

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE RULES AND ORDER OF BUSINESS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 325

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
REQUIRING A PUBLIC UTILITY TO PROCURE REPLACEMENT RESOURCES IF
THE PUBLIC UTILITY ABANDONS A FACILITY IN CERTAIN
CIRCUMSTANCES.

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

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

"62-9-1. NEW CONSTRUCTION--REPLACEMENT RESOURCES--
RATEMAKING PRINCIPLES.--

A. No public utility shall begin the construction
or operation of any public utility plant or system or of any
extension of any plant or system without first obtaining from
the commission a certificate that public convenience and
necessity require or will require such construction or

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

24 B. If a certificate of public convenience and
25 necessity is required pursuant to this section for the

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

21 C. The requirements for replacement resources
22 located in a school district in which a facility is being
23 abandoned, pursuant to Subsection B of Section 62-9-5 NMSA
24 1978, shall not preclude a public utility from being granted a
25 certificate of public convenience and necessity; provided that

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1 the requirements of Section 62-9-3 NMSA 1978 are met.

2 ~~[G-]~~ D. The commission may approve the application
3 for the certificate without a formal hearing if no protest is
4 filed within sixty days of the date that notice is given,
5 pursuant to commission order, that the application has been
6 filed. The commission shall issue its order granting or
7 denying the application within nine months from the date the
8 application is filed with the commission. Failure to issue its
9 order within nine months is deemed to be approval and final
10 disposition of the application; provided, however, that the
11 commission may extend the time for granting approval for an
12 additional six months for good cause shown.

13 ~~[D-]~~ E. As used in this section:

14 (1) "mutual domestic water consumer
15 association" means an association created and organized
16 pursuant to the provisions of:

17 ~~[1-]~~ (a) Laws 1947, Chapter 206; Laws
18 1949, Chapter 79; or Laws 1951, Chapter 52; or

19 ~~[2-]~~ (b) the Sanitary Projects Act; and

20 (2) "replacement resource" means a new supply-
21 side resource owned by a public utility or a non-utility
22 provider that the public utility needs, due to the public
23 utility's abandonment of a coal-fired generation facility
24 located in New Mexico, to provide reliable service to the
25 public utility's customers that minimizes environmental impacts

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1 and is the public utility's most cost-effective option among
2 feasible resource alternatives available to meet that need in
3 accordance with the requirements of Subsection B of Section 62-
4 9-5 NMSA 1978."

5 SECTION 2. Section 62-9-5 NMSA 1978 (being Laws 1941,
6 Chapter 84, Section 48, as amended) is amended to read:

7 "62-9-5. ABANDONMENT OF SERVICE--LOCATION OF REPLACEMENT
8 RESOURCES.--

9 A. No utility shall abandon all or any portion of
10 its facilities subject to the jurisdiction of the commission,
11 or any service rendered by means of such facilities, without
12 first obtaining the permission and approval of the commission.
13 The commission shall grant such permission and approval, after
14 notice and hearing, upon finding that the continuation of
15 service is unwarranted or that the present and future public
16 convenience and necessity do not otherwise require the
17 continuation of the service or use of the facility; provided,
18 however, that ordinary discontinuance of service or use of
19 facilities for nonpayment of charges, nonuser or other reasons
20 in the usual course of business shall not be considered as
21 abandonment. In considering the present and future public
22 convenience and necessity, the commission shall specifically
23 consider the impact of the proposed abandonment of service on
24 all consumers served in this state, directly or indirectly, by
25 the facilities sought to be abandoned.

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1 B. If a facility being abandoned is a facility
2 described in Paragraph (1) of Subsection G of Section 62-3-3
3 NMSA 1978, is a coal-fired generation facility located in New
4 Mexico and the abandonment will cause, in the aggregate, a
5 reduction in annual property tax revenue paid to local
6 governments of two million five hundred thousand dollars
7 (\$2,500,000) or more that is attributable to the facility being
8 abandoned, then the utility abandoning the facility shall
9 procure replacement resources within the school district in
10 which the facility being abandoned is located; provided that
11 the cost to customers to procure the replacement resources
12 shall be no more than one hundred ten percent of the estimated
13 cost to customers to procure the same resource type and
14 capacity in a different location in the state; and provided
15 further that locating the replacement resources in that school
16 district shall not adversely affect adequate system
17 reliability.

18 C. Applications for abandonment shall include
19 evidence of property tax revenue attributed to the facility
20 that is being abandoned.

21 D. As used in this section, "replacement resource"
22 means a new supply-side resource owned by a utility or a non-
23 utility provider that the utility needs, due to the utility's
24 abandonment of a coal-fired generation facility located in New
25 Mexico, to provide reliable service to the utility's customers

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1 that minimizes environmental impacts and is the utility's most
2 cost-effective option among feasible resource alternatives
3 available to meet that need in accordance with the requirements
4 of Subsection B of this section."

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