an air emissions reduction project at a generation plant.

Significant Issues

According to PRC, piecemeal ratemaking occurs when certain utility costs or investments are allowed for recovery from ratepayers without consideration of other, perhaps offsetting, cost reductions or depreciation or retirement of plant investment. The effect of this piecemeal ratemaking is a one-way ratchet of increasing rates. PRC currently does not allow for piecemeal ratemaking for these reasons.

PRC indicates §62-8-7, section H, requires PRC to approve a cost recovery rate rider if the public utility files an application. Section J does allow for PRC to alter an existing rider but only

with respect to its performance under the voluntary emissions reduction agreement. This section appears to be a means of avoiding PRC's existing authority to determine the prudence of a utility's investments and operations before allowing the utility to recover such costs from ratepayers.

PRC questions whether allowing this streamlined method of cost recovery through a rate rider is appropriate for the whole ratemaking process, which was put into effect to assure fair, just and reasonable rates to the consumers. PRC indicates that through piecemeal ratemaking, a proposed rate rider could have the potential of increasing total retail rates five percent.

PRC indicates the bill does not address whether certification by DE is required prior to the utility's application to and approval by the PRC.

PRC notes that by engaging in voluntary emissions reductions, the utility may be speculating (with ratepayer money) on future federal and state emissions regulations. If the utility's voluntary investment does not satisfy federal or state environmental regulations, it appears ratepayers will still be obligated to pay for both the voluntary emissions reduction-based investments as well as the required emissions reductions investments.

According to DE, the bill does not ensure that the emission control project is voluntary or that there will be environmental benefit to New Mexico. The bill could result in a financial benefit to electric utilities without resulting in an overall benefit to the environment.

DE indicates this bill requires that the utility supply power to New Mexico retail customers. A number of New Mexicans purchase power from utilities in surrounding states, including Texas and Colorado. DE notes the principal environmental benefit would accrue to out-of-state ratepayers, not ratepayers in New Mexico. However, there is a provision in the bill that allows PRC to allocate costs pro rata to New Mexico retail customers.

FISCAL IMPLICATIONS

DE reports it did not review this bill for effects on ratepayers other than as stated. DE believes the potential negative effects on ratepayers can best be addressed by other agencies.

ADMINISTRATIVE IMPLICATIONS

According to DE, department time and resources will be needed to make the required certification. There is no provision in the bill that allows DE to collect fees to cover the costs of such an analysis.

TECHNICAL ISSUES

According to PRC, this bill allows for piecemeal ratemaking. The bill allows utilities to seek PRC approval for the implementation of a rate-rider to recover costs outside of a general rate proceeding and those costs that the utility voluntarily incurred. Approval of such a rate-rider would provide the utility the opportunity for full recovery from the ratepayers of New Mexico for projects the utility chooses to implement, including those located in other states.

PRC indicates the utility will be allowed to recover the cost of plant improvements and will be allowed to keep the benefits of any cost or production efficiencies. Only revenues received from

selling allowances under the federal Clean Air Act will be credited to offset the air quality improvement costs associated with the rider.

PRC notes the utility would need to show to the department of environment “significant environmental benefits” but the bill does not define “significant environmental benefits.” This showing by the utility would need to include reductions of the level of air emissions at the generating plant below current federal or state requirements to be certified by the department of environment. How would New Mexico ratepayers weigh that environmental benefit against the cost an additional rate-rider paid? PRC wonders if there is a potential for “gold plating” the system by the utility?

PRC reports that without this bill the utility could still voluntarily invest in the installation of an air emissions reduction project at its generation plant but would be at the same risk for recovery as it would for any other plant investment. Piecemeal ratemaking has traditionally not been an accepted practice in rate of return regulation because the practice does not allow the regulator to look at the whole picture, and take all of the utility’s operations and costs into consideration. PRC’s goal when approving rates for a utility is to assure fair, just, and reasonable rates.

PRC questions if PRC can investigate and disallow cost recovery of any cost overruns or examples of project mismanagement incurred by the utility?

According to PRC, PRC hearings required by this bill may be based in large part upon speculation regarding future emissions regulations and requirements. PRC hearings are normally based upon known, audited costing and financial information. Hearings based upon softer, more speculative numbers will likely generate large amounts of discovery and witness cross-examination by parties opposed to rate increases.

According to DE, this bill requires DE to perform a certification that the emission reduction project creates “significant environmental benefit” but does not define “significant environmental benefit”. The bill does not specify that DE has authority to request and receive from the applicant the information necessary to make this determination. DE reports that acquiring the necessary information could be particularly difficult if the facility is located out of the state’s jurisdiction.

The bill requires that the public utility demonstrate that the emissions project will have “projected emissions reductions” and that other criteria air pollutants are not increased above a “*de minimus*” threshold. DE notes the term “*de minimus*” is not defined. DE further indicates the increase in other pollutants should go beyond criteria air pollutants and include other hazardous air pollutants and other types of pollution.

DE indicates the bill does not include a provision for DE to develop regulations to implement the program. Such regulations could further define the certification process, including the establishment of criteria for assessing the environmental impacts of the project and allowing for the collection of fees to cover the cost of the program.

OTHER SUBSTANTIVE ISSUES

PRC reports that while the public as a whole benefits from cleaner air only a few select New Mexicans will be required to finance this benefit under this bill.

ALTERNATIVES

DE has provided the following suggested amendments:

- Page 6, line 15: “(1) the installation of air emission control equipment is not required by any air quality permit, local, state or federal law, or settlement of an administrative or judicial action;”
- Page 7, line 2: “(d) any other environmental effects resulting from the project”
- Page 7, line 13-14: “(4) the air emissions reduction project will not increase other air pollutants above de minimis thresholds;”
- Page 7, line 15-20: “(5) the department of environment, within ninety days of receipt of the utility’s complete filing, certifies that:
(a) the air emissions reduction project will not increase other air pollutants or pollutants of other media above minimal levels;
(b) the proposed air emissions reduction project creates significant environmental benefits to New Mexico, including reduction of actual air emissions from the generating plant based on the average of the three most recent years of emission data; and
(c) the air emissions reduction project meets the requirement in paragraph (H)(1) of this section; and
(6) the public utility provides the department of the environment with information as requested to assess the environmental impacts including air quality impacts of the project to New Mexico; and,”
- Page 8 line 3-5: “The proposed rate rider remains in effect until all air quality improvement costs have been recovered or are included in base rates in a general rate case, or, due to changes in applicable law or other requirements, the air emission reductions from the project are no longer voluntary. “
- Page 8, line 11: “K. The department of environment shall promulgate regulations implementing procedures for its certification under this section, including criteria for determining whether the project creates significant environmental benefits to New Mexico, whether the air emission reduction project will not increase other air pollutants or pollutants of other media above minimal levels, and a schedule of fees to cover any required analyses.”

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The current ratemaking process, which incorporates cost and investment increases as well as cost and investment decreases, will be maintained.

According to PRC, costs and rate treatment associated with plant investments by utilities would remain part of a general rate case proceeding. Utilities may be less willing to “voluntarily” install air emissions reductions projects at generating plants. Ratepayers would be less likely to

pay for an investment by a utility for which the ratepayers would receive little or no benefit in relations to the cost.

POSSIBLE QUESTIONS

Does the generating plant to which air emissions reductions projects are to be voluntary installed need to be owned by the public utility?

What types of costs associated with the “voluntary installation” are recoverable through the rate-rider proposed by this bill? Specifically, does the bill allow recovery of overhead costs, including engineering studies and a return on the utility’s investment in the additional plant? If a return on investment is allowed, how should that return be calculated?

JR/yr