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HOUSE BILL 85

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO ENERGY; AMENDING AND ENACTING SECTIONS OF THE  
PUBLIC UTILITY ACT TO PROVIDE FOR ELECTRIC UTILITIES TO RECOVER  
ALL REASONABLE COSTS INCURRED FOR INVESTMENT IN NEW  
TRANSMISSION FACILITIES THAT ARE CERTIFIED AND APPROVED BY THE  
PUBLIC REGULATION COMMISSION TO FACILITATE ECONOMIC DEVELOPMENT  
AND DEVELOPMENT OF RENEWABLE ENERGY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Utility Act is  
enacted to read:

"[NEW MATERIAL] RECOVERY OF TRANSMISSION INFRASTRUCTURE  
IMPROVEMENT COSTS.--

A. The commission shall adopt rules that provide  
for an electric utility to recover on an annual basis, through  
a transmission cost adjustment clause, its reasonable and

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1 necessary transmission infrastructure improvement costs and  
2 changes in wholesale transmission charges to the electric  
3 utility under a regional transmission tariff approved by a  
4 federal regulatory authority to the extent that the costs or  
5 charges have been incurred since the end of the test year in  
6 the electric utility's most recent base-rate case. The  
7 commission may allow the electric utility to recover only the  
8 costs or charges allocable to its retail customers in the state  
9 and shall not allow the electric utility to recover more  
10 revenue through the transmission cost adjustment clause than  
11 authorized.

12 B. An electric utility's retail customers in the  
13 state shall be held harmless in a base-rate case or a  
14 transmission cost recovery case in the event the electric  
15 utility, when it had been designated to provide new  
16 transmission facilities under the guidelines of the regional  
17 transmission organization of which it is a member, declined the  
18 opportunity to construct or own, or both, the new transmission  
19 facilities itself, to the extent the declined opportunity  
20 results in higher costs to the electric utility's retail  
21 customers in the state."

22 Section 2. Section 62-9-1 NMSA 1978 (being Laws 1941,  
23 Chapter 84, Section 46, as amended) is amended to read:

24 "62-9-1. NEW CONSTRUCTION--RATEMAKING PRINCIPLES.--

25 A. No public utility shall begin the construction

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1 or operation of any public utility plant or system or of any  
2 extension of any plant or system without first obtaining from  
3 the commission a certificate that public convenience and  
4 necessity require or will require such construction or  
5 operation. This section does not require a public utility to  
6 secure a certificate for an extension within any municipality  
7 or district within which it lawfully commenced operations  
8 before June 13, 1941 or for an extension within or to territory  
9 already served by it, necessary in the ordinary course of its  
10 business, or for an extension into territory contiguous to that  
11 already occupied by it and that is not receiving similar  
12 service from another utility. If any public utility or mutual  
13 domestic water consumer association in constructing or  
14 extending its line, plant or system unreasonably interferes or  
15 is about to unreasonably interfere with the service or system  
16 of any other public utility or mutual domestic water consumer  
17 association rendering the same type of service, the commission,  
18 on complaint of the public utility or mutual domestic water  
19 consumer association claiming to be injuriously affected, may,  
20 upon and pursuant to the applicable procedure provided in  
21 Chapter 62, Article 10 NMSA 1978, and after giving due regard  
22 to public convenience and necessity, including reasonable  
23 service agreements between the utilities, make an order and  
24 prescribe just and reasonable terms and conditions in harmony  
25 with the Public Utility Act to provide for the construction,

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1 development and extension, without unnecessary duplication and  
2 economic waste.

3 B. If a certificate of public convenience and  
4 necessity is required pursuant to this section for the  
5 construction or extension of a generating plant or transmission  
6 lines and associated facilities, a public utility may include  
7 in the application for the certificate a request that the  
8 commission determine the ratemaking principles and treatment  
9 that will be applicable for the facilities that are the subject  
10 of the application for the certificate. If such a request is  
11 made, the commission shall, in the order granting the  
12 certificate, set forth the ratemaking principles and treatment  
13 that will be applicable to the public utility's stake in the  
14 certified facilities in all ratemaking proceedings on and after  
15 such time as the facilities are placed in service. The  
16 commission shall use the ratemaking principles and treatment  
17 specified in the order in all proceedings in which the cost of  
18 the public utility's stake in the certified facilities is  
19 considered. If the commission later decertifies the  
20 facilities, the commission shall apply the ratemaking  
21 principles and treatment specified in the original  
22 certification order to the costs associated with the facilities  
23 that were incurred by the public utility prior to  
24 decertification.

25 C. The commission may issue an order and a

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1 certificate of convenience and necessity to an electric utility  
2 to construct or enlarge transmission or transmission-related  
3 facilities but only for facilities to be constructed in the  
4 utility's New Mexico service area. If the commission issues a  
5 certificate of convenience and necessity to an electric utility  
6 for transmission and transmission-related facilities, or if the  
7 commission orders an electric utility to construct or enlarge  
8 transmission or transmission-related facilities that the  
9 commission determines are needed for achieving the goals of  
10 promoting economic development or development of renewable  
11 energy projects, the commission shall find that the  
12 transmission facilities are used and useful for providing  
13 public utility service in accordance with this section and are  
14 prudent and includable in the utility's rate base.

15           [~~G.~~] D. The commission may approve the application  
16 for the certificate without a formal hearing if no protest is  
17 filed within sixty days of the date that notice is given,  
18 pursuant to commission order, that the application has been  
19 filed. The commission shall issue its order granting or  
20 denying the application within nine months from the date the  
21 application is filed with the commission. Failure to issue its  
22 order within nine months is deemed to be approval and final  
23 disposition of the application; provided, however, that the  
24 commission may extend the time for granting approval for an  
25 additional six months for good cause shown.

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[D-] E. As used in this section, "mutual domestic water consumer association" means an association created and organized pursuant to the provisions of:

(1) Laws 1947, Chapter 206; Laws 1949, Chapter 79; or Laws 1951, Chapter 52; or

(2) the Sanitary Projects Act."

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