

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](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Soules ORIGINAL DATE \_\_\_\_\_ LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Limit Utility Rate-Change Request Frequency SB 235

ANALYST Martinez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Public Regulation Commission

### SUMMARY

#### Synopsis of Bill

SB 235 limits changes in rates, and requests for changes in rates, that are charged by a public utility to a particular customer class to only once in any three-year period. SB 235 expressly exempts rural electric cooperatives from this limitation.

### FISCAL IMPLICATIONS

SB 235 carries no appropriation and will not have a fiscal impact on the Public Regulation Commission.

### SIGNIFICANT ISSUES

The Public Regulation Commission states the following significant issues below;

There are currently no limitations in place by statute or Public Regulation Commission (PRC) rules on how often public utility rates may or may not change.<sup>1</sup> The Public Utility Act, Sections 62-1-1, et seq., NMSA 1978, grants broad and exclusive jurisdiction over public utilities and their rates and service to the PRC. The public utilities regulated by the PRC include, but are not limited to Public Service Company of New Mexico (“PNM”), Southwestern Public Service Company (“SPS”), El Paso Electric Company (“EPE”), and New Mexico Gas Company. The only limitations are practical ones, in that utilities have only one rate case at a time because rates are subject to full evidentiary hearings lasting anywhere from 2 to 4 weeks, and rates are set against the backdrop of total utility expenses and revenues. Rates are designed to recover the utility’s “revenue requirement,” meaning the revenues that are required by the utility to cover its reasonable expenses incurred in providing utility services and also to cover a profit opportunity (a/k/a “rate of return”) on its prudent capital investment.

The most significant issue raised by SB 235 is that utilities have a legal right to rates that recover its revenue requirement. “Ultimately, the Commission must ensure that rates are neither unreasonably high so as to unjustly burden ratepayers with excessive rates nor unreasonably low so as to constitute a taking of property without just compensation or a violation of due process by preventing the utility from earning a reasonable rate of return on its investment.” In the Matter of the Petition of PNM Gas Services v. NMPUC, 129 N.M.1, 1 P.3d 383 (2000) (citations omitted).

SB 235 would impose a limitation on the frequency of rate changes or rate-change requests that may interfere with the right of utilities to rates that provide an opportunity to earn a reasonable rate of return on its investment. Moreover, not all costs incurred by a utility are within its control, and such increasing costs may drive utility requests for rate increases.

## PERFORMANCE IMPLICATIONS

Public utilities, likely due to changing economic conditions, are in an era of frequent rate cases. Both PNM and SPS filed rate cases in late 2015 (NMPRC Case Nos. 15-00261 and 15-00296-UT, respectively) and again in late 2016 (NMPRC Case Nos. 16-00276-UT and 16-00269-UT, respectively). Moreover, the complexity of the issues and sheer quantity of the material presented in the general rate cases are largely due to the use of future test periods allowed by Section 62-6-142 and the corresponding reliance on forecasts. This effect plus issues stemming from the Renewable Energy Act (Section 62-16-1 et seq.) and Efficient Use of Energy Act (Section 62-17-1 et seq.) mandates and associated automatic cost recovery rate riders impose increasingly high demands on PRC resources already under budget pressures. A limitation on frequency of cases could alleviate this pressure.

---

<sup>1</sup> Section 62-8-7.1 of the Public Utility Act, Sections 62-3-1 et seq., NMSA 1978, which allows small water and sewer utilities to implement a certain level of rate increases once in a twelve-month period without a hearing so long as the protest threshold is not crossed.

<sup>2</sup> Notwithstanding that intended benefits of the use of “future test years” include reducing regulatory lag and the need for more frequent rate cases.

<https://www.aep.com/about/IssuesAndPositions/Financial/Regulatory/AlternativeRegulation/FutureTestYears.aspx>;

[http://www.eei.org/issuesandpolicy/stateregulation/Documents/EEI\\_Report%20Final\\_2.pdf](http://www.eei.org/issuesandpolicy/stateregulation/Documents/EEI_Report%20Final_2.pdf)

## **ADMINISTRATIVE IMPLICATIONS**

As noted above, SB235 will have a positive impact on the administrative burdens of the PRC; a limitation on frequency of cases could alleviate high demand on PRC resources that are currently under budget pressures.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Public utilities will be able to continue to file applications for rate increases at their discretion unless otherwise constrained by negotiated rate paths approved by the Commission that, in the past, have included a phased-in rate increase over, for example, a 2 to 3 year period, or an agreement by the utility to “stay out” of the PRC with a rate increase request for a certain period of time, normally again, a 2 to 3 year period.

JM/jle/al